

General Terms and Conditions of Duwe-3d AG for the Temporary Licensing of the Software Module D3D++ for PolyWorks|Inspector™

Duwe-3d AG (hereinafter: “Duwe”) licenses to companies and other commercial business persons (hereinafter: the “Customer”) the software module D3D++ for PolyWorks|Inspector™ (hereinafter the “Software module”) for temporary use on the basis of the following terms and conditions unless Duwe and the Customer agree otherwise in writing in the course of the order and the corresponding order acceptance (hereinafter: the “Software License Agreement”).

I. Conclusion of Agreement

1. General terms and conditions of Customer are applicable for Duwe only if and to the extent explicitly agreed by Duwe in writing.
2. Every offer of Duwe regarding the licensing of the Software not binding and without obligation.
3. Ancillary and additional arrangements with Duwe which are made respectively prior, upon or after formation of a Software License Agreement must be made in writing to be valid.

II. Subject-Matter of the Service and Fees

1. Unless otherwise agreed in the Software License Agreement, the program will be provided in object code with the corresponding documentation as well as maintained in accordance with the respective applicable General Terms and Conditions of Duwe for the Maintenance of Software. Program and documentation are hereinafter collectively also referred to as Software. Unless agreed otherwise, this documentation will be provided in English language.
2. The Customer is granted the non-exclusive rights in the Software stated in section III of this General Terms and Conditions for the Temporary Licensing of Software module D3D++ for PolyWorks/Inspector™ for the term set forth in section VII. Customer acknowledges that the ideas and concepts, which are part of the Software, are industrial secrets of Duwe and Customer has to treat them with the same diligence as its own industrial secrets. Customer is not allowed to use those ideas and concepts for other purposes, especially for the purpose of reproduction.
3. Unless otherwise agreed in the Software License Agreement, Duwe may effect delivery of the Software at the option of Duwe – to the extent practicable and reasonable for the Customer – in the following ways: either by delivery of an electronic data carrier on which the Software is stored, or by e-mail transfer, or by referring the Customer to a possibility to download the Software from the internet.
4. D3D++ is a Plug-In for the Software PolyWorks/Inspector of InnovMetric Software, Inc. Before using the Software, Customer must register the Software with Duwe. Within this registration, Customer has to indicate the ID number of the PolyWorks/Inspector license under which Customer intends to use the Software in accordance with section III.
5. The Software is licensed and maintained at the fee stated in the Software License Agreement, which is payable by the Customer without deduction and in advance. The prices stated in the Software License Agreement are net amounts which do not include taxes and other duties.

III. Customers rights of use

1. Customer may only use the Software in case of advance payment of the fee agreed in the Software License Agreement and only in conjunction with the PolyWorks/Inspector license of InnovMetric Software, Inc. which was indicated at the registration in accordance with section II paragraph 4; further, the Customer may only use the Software in the respective applicable version, and for internal use only.
2. Only for archival storage, Customer is allowed to make backup copies. Any other reproduction is not permitted.

IV. Warranty

1. The Customer must notify Duwe in writing of material and title defects of the Software at the latest 5 days after detection or report announcement. The notice of defect has to be as detailed as possible.
2. A material defect only exists if it can be reproduced or if it can be displayed by means of machine-generated issues.

3. Software which has a material or title defect upon delivery or during the agreed term of use may at the option of Duwe be repaired, replaced, or re-provided. Duwe may also fulfill its obligation for secondary performance in case of material defects of the Software by providing maintenance services in accordance with the respective current Duwe General Terms and Conditions for the Maintenance if these measures are reasonable for the Customer in the individual case. Further claims due to material or title defects, in particular any claims for reduction and for compensation of expenses or damages, only exist in accordance with the statutory provisions in case of a final failure of secondary performance and in case Duwe acted with willful intent or negligence.
4. To the extent it is not possible for Duwe to remove title defects at appropriate and reasonable conditions pursuant to paragraph 3 above or by other suitable means, Duwe may terminate this Agreement extraordinarily. In this case the fee is reimbursed to Customer on a pro rata basis, taking into account the actual term of use.

V. Liability

1. Duwe is liable
 - without any fault in case of claims under applicable strict product liability law,
 - in case of fraudulent misrepresentation,
 - in case of willful intent and gross negligence,
 - in case of simple negligence, for damages due to injury of body and health,
 - in case of simple negligence, in case of breach of core duties under the Agreement.
2. The preceding liability also applies in case Duwe's vicarious agents acted willfully or negligently, provided that they are legal representatives or employees of Duwe. In case of other vicarious agents, the objective liability of Duwe is limited to cases in which these vicarious agents acted with gross negligence or willful intent.
3. Duwe's liability is limited to the typically foreseeable damages. In case of loss of data, the liability is limited to the typical restoration costs which would have arisen in case of regular and risk-adequate production of back-up copies.
4. In all other cases, the liability of Duwe is excluded. This also applies to the liability of employees, representatives, and vicarious agents of Duwe.

VI. Information Obligations

Upon request, the Customer will inform Duwe whether and to which extent the Software is used in accordance with the Software License Agreement and whether the obligation pursuant to section VII paragraph 2 is complied with. After prior written notice by Duwe, Duwe may check compliance with these obligations by the Customer on the Customer's premises. The Customer may request formation of a reasonable non-disclosure agreement as a condition precedent to such a control visit. The costs of the control visit will be borne by the Customer if a breach of obligation by the Customer is determined.

VII. Term of the Software License Agreement

1. The Software License Agreement commences on the date set forth in the Agreement and remains in effect for one year, unless agreed otherwise. The right of each party to terminate extraordinarily for important cause remains unaffected.
2. In case of every termination of the Agreement, the Customers' right to continue using the Software will expire. Upon request of Duwe, the Customer is obligated to surrender the original Software data carrier as well as all copies made by the Customer or, at the option of Duwe, to delete or destroy them.

VIII. Notes and information on Third Party Software and Open Source Libraries

The Software module uses third-party software and open source libraries. You will find a complete list along with the applicable licensing information in the Third Party Notices in the installation directory, see ***D3D++ ThirdPartyNotices.pdf***. By using the Software module and thus the contained third-party software, you accept their license terms.

IX. Miscellaneous

1. Every Software License Agreement with the Customer, its conclusion and termination are subject to the laws of Switzerland, to the extent these General Terms and Conditions for the Temporary Licensing of Software do not provide otherwise. UN Sales Law (CISG) does not apply. The exclusive venue for disputes from or in connection with these agreements is Kempten (Allgäu, Germany) if the Customer is a merchant.
2. Should a provision of the Software License Agreement be or become invalid, the validity of this Agreement is not affected, unless the adherence to the Agreement would constitute an unreasonable hardship for one of the parties. The parties will replace the invalid provision with a valid provision which most closely resembles the intention of the parties upon formation of the Agreement.