

## Software End User Licence Agreement (EULA)

### 1. Scope of application

- 1.1 This licence agreement set out the terms and conditions of use of the contractual software **aRTist** (a computer program for the simulation of radiographic testing), hereinafter called "Software", between the customer (a company or legal entity which procures and uses the Software as the end user), hereinafter referred to as the Licensee, and the Federal Republic of Germany, represented by the Federal Minister of the Federal Ministry for Economic Affairs and Energy (BMWi), represented in turn by the President of the **Federal Institute for Materials Research and Testing (BAM)**, Unter den Eichen 87, 12205 Berlin, hereinafter referred to as the Licensor.
- 1.2 The use (purchase, installation, usage) of the Software shall constitute an acknowledgement on the part of the Licensee of these licence conditions and shall render this licence agreement binding on the Licensee and the Licensor.
- 1.3 The provisions of this contract shall also take precedence within the scope of the Software Update and Support Contract.
- 1.4 The general terms and conditions of business or purchasing conditions of the Licensee shall not apply, even if the Licensor does not specifically express any objection to the same. This shall also apply if the Licensee cites and makes reference to its own general terms and conditions of business or purchasing conditions in a letter of confirmation.
- 1.5 Differing agreements shall only be binding if they have been confirmed in writing by the Licensor.

### 2. Subject of contract

- 2.1 The subject of the licence agreement is the permanent use of the Software, including the program description with the user manual and the additional data listed therein, as well as the granting of the rights of use detailed in section 3.
- 2.2 The Licensor shall provide the Licensee with the Software in the form of an installation package. The Software can be used by the Licensee free of charge as a lite version with limited functionality. The Licensee must purchase a licence in order to have full use of the Software. Upon request, the Licensor grants a time-limited full use of the Software as a demo version in advance. The granting of rights by the Licensor pursuant to section 3 shall include a licence for which the Licensee shall receive a licence to use the Software. The Licensee shall be required to purchase more than one licence to enable simultaneous use of the Software by several users on its premises. The Software may be used either with hardware-bound or network-bound licensing, provided that the Software is available for the relevant platform.
- 2.3 The Licensor shall provide the Licensee with a copy of the Software and program description with user manual by way of a download which the Licensor shall make available to the Licensee in the form of an installation package.
- 2.4 The properties and functions of the Software shall be as specified in the program description with user manual. The specifications contained therein should be understood as a performance description and not as a warranty. A warranty shall only be granted if expressly designated as such.
- 2.5 Installation and configuration services shall not form part of this licence agreement.

### 3. Granting of rights

- 3.1 The Licensee shall be granted a non-exclusive right to use the lite version of the Software, as described in section 2.2, for an unlimited time to the extent granted in this licence agreement. Upon full payment of the fee pursuant to section 4, the Licensee shall be granted a non-exclusive right to use the full version of the Software for an unlimited time to the extent granted in this licence agreement.
- 3.2 The Licensee shall be entitled to make a backup copy if this is necessary to safeguard future use. The Licensee shall clearly indicate that this is a backup copy, affixing a label to this effect and a notice acknowledging the copyright held by the Licensor.
- 3.3 The Licensee shall only be entitled to decompile and reproduce the Software if this is provided for by law.
- 3.4 The Licensee shall be entitled to transfer the purchased copy of the Software to a third party permanently by handing over the program description with user manual. In this case the Licensee shall completely relinquish all use of the Software, remove all installed copies of the Software from its computers and from its network, and erase all copies on other data carriers or hand them over to the Licensor, unless legally obliged to observe a longer storage period. The Licensee shall confirm, on request, that the above measures have been fully implemented, duly notifying the Licensor in text form.
- 3.5 Copyright notices and other features serving to identify the program may not be removed from the Software or altered.

### 4. Fee and due date

- 4.1 The purchase price for the full version of the Software shall be EUR 5,250.00. Each additional licence shall cost EUR 4200.00. The prices shall be quoted exclusive of statutory value added tax at the applicable rate at the time of performance.
- 4.2 Payments shall be due when the download is made available and must be remitted within 30 days of the invoice date.

### 5. Software updates

- 5.1 The purchase price stated in section 4.1 shall include updates for the full version of the Software for a period of three (3) years with effect from the provision of the full version of the Software.
- 5.2 After the period specified in section 5.1 has expired, updates for the full version of the Software shall be subject to the terms agreed by the Licensee and the Licensor in a mandatory update and support contract.
- 5.2 Before performing an update, the Licensee shall be required to make the necessary checks to ensure that any programming interfaces which may be used remain unchanged. The Licensor shall provide information on changes.

### 6. Warranty

- 6.1 The Licensor shall provide the Licensee with a warranty vouching for the agreed quality and guaranteeing that the Software can be used without infringing third-party rights. The warranty for material defects shall not apply to defects which are based on the fact that the Software is used in a hardware and software environment which does not meet the requirements of the Software, nor shall it apply to changes and modifications which the Licensee has made to the Software without being entitled to do so by

- law, by virtue of this licence agreement or on the basis of the prior consent of the Licensor.
- 6.2 The Licensee must check the Software for obvious defects immediately upon receipt and report any such defects to the Licensor immediately in text form or in writing, otherwise these defects shall not be covered by the warranty. The same shall apply if any defect should become apparent at a later date.
- 6.3 In the event of a material defect, the Licensor shall be entitled to effect supplementary performance, i.e. to choose between remedying the defect (rectification) and delivering a replacement.
- 7. Liability**
- 7.1 The Licensor shall have unlimited liability for injury to life, limb or health in case of deliberate intent and gross negligence, in accordance with the provisions laid down in the law on product liability and to the extent set out in any warranty assumed by the Licensor.
- 7.2 In case of slight neglect of a duty which is essential to the achievement of the purpose of the contract (cardinal obligation), the liability of the Licensor shall be limited in amount to the damage which is foreseeable and typical for the type of transaction in question.
- 7.3 No further liability shall be accepted by the Licensor.
- 7.4 The above limitation of liability shall also apply to the personal liability of the employees, representatives and governing bodies of the Licensor.
- 8. Security measures and audit rights**
- 8.1 The Licensee shall put suitable measures in place to protect the Software from unauthorised access. All the copies of the Software must be kept in a secure location.
- 8.2 The Licensee shall enable the Licensor on request to check that the Software is being used properly, verifying in particular that the Licensee is applying the quality and quantity standards stipulated within the scope of the licences acquired by the latter. For this purpose, the Licensee shall provide the Licensor with information, grant the Licensor access to relevant documents and records, and enable the Licensor or an auditing company instructed by the Licensor and acceptable to the Licensee to inspect the hardware and software environment.
- 9. Confidentiality**
- 9.1 The Licensor and Licensee shall be obliged to keep all information, images and documentation obtained concerning the relationships, internal procedures and technical equipment of the other party confidential. Neither party may reproduce or publish such information or documentation or otherwise disclose them to third parties without obtaining the prior written consent of the other party, and neither party may use or exploit them in any other way for purposes beyond the scope of this contract.
- 9.2 Information shall be considered non-confidential if it was known to the public at the time of its disclosure to the other party in any given case or if it comes to the attention of the public after this point in time without the involvement of this party.
- 9.3 Each party shall be released from the duty of confidentiality if and insofar as this party is required by a public authority, a court or any other state body to disclose information which is subject to the duty of confidentiality pursuant to section 8.1. This party shall be obliged to notify the other party without delay and to provide the other party with the relevant information as to which body is seeking the information and to what extent. The party

obliged to disclose the information shall make every effort to ensure that the amount of information to be disclosed is kept as low as possible and, where possible, to obtain the assurance that the information to be disclosed will be treated confidentially. The party obliged to disclose the information shall make all reasonable efforts to enable the other party to resist this request for information.

**10. Data protection**

- 10.1 Both parties shall comply with the statutory provisions concerning data protection, most notably as set out in the General Data Protection Regulation (GDPR), and shall regularly monitor compliance with the legislation.
- 10.2 Personal data shall only be processed by the Licensor for the purposes of performing the contract.

**11. Other provisions**

- 11.1 The Licensee may only assign rights arising from this licence agreement with the written consent of the Licensor.
- 11.2 This licence agreement shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 11.3 The place of jurisdiction for all disputes arising directly or indirectly from this contract shall be Berlin, insofar as admissible.
- 11.4 The parties hereby confirm their awareness that the Software may be subject to export and import restrictions. Licensing requirements may specifically apply, and the use of the Software or related technologies in other countries may be subject to restrictions. The Licensee shall comply with the applicable export and import control regulations in force in the Federal Republic of Germany, in the European Union and in the United States of America and with all other relevant regulations. The execution of the contract by the Licensor shall be subject to the proviso that there are no obstacles to performance based on national and international regulations.
- 11.5 Should individual provisions of this agreement be or become invalid, this shall not affect the validity of the other provisions. The inoperative provision shall be replaced by a valid provision with retroactive effect which is legally admissible and comes closest to the spirit and purpose of the original provision.