

General Terms and Conditions of Duwe-3d AG for the Permanent Use of Software by InnovMetric Software Inc.

Duwe-3d AG (hereinafter: Duwe) licenses companies and other commercial business persons (hereinafter: the “Customer”) software products by InnovMetric Software Inc. (hereinafter the “Software”) for permanent 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”).

The Customer acknowledges that it must enter into an End-User License Agreement with InnovMetric Software Inc. in addition to the Software License Agreement with Duwe in the course of installing the Software (hereinafter: “Manufacturer Agreement”). The terms of this Manufacturer Agreement may be viewed under <http://www.duwe-3d.de> or will be provided by Duwe in writing upon the Customer’s request.

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 is 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. The Manufacturer Agreement is formed electronically in the course of the Software installation. Should the Customer not agree to the terms of this Manufacturer Agreement, in particular to the restrictions on use set forth therein, for whatever reason, the Customer may rescind the Software License Agreement with Duwe by a pertinent written declaration, and it may terminate the installation of the Software and return the Software to Duwe against refund of fees already paid, if any. This rescission right of the Customer is excluded if it is not validly exercised within 30 days after formation of the Software License Agreement with Duwe.
4. The Software License Agreement with Duwe and the Manufacturer Agreement apply independently from each other. However, a valid termination of the Manufacturer Agreement will entail the termination of the Software License Agreement and vice versa.

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 a pertinent license key, a dongle and the corresponding documentation. Program, license key and documentation are hereinafter collectively also referred to as Software. Subject-matter of the delivery is only the Software expressly designated in the offer, in particular the documentation expressly stated therein. Unless agreed otherwise, this documentation will be provided in English language.
2. The Customer is permanently granted the non-exclusive rights in the Software stated in the Software License Agreement and in the Manufacturer Agreement (paragraphs 3 and 4 thereof). In case of conflicts between the respective terms of the Software License Agreement and the Manufacturer Agreement, the terms of the Manufacturer Agreement shall prevail.
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 email transfer, or by referring the Customer to a possibility to download the Software from the internet.
4. Duwe points out that the complete installation or use of the Software depends on the prior entry of a license key. The term of the license key will either correspond to the term of use agreed for the program or, to the extent agreed in the Software License Agreement, to shorter, recurring periods. In this case, Duwe will provide to the Customer a new license key prior to a program suspension caused by the license key. The Customer is further informed that – regardless of the aforementioned term – the license key is initially limited to a period of eight weeks as from the first use of the license key in order to secure the payment claims of Duwe and that Duwe will replace this license key by a license key with the aforementioned term immediately upon full payment of the fee stated in the subsequent paragraph 5 of this section II.
5. The Software is licensed at the fee stated in the Software License Agreement, which is payable by the Customer without deduction. The prices stated in the Software License Agreement are net amounts which do not include taxes and other duties.

III. Warranty

1. The Customer must notify defects (material and title defects) in accordance with the statutory provisions, in any case including a detailed description of the defect. A material defect only exists if it can be reproduced or if it can be displayed by means of machine-generated issues.
2. For the avoidance of doubt: to the extent that a separate Software Maintenance Agreement is in effect with the Customer, Duwe shall only remove material and title defects in accordance with the Software Maintenance Agreement unless the Customer has expressly clarified when notifying the defect that it is asserting warranty claims against Duwe.
3. Software which has a material or title defect upon delivery which was properly notified by the Customer in accordance with these Terms 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 a new version of the Software or by taking circumvention measures, if the compatibility and functionality of the Software remain substantially unaffected, respectively, and if this is reasonable for the Customer in the individual case. Further claims due to material or title defects, in particular any claims for compensation of expenses or damages, only exist in accordance with the statutory provisions in case of a final failure of such secondary performance.
4. To the extent it is not possible for Duwe to remove title defects at appropriate and reasonable conditions pursuant to paragraph 3 or by other suitable means, Duwe may rescind this Agreement.
5. Claims of the Customer against Duwe based on material or title defects will become time-barred within 12 months after delivery of the Software. This does not apply if a longer period is provided by mandatory law and in cases of injury to life, body or health, in case of a willful or grossly negligent breach of duty by Duwe and in case of fraudulent concealment of a material defect. The statutory provisions regarding suspension, interruption and restart of the limitation periods remain unaffected.

IV. Replacement Dongle

1. In case of a malfunction of a provided dongle, the Customer may request a replacement dongle from Duwe. During the warranty period (section III paragraph 5) or in the scope of an ongoing Software Maintenance Agreement, the replacement delivery will be made free of charge. After expiration of the warranty period or absent a Software Maintenance Agreement, a reasonable flat fee must be paid.
2. In case of a loss of the dongle, the Customer may only request replacement delivery against renewed payment of the fee stated in section II paragraph 5.

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

1. The Customer is obligated to notify Duwe in writing about the removal of a copy protection or similar protection routine from the program code immediately. The necessary disruption of the program use required for this type of permitted program modification must be described by the Customer as detailed as possible, using its best efforts. The description duty includes a detailed description of the disruption symptoms occurred, the estimated cause of disruption and in particular a detailed description of the undertaken program modification.

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2. 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. Retention of Title / Expiration of the Rights of Use

1. Apart from the right to use the Software granted subject to condition subsequent by means of the license key, Duwe also retains title in data carriers delivered to the Customer, if any, until complete payment.
2. In case of every termination of the Agreement, the Customer's 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. 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.