

KMD - End User License Agreement

Introduction

This End User License Agreement ("EULA") applies to any agreement concerning a customer's ("Customer") use of software developed or provided by KMD A/S, Lautrupparken 40, DK-2750 Ballerup, Denmark, CVR No 26 91 17 45 ("KMD"), unless otherwise agreed.

Please read this EULA carefully. The terms of the EULA govern the Customer's use of the software and any future upgrades or addenda hereto unless otherwise specified and agreed in writing with KMD at that particular time.

IMPORTANT! BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE THAT ACCOMPANIES THIS EULA, YOU AGREE TO BECOME BOUND BY THE TERMS AND CONDITIONS STATED HEREIN. IF YOU DO NOT AGREE WITH THE SAID TERMS AND CONDITIONS, YOU MUST NOT DOWNLOAD, INSTALL, USE, ACCESS OR RETAIN ANY COPIES OF THE SOFTWARE.

1. Grant of license

- 1.1 If the license fee for using the software has been paid in full, the Customer is granted a time-limited, non-exclusive, non-transferable license to use the KMD software developed and provided by KMD ("KMD software") for its own internal purposes and subject to the terms and conditions of this EULA. The scope of use, including the number of users permitted, may be further specified in a separate agreement or appendix.
- 1.2 The license fees for the KMD software will be invoiced on the date when software is shipped from KMD or access to the software is otherwise granted.
- 1.3 The Customer will be provided with one copy of an executable object code of the KMD software and one copy of the documentation accompanying the software or electronic access to such documentation.
- 1.4 Except as expressly authorized, the Customer shall not:
 - distribute, sell, rent or otherwise transfer the KMD software or documentation to any third party; or
 - sub-license the KMD software or provide outsourcing, timesharing, rental or other such services thereof to any third party.
- 1.5 Except as expressly authorized herein, or as expressly permitted by mandatory statutory provisions of applicable law, the Customer shall not:
 - copy, in whole or in part, the KMD software other than for backup purposes; or
 - change or maintain the KMD software; or
 - reverse engineer or otherwise derive product source code from the licensed executable code.
- 1.6 In case of third party software, which is not an embedded part of the KMD software, the Customer's rights and obligations regarding such third party software is subject to the particular third party's license terms and conditions.

2. Documentation use and editing

- 2.1 The Customer is allowed to copy all accompanying documentation in accordance with the number of user licenses acquired without any extra charge.
- 2.2 Standard training material from KMD shall not be copied or edited unless permission has been granted and compensation agreed with KMD. This is also valid for documentation developed specifically for the Customer.
- 2.3. For database and other third party software, the Customer is allowed to copy the documentation according to the particular license agreements of the database and third party software providers.

3. Intellectual property rights

- 3.1 The Customer acknowledges that the KMD software and all intellectual property rights, including copyright, thereto are the property of (or are licensed by third parties to) KMD and that nothing in this EULA is intended to transfer ownership of the KMD software and associated intellectual property rights to the Customer. The Customer is only granted a limited license to use the software as described in this EULA.

4. KMD warranties and defects

- 4.1 KMD warrants that the KMD software has been developed and programmed in accordance with good IT practice.
- 4.2 The Customer acknowledges, however, that software in general is not error-free or without defects and agrees that the existence of such errors or defects in the KMD software or other software provided to the Customer shall not constitute a breach of this EULA.
- 4.3 KMD warrants that the licensed KMD software shall operate substantially in accordance with the functional specification published on KMD's web site or disclosed to the Customer including any Product Fact Sheets. For any breach of such warranty within 60 days from the Customer's acquisition of a software license, KMD will repair or replace the software or parts of the software without undue delay.
- 4.4 KMD further warrants that the software will not infringe the rights of any third parties, including copyrights. This warranty is subject to the condition that KMD shall be given prompt notice of any such claim of infringement that is made against the Customer and KMD shall have the right to defend any such claims and make settlements thereof at its own discretion and the Customer shall give such assistance as KMD may reasonably require to settle or oppose any such claims.
- 4.5 KMD disclaims all other warranties, expressed or implied, with regard to the software, including but not limited to, warranties of merchantability or fitness for any particular purpose.
- 4.6 KMD's sole obligation for breach of the above or in case of any defect in the KMD software will be to correct or replace that portion of the software which fails to conform in accordance with the functional specification stated above. For the avoidance of doubt, there shall be no obligation to remedy:
 - altered, damaged or modified software except where such alterations, damage or modifications are caused by KMD, their employees and/or agents;
 - software that is not the current or previous sequential release;

- software problems caused by the Customer's negligence, hardware malfunction or other cause beyond the control of KMD;
 - defective data;
 - problems caused by an incorrect interface to other software or data sources; or
 - software installed in an operating environment not supported by KMD.
- 4.7 The Customer shall give KMD a reasonable opportunity and access to correct any defects which KMD is under an obligation to remedy. To the exclusion of any other remedies of breach KMD undertakes at its expense to use reasonable endeavors to carry out remedial services as soon as practicable after any such defect has been identified and reported in writing by the Customer to KMD.
- 4.8 Third party software is provided "as is" without warranties of any kind, although the original manufacturers of third party software or third party suppliers of such software may provide their own warranties.

5. Limitation of liability

- 5.1 KMD shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this EULA, the software, its use or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law.
- 5.2 Notwithstanding the generality of the above, KMD expressly excludes liability for any indirect, special, incidental or consequential loss or damage which may arise in respect of the software, its use or in respect of equipment or property, or for loss of profit, business, revenue, goodwill, data or anticipated savings.
- 5.3 In the event that any exclusion contained in this EULA shall be held to be invalid for any reason and KMD becomes liable for loss or damage that may lawfully be limited, such liability shall be limited to the annual or one-time license fee as the case may be.
- 5.4 KMD does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of KMD, its employees, agents or authorized representatives.

6. Confidentiality

- 6.1 All information including, but not limited to, data, drawings, specifications, documentation, software listings, object or source code, pricing, which the Customer may have received relating to the KMD software (other than the ideas and principles which underlie the software), is proprietary and confidential. The Customer hereby agrees that it shall use such information solely in accordance with the provisions of this EULA and that it shall not at any time during or after expiry or termination of this EULA, disclose the information, whether directly or indirectly, to any third party without KMD's prior written consent.
- 6.2 The above shall not prevent the disclosure or use by the Customer of any information which is or hereafter, through no fault of the Customer, becomes public knowledge or to the extent permitted by law.

7. Audit

- 7.1 KMD reserves the right to audit, at KMD's expense, the Customer's deployment and use of the KMD software for compliance with this EULA at any mutually agreeable time during the Customer's normal business hours. If the Customer's use of the KMD software is found to be greater than contracted for, the parties shall within 30 days commence negotiations for adjustment of the license, maintenance and support fees accordingly. If the fees owed by the Customer are greater than five per cent, the Customer shall pay the expenses associated with such audit in addition to the additional license, maintenance and support fees due.
- 7.2 The Customer shall implement reasonable controls to ensure that it does not violate the rights to use the software granted in this EULA.

8. Termination

- 8.1 The EULA may be terminated by either party with immediate effect in the event of:
- the other party commits any material breach of any of the terms of this EULA (and if such breach is remediable) fails to remedy such breach within 30 days of being notified of the breach; or
 - the other party's bankruptcy, suspension of payments, compulsory composition or similar arrangement with its creditors provided that such termination is not contrary to mandatory law.
- 8.2 Any violation by the Customer of the terms of this EULA or any other applicable terms regarding the Customer's license to use the KMD's software pursuant to clause 2 above shall be considered a material breach of this EULA.
- 8.3 Upon termination of the EULA, the Customer shall cease all use of any KMD software. In addition, the Customer shall either destroy or return all copies of the software according to KMD's instructions.

9. Disputes

- 9.1 Any dispute arising out of or in connection with this EULA, including any disputes regarding the existence, validity or termination thereof, shall be governed by Danish law and settled by arbitration arranged by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

10. Embedded third party software

- 10.1 All KMD products contain dotNetInstaller open source software. The following applies in respect of such software (The MIT License):
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 - Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:
 - The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

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