

CADFEM Master License Agreement
Version 31.05.2012

CADFEM GmbH
Marktplatz 2
85567 Grafing

<http://www.cadfem.de/fileadmin/software/CFMLA-310512.pdf>

1. Software License Grant / Term

- 1.1 This Master License Agreement (hereinafter also called "the Agreement") shall apply to all Individual Contracts that refer to this Agreement. These Individual Contracts shall be effective provided that Customer has placed a written order specified following a written offer submitted by CADFEM and a **License Form** has been signed by both parties. No general terms and conditions of Customer shall apply.
- 1.2 CADFEM delivers to Customer the most current version of the software described in the **License Form** and grants Customer, a non-exclusive, non-transferable right of use of the software - depending on the provisions in the **License Form** - either for the term of the Individual Contract (software lease) or permanently (software purchase) according to the provisions of this Agreement. The grant of the Individual Contractual rights of use is effective after receipt of full payment. Before this date Customer is granted a temporary right of use for a period of 30 days from the date of delivery of the software.
- 1.3 At CADFEM's option, the software is either delivered on a data carrier or can be downloaded from a server. The scope of delivery includes a user documentation in English that is also either delivered on a data carrier or can be downloaded online.
- 1.4 The software is only executable when activated by means of a special key (authorization code and/or a dongle). If, according to the **License Form**, it is only for use on a specific computer, the software may only be activated on that computer. Authorization code and/or dongle are provided by CADFEM. As long as Customer is only entitled to a temporary right of use prior to payment, CADFEM must only provide a temporary key to Customer that allows use of the software for a period of 30 days from the date of delivery of the software. Only after payment in full of the charge for the software, Customer shall have the right to a permanent key (in case of software purchase) or to a key limited to the term of the Individual Contract (in case of software lease). If Customer wishes to use the software on a computer other than the one agreed in the **License Form**, a new key will be needed. Damaged dongles returned or provably lost dongles will be replaced by CADFEM at the customer's expense.
- 1.5 Customer must take care that his computer has a suitable configuration. The software is considered as delivered as soon as Customer has received everything needed for having access to the software. Customer shall install the software at his own expense.
- 1.6 In case of software lease, Customer has the right to use the software for a period of 12 months from delivery, unless otherwise agreed in the **License Form**. CADFEM can terminate the Individual Contract early in case CADFEM should lose its distribution licence. In case of software lease after termination of the Individual Contract dongles provided by CADFEM are to be returned, the copies of the software on the computers are to be deleted and safety copies are to be destroyed.
- 1.7 Customer receives the software in a binary format and has no right to receive the source code. Use is legally and technically restricted to the number of simultaneous tasks on the computers of Customer as specified in the **License Form**.
- 1.8 Customer is obliged to respect the copyright and other intellectual property rights of the software producer in the software. Any duplication of the software outside the Individual Contractually allowed use is inadmissible. Any changes in the software by Customer are only admissible for the purpose of error correction and provided CADFEM is in default with error correction after having received a written notice. Decompilation of the software is only admissible for obtaining information subject to the conditions and restrictions according to Art. 69e Copyright Act (UrhG) and only

if CADFEM has failed to make the required information available within a reasonable period of time after having received a written request.

- 1.9 If there is made reference to separate license terms of the producer in the **License Form**, there may result from these terms further provisions in respect of the license and the use of the software. In this case such license terms shall also govern the legal relationship between the producer and Customer.
- 1.10 If it is indicated in the **License Form** that the software is a "**University Version**" ("Hochschulversion"), the software may only be used for academic teaching and research and not for commercial purposes; upon CADFEM's request, Customer must provide an annual report on the use of the software.

2. Duties and Obligations of Customer

- 2.1 Customer is not allowed to transfer the software to a third party. Customer may, however, permit the use of the software to employees and Individual Contractors who are not granted an independent right of use and who use the program on behalf of the Customer. The restrictions of use according to Section 1 of this Agreement remain unaffected.
- 2.2 Customer is obliged to observe the export regulations of the Federal Republic of Germany as well as of the countries where the software was produced.
- 2.3 Customer is obliged to run regular data backups appropriate in relation to the existing risks.

3. Warranty / Indemnification

- 3.1 If the software has any defects, CADFEM must at its option either correct the respective defect in the software or deliver software free from defects within a reasonable period from notification of the defect by Customer. In the event such remedy fails, Customer shall be entitled to legal claims, unless otherwise regulated below. Since CADFEM itself is not in possession of the source code, it can only correct defects as far as it has been supplied by the software producer with a respective error-correction update. As far as Customer incurs a damage caused by defects in the software, the limitations of liability according to Items 4.1 to 4.6 of this Agreement shall apply.
- 3.2 Claims based on defects are excluded in case of a use of the software on an operating system other than the system specified in the **License Form**.
- 3.3 No warranty is provided for the correctness and/or usability of the results achieved with the software. The descriptions of the software in the user documentation do not involve any warranties.
- 3.4 Customer must inspect the software immediately after its delivery. Any obvious defects must be immediately reported to CADFEM in writing; otherwise Customer will lose any rights to claim removal of such defects. The same applies to defects that become apparent at a later point of time.
- 3.5 In case a third party is entitled to claims against Customer for infringement of copyright or other intellectual property rights by the software made available by CADFEM and therefore Customer's Individual Contractual use of the software is impaired or forbidden, CADFEM will, at its option and expense, either make available to Customer a software altered or replaced in such a manner that it does not infringe the rights of the third party, without involving a loss of functionality of the software, or indemnify Customer against the payment of licence fees for the use of the software towards the third party. The customer must immediately inform CADFEM in writing about any alleged infringements of copyright or other intellectual property rights of a third party. Moreover, it must not recognize the alleged infringement and may only conduct disputes of any kind with the third party about the infringement in agreement with CADFEM. Any claims of Customer resulting from an infringement of copyright or other intellectual property rights are excluded as far as the infringement is based on the fact that the software has been altered or is used together with software of another software producer by Customer. The same applies, if the infringement is based on improper use, in particular if the use is not in line with the Individual Contractual user documentation. Any other claims of Customer based on infringement of protective rights of a third party are excluded, unless liability is provided for in this Agreement (Items 4.1 to 4.6 of the Agreement).
- 3.6 Extraordinary termination for non-grant of use (Art. 543 Subsec. 2 No. 1 German Civil Code (BGB)) based on a defect in the software is excluded as long as the attempt of a correction of the defect by CADFEM is not to be regarded as having failed.

3.7 In case of software purchase, claims of Customer based on defects (including claims for damages) the warranty period is 12 months. In cases of damage to life, body or health, of a wilful or grossly negligent breach of duty on part of CADFEM, of fraudulent concealment of defects or of claims under the Product Liability Act the respective Law shall apply.

4. Limitation of Liability

4.1 CADFEM is only liable for damage, on whatever legal grounds, if such damage is caused by intent or gross negligence or by wilful or negligent breach of material Individual Contractual duties. Material Individual Contractual duties within the above meaning are such Individual Contractual duties that are mandatory for proper performance of the Individual Contract and on the fulfilment of which Customer may regularly rely.

4.2 In case of simple negligence, liability of CADFEM is limited to the foreseeable damage.

4.3 CADFEM is only liable for consequential damage caused by a defect in case of intent and gross negligence; legal claims of Customer for compensation for damage caused by delay in rectification of the defect remain unaffected.

4.4 The above limitations and exclusions of liability do not apply to damage from injury of life, body or health that CADFEM is responsible for, as well as to liability under the Product Liability Act.

4.5 It is understood between parties to the Individual Contract that computer-aided engineering (CAE) always must be verified using suitable methods because the results obtained may be incorrect due to wrong or inaccurate entries or hidden defects in the software.

4.6 Proper use of the software requires a specific training of the user.

5. Support and Maintenance

The Individual Contract includes support and maintenance, in case of software lease during the term of the software lease and otherwise only as far as specified in the **License Form**, to the following extent:

5.1 Support includes explanations for correcting operating errors by way of short advice given on the phone during the usual business hours (service hotline). Support is only provided for the most current or the previous version.

5.2 Maintenance includes delivery of the update versions (improved and further-developed versions) issued by the software producer after their release. Update versions are issued at the software producer's free discretion. Update versions may require an updating of operating systems and interface programs.

5.3 If support and maintenance are agreed in case of software purchase, the respective term commences at the date of delivery of the software and has a duration of 12 months, unless otherwise stipulated in the **License Form**. CADFEM can terminate support and maintenance early in case it should lose its distribution licence.

5.4 The obligation to provide support and maintenance ceases if Customer alters the software without authorization.

6. Purchase Price / Lease / Maintenance and Support Charge

6.1 The charge for software including the grant of license connected with it (purchase price/lease) as well as a separate charge for support and maintenance services, if applicable, depend on the respective content of the order placed by Customer. In case of software lease, the agreed amount of lease applies exclusively to the agreed term of the Individual Contract.

6.2 The charge for the software (purchase price/lease) as well as the charge for support and maintenance services is due for payment upon delivery of the software. If, in case of software purchase, there is also included support and maintenance, the charge for such services is due for payment at the beginning of the respective term.

6.3 If a term of software lease or a term of support and maintenance is extended, the respective charge is due for payment at the beginning of the new term.

6.4 If CADFEM terminates the Individual Contract early (in case of software lease or support and maintenance) for the reason that CADFEM loses its distribution licence and no third party will pro-

vide the services until the original termination date without further cost for Customer, the charge already paid by Customer for the current term shall be refunded on a prorated basis.

- 6.5 Customer shall bear customs duties, taxes and all other fees incurred in connection with the delivery of the software. The same applies to postage, freight and packaging.

7. Extension of the Term of Individual Contract

The extension of a term for software lease or support and maintenance by a further term is subject to written agreement. Such agreement can be made by signing a new **License Form** with reference to this Agreement (indicating the Individual Contract Number) provided that Customer has placed a written purchase order specified following a written offer submitted by CADFEM.

8. Other Provisions

- 8.1 Customer's rights from this Agreement and from any Individual Contracts under this Agreement cannot be assigned to a third party. Customer can set off claims for payment of CADFEM only against claims from the same Individual Contract or claims that are uncontested or have become res judicata. A right of retention is only due to Customer for claims from the same Individual Contract.
- 8.2 This Agreement is governed by German law, excluding the United Nations Convention on Individual Contracts for the International Sale of Goods (CISG). If Customer is a registered merchant, a legal person under public law or a special fund under public law or if it does not have a general place of jurisdiction within Germany, the court of the district in which CADFEM has its established seat shall have exclusive jurisdiction.
- 8.3 Any addendum to or amendment of this Agreement or a License Form must be made in writing. This applies also to a possible waiver of the written-form requirement.
- 8.4 If any provision of this Agreement should be or become ineffective or impracticable, that shall not affect the legal validity of the remaining provisions. In place of the ineffective provision, there shall be regarded as agreed an effective provision that comes economically as close as possible to what was intended by the parties.