

GENERAL TERMS AND CONDITIONS OF THE 3D-TOOL GMBH & CO. KG – AS OF JANUARY 24TH 2025

These general terms and conditions apply exclusively to all transactions with 3D-Tool GmbH & Co. KG, Im Steiles 23/1, 69469 Weinheim, Germany, regarding the transfer of Software (as defined below). According to the stipulations agreed upon at the conclusion of the contract, the Software is provided either against payment of a fee or free of charge. The Software was developed by 3D-Tool GmbH & Co. KG for use within the scope of the customer's commercial or self-employed professional activity.

1. PARTS OF THE AGREEMENT

The following conditions apply exclusively. The customer's general terms and conditions do not become part of the contract, even if they are not expressly contradicted, and even if 3D-Tool carries out deliveries to the customer or provides other services to the customer in the knowledge of such general terms and conditions.

2. DEFINITIONS

2.1. Software: The Software agreed between the parties as part of the conclusion of the contract (e.g. 3D-Tool and its components as a paid solution or FreeViewer as a free solution) and the documentation it contains. Without prejudice to the stipulations contained in these GTC, 3D-Tool GmbH & Co. KG and the customer shall, for each contract, define the subjective requirements regarding the scope and content of each chargeable service of 3D-Tool GmbH & Co. KG ("Specifications"). Within the scope of the conclusion of the contract, the customer will check the service description of the Software for (a) its conformity with the performance expected by the customer in terms of type, quantity, quality, functionality, compatibility, interoperability and with regard to all other relevant characteristics of the goods or other service and (b) all other information that is essential for the use required by the customer according to the respective contract. Irrespective of this, only those subjective requirements agreed by the parties in the service description are binding for determining the subject of the contract. The provision of the source code is not part of the performance obligation.

2.2. License: The rights of use to the Software granted to the customer.

3. PRICES

3.1. All specified prices are net prices and do not include any statutory taxes or duties.

3.2. If a value-added tax free delivery or service is feasible, the customer is obligated to provide the necessary proof. If the delivery or service is provided without the value-added tax by mistake, the customer shall exempt 3D-Tool GmbH & Co. KG from the tax obligation and bear all extra expenses.

4. CONCLUSION OF CONTRACT

4.1. Orders can be made via E-Mail or mail to 3D-Tool GmbH & Co. KG as well as via the online shop of the 3D-Tool GmbH & Co. KG. The order represents a binding offer to 3D-Tool GmbH & Co. KG to conclude a contract for the provision of the relevant Software for a fee or free of charge. However, the contract is only concluded with the order confirmation, invoice, or delivery of the ordered Software by 3D-Tool GmbH & Co. KG.

4.2. The automatically generated confirmation of receipt of an order in the online shop of the 3D Tool GmbH & Co KG does not constitute the conclusion of an agreement. It is merely a confirmation that the order was received.

4.3 When ordering in the online shop, the Software products selected by the customer are stored in the "Shopping Cart". The according button in the navigation bar enables the customer to edit the contents of the Shopping Cart at any time. By using the button "Go to Checkout", the customer is taken to the ordering form to, as far as necessary, enter the invoice address, the delivery address, to select the mode of payment and, in case of payment by credit card, to enter the credit card details. Before finally sending the order, the customer will be able to verify all details, to make changes or to cancel the order.

4.4. When ordering in the online shop, the text of the contract (GTC and order data) is stored by 3D-Tool GmbH & Co KG. However, this storage is only temporary, respectively not accessible by the customer. But the customer is able to download the terms and conditions of business and the order data respectively print them by using the print function of his browser. Additionally, the customer will receive an automatically generated confirmation of receipt after sending the order which contains the terms and conditions of business and the order data in text form.

4.5. If Licenses are ordered by mistake, the Licenses can only be canceled or changed within a time limit of five (5) days after conclusion of the agreement, if the Licenses have not been used to activate the Software. 3D Tool GmbH & Co. KG is to be given written notice of an incorrect order.

4.6. In the event that Licenses shall be ordered on behalf of a third party such order shall only be permitted upon disclosure of the representation itself and the person being represented. The License Certificate will in such case directly be issued on the person being represented. The representative will not be granted any License himself. This Section 4.6 is without prejudice to the other stipulations of these terms and conditions of business or the EULA.

4.7. To test the full range of functions of the Software, the customer can request a one-time free Trial Key from 3D-Tool GmbH & Co. KG before purchasing a chargeable License. If the Software is executed and used with a Trial Key, all commercial use and use of the Software for production purposes is prohibited.

5. RIGHTS OF USE

5.1. The type and scope of the rights of use granted to customer, and the provisions concerning liability for defects of title, are defined in the End User License Agreement (EULA) of the Software.

5.2. The rights of use for an unlimited period of time to the chargeable Software shall be granted to the customer only upon complete and unconditional payment of the sales price. The use of the Software is tolerated until the rights are granted for an unlimited period of time and until then can be revoked at any time.

6. PAYMENT CONDITIONS FOR CHARGEABLE SOFTWARE

6.1. Customers that have their place of business in Germany can pay on account, or with credit card.

6.2. Customers that do not have their place of business in Germany pay with credit card.

6.3. 3D-Tool reserves the right to request advance payment in individual cases.

6.4. The right of retention may not be exerted unless that right is based on this contractual relationship.

6.5. The customer only has the right to set off claims that are recognized as legally binding or claims that the 3D-Tools GmbH & Co. KG has not disputed.

6.6. If the customer is entitled to a refund due to an overpayment, a double payment, or for other errors for which the customer is responsible, only the actually received sum paid to the account of 3D-Tools GmbH & Co. KG less any incurred charges and any reimbursement costs which may arise, shall be refunded.

7. PROVISION OF THE SOFTWARE AND ACTIVATION OF LICENSES

7.1. The Software is available to the customer for download in the version current at the time the contract was concluded and in accordance with the current specifications. 3D-Tool GmbH & Co. KG warrants the availability of the download for thirty (30) days from receipt of the License certificate sent to the customer by 3D-Tool in accordance with Section 7.3.

7.2. The customer is responsible for installing the Software on his IT systems. It may not be possible to use chargeable Software with its full range of functions immediately after downloading, but only after the corresponding License certificate has been provided by 3D-Tool; up to this point in time, the use of the Software may only be possible to a limited extent, namely within the scope of the Free Viewer Software provided free of charge.

7.3. To use the chargeable Software with the License, the Software must be activated after installation. The License Certificates required to activate the Software will be sent immediately after the conclusion of the contract to the customer via e-mail or via regular mail.

7.4. The customer is responsible for adequately securing the Software provided to him and the License certificates against unauthorized access by third parties.

7.5. Should the 3D-Tool GmbH & Co. KG not be able to fulfill its obligations due to unforeseeable, extraordinary circumstances that 3D-Tools GmbH & Co. KG cannot prohibit, despite due diligence, the delivery period shall be prolonged for a reasonable period of time, not to exceed a maximum time period of eight weeks.

7.6. If the delivery, or the provision of services, should become impossible for the reasons listed above the 3D-Tool GmbH & Co. KG shall be exempted from the duties to perform its obligations.

8. INSPECTION OBLIGATION AND OBLIGATION TO GIVE NOTICE OF DEFECTS

The customer is obligated to immediately inspect all delivered goods and services performed by 3D-Tools GmbH & Co. KG in the course of the execution of the agreement for defects and must give 3D-Tools GmbH & Co. KG notice of any defects without delay. If the customer fails to comply, he shall forfeit his warranty claims for such defects, which would have been discovered in the course of an immediate examination.

9. WARRANTY

9.1. For Software provided free of charge (Free Viewer) - including during a free test (Trial Key) - 3D-Tool GmbH & Co. KG is only liable pursuant to the statutory provisions (in particular §§ 524, 600 German Civil Code). The statute of limitations for these claims is based on Section 9.6.

9.2. In the case of chargeable provision of Software, the basis for liability claims for material defects, as per the following paragraphs, are the agreed specifications of the Software, as well as the objective requirements for the Software.

9.3. Any samples or specimens of delivery items (including test versions, drawings, plans, calculations, references to DIN standards) provided to the customer by 3D-Tool or by third parties (e.g. sales partners of 3D-Tool) before the conclusion of the contract shall only determine the contractually agreed quality of the Software instead of or in addition to the specifications of the Software, if 3D-Tool expressly notifies the customer of this when or after providing the sample ; otherwise, such samples or specimens are only non-binding examples of possible specifications. Public statements made by 3D-Tool or their sub-suppliers or on their behalf, and which go beyond the quality specifications specified in the service description, are corrected by the more specific or conflicting specification in the specifications.

9.4. In case the Software is defective, the 3D-Tool GmbH & Co. KG first and foremost provides warranty by supplementary performance within an appropriate period of time. 3D Tool GmbH & Co KG shall thereby provide the customer with new Software free of defects or repair the defect at its own choice. As far as reasonable for the customer, the defect can also be eliminated using other solutions, which circumvent the defect (workarounds).

9.5. The customer's right to withdraw from the contract or to assert claims for damages due to software errors that only marginally limit the usability of the Software is excluded.

9.6. The statute of limitations for all warranty claims and other claims against 3D-Tools GmbH & Co. KG is twelve (12) months. This time period shall begin upon delivery, or provision of the contractual goods. The same terms shall apply to damage claims arising out of defects, as well as to claims for the compensation of fruitless expenditures. This statute of limitations shall not be applicable to willfully or gross negligently induced defects, which thereby lead to damages claims, defects that are maliciously kept secret, or in the case of injury to life, limb or health, in the event that a guarantee is breached, or to claims based on the Product Liability Act of the Federal Republic of Germany. In these cases the statute of limitation in accordance with the provisions of the law shall apply.

9.7. For the rest, the provisions of Section 10 apply accordingly to claims for damages by the customer due to material defects.

10. LIABILITY – LIMITATIONS AND STATUTE OF LIMITATIONS

10.1. The following limitations of liability and the restriction of the statute of limitation shall not be applicable to damages to life, limb and/or health and/or to damages resulting from the breach of a guarantee and/or to damages that are caused by willful misconduct or gross negligence. The provisions of law shall apply to these cases. The same applies to the liability in accordance with the Product Liability Act of the Federal Republic of Germany.

10.2. The 3D-Tool GmbH & Co. KG shall not be liable for damages due to the loss of data and the non-usability of the Software that are incurred exclusively due to the fact that the customer failed to make an appropriate security back-up of the Software and the data processed with the Software. 3D-Tool GmbH & Co. KG's liability for damages in such a case is limited to the costs that would have been incurred if the customer had appropriately made a security back-up.

10.3. For negligently caused damage, the liability of 3D-Tool GmbH & Co. KG is (a) excluded in the case of providing the Software free of charge, or (b) in the case of providing the Software against a fee, limited to the foreseeable damage typical of the concrete contractual relationship.

10.4. For negligently caused damage incurred due to the delayed performance, the liability of 3D-Tool GmbH & Co. KG is (a) excluded in the case of providing the Software free of charge, or (b) in the case of providing the Software against a fee limited to 15 % of the sales price.

10.5. Damages claims that are not based on a defect in the Software shall become statute barred twelve (12) months upon discovery thereof, or 12 months after that point of time in which the damages could have been discovered with due diligence.

11. EXPORT RESTRICTIONS AND REGULATIONS

11.1. The customer acknowledges and agrees that the Software is subject to the export control laws and regulations of the United States and the United Kingdom. Notwithstanding any other obligation pursuant to this Section 11, the customer is obliged to independently monitor and comply with the obligations and requirements arising out of said export control laws and regulations.

11.2. The Software may not be exported, re-exported, or transferred to end users engaged in activities related to weapons of mass destruction except as authorized by the export laws and regulations of the United States. Such activities include but are not necessarily limited to activities related to: (1) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons; (2) the design, development, production, or use of missiles or support of missiles projects; and (3) the design, development, production, or use of chemical or biological weapons.

11.3. Should further export control laws or regulations for the transnational delivery or performance for the country of the customer exist, the customer shall independently initiate and carry through the necessary procedures, obtain the necessary permits and shall – if so required – provide the permits to 3D-Tool GmbH & Co. KG.

11.4. If further costs for customs, fees, taxes or duties are payable in the course of a transnational delivery or performance, the customer shall carry these costs. The customer shall be liable for and shall bear all taxes and dues incurring in his country also if the 3D-Tool GmbH & Co. KG is debtor of such taxes and dues.

12. GENERAL

12.1. All agreements with the 3D-Tool GmbH & Co. KG are construed under and shall be governed by the laws of the Federal Republic of Germany to the exclusion of the regulations of Private International Law (IPR) and the provisions of the UN Sales Convention (CISG).

12.2. The contractual language is German or English, depending on the language used for concluding the contract. If the contract is concluded via the online shop of 3D-Tool GmbH & Co. KG the only language available for concluding the contract is English.

12.3. The place of jurisdiction is the place of business of the 3D-Tool GmbH & Co. KG. However, the 3D-Tool GmbH & Co KG also has the right to file an action against the customer at the latter's place of business.

12.4. If individual provisions of these GTC should be invalid or not executable or become invalid or not executable upon conclusion of the agreement, the validity of the remaining agreement shall not be affected.

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