

## Smlouva o dodání software

### SMLUVNÍ STRANY:

Vysoká škola báňská – Technická univerzita Ostrava

**Fakulta elektrotechniky a informatiky**

se sídlem: 17. listopadu 15/2172, 708 33 Ostrava – Poruba  
 zastoupená: [redacted] děkanem FEI  
 IČ: 61989100  
 DIČ: CZ61989100  
 bankovní spojení: ČSOB. a.s.  
 č.ú.: [redacted]  
 (dále jen „**Objednatel**“)

a

**TransTech Electronic s.r.o.**

se sídlem: Hněvkovská 1275/58, 148 00 Praha 4  
 zápis v obchodním rejstříku: v OR vedeném Městským soudem v Praze,  
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 č.ú.: [redacted]  
 (dále jen „**Dodavatel**“)

uzavřely níže uvedeného dne, měsíce a roku tuto smlouvu v souladu s ustanovením § 1746 odst. 2 zákona č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisu (dále jen „občanský zákoník“)

(dále jen „**Smlouva**“).

### 1. ÚVODNÍ USTANOVENÍ

- 1.1 Objednatel prohlašuje, že:
  - 1.1.1 je právnickou osobou, veřejnou vysokou školou univerzitního typu založenou podle zákona č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách), ve znění pozdějších předpisů, a
  - 1.1.2 splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.
- 1.2 Dodavatel prohlašuje, že splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.

## 2. PŘEDMĚT SMLOUVY

2.1 Dodavatel je povinen dodat Objednateli:

- CST STUDIO SUITE

(dále jen „Software“).

Jedná se o nákup licence Educational license + Free Classroom license

- 2.2 Objednatel se zavazuje Software převzít a zaplatit Dodavateli cenu ve výši a za podmínek sjednaných v této Smlouvě.
- 2.3 Smluvní strany prohlašují, že Software je standardní software s možností výrobce poskytovat nevýhradní licence, a tedy se na něj nevztahuje § 61 zákona č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů (dále jen „autorský zákon“), ve znění pozdějších předpisů.
- 2.4 Další podmínky užívání software jsou uvedeny v licenčních a všeobecných obchodních podmínkách, které tvoří přílohu č. 1 a č. 2 této Smlouvy

## 3. CENA A PLATEBNÍ PODMÍNKY

- 3.1 Smluvní strany se dohodly na celkové a konečné ceně ve výši 131853,- Kč bez DPH, sazba DPH ve výši 21%, cena včetně DPH 159542,- Kč.
- 3.2 Celková cena je nepřekročitelná vyjma případu zákonné změny sazby DPH. V celkové ceně jsou zahrnuty veškeré náklady Dodavatele spojené se splněním jeho závazku z této Smlouvy, tj. zahrnuje dodání Software včetně licence, technickou podporu, a dále náklady na dopravu.
- 3.3 Objednatel se zavazuje zaplatit celkovou cenu uvedenou v bodě 3.1 na základě řádného daňového dokladu – faktury vystavené Dodavatelem. Dodavatelem vystavená faktura na software CST STUDIO SUITE bude obsahovat základní náležitosti faktury dle tohoto odstavce Smlouvy níže. Přílohou faktury musí být podepsaný předávací protokol potvrzující protokolární převzetí Software. Faktura musí splňovat náležitosti daňového a účetního dokladu dle zákona č. 563/1991 Sb., o účetnictví, ve znění pozdějších předpisů, a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů. V případě, že faktura takové náležitosti nebude splňovat, popř. bude chybně vyúčtována cena nebo DPH, bude Objednatelem vrácena do 20 dnů ode dne jejího doručení k opravení bez proplacení. V takovém případě běží u předmětné faktury lhůta splatnosti znovu ode dne doručení opravené či nově vyhotovené faktury Objednateli. Fakturu Dodavatel doručí Objednateli doporučenou poštou na adresu Objednatele.
- 3.4 Cena je splatná do 30 kalendářních dnů ode dne doručení příslušné faktury Objednateli. Smluvní strany se dohodly na tom, že závazek zaplatit cenu je splněn dnem odepsání příslušné částky z účtu Objednatele ve prospěch účtu Dodavatele uvedeného na titulní straně této Smlouvy.

## 4. DOBA A MÍSTO PLNĚNÍ

- 4.1 Dodavatel je povinen dodat Software CST STUDIO SUITE (včetně licence) tak, aby mohl být Objednatelem užíván do 8 týdnů od účinnosti Smlouvy.
- 4.2 Dodavatel je povinen oznámit termin dodání Software nejméně 5 dnů předem, v opačném případě není Objednatel povinen k přijetí Software; v takovém případě nejde o porušení povinností Objednatele.
- 4.3 Místem dodání Software je adresa sídla Objednatele.

## 5. DODÁNÍ PLNĚNÍ

- 5.1 Software je dodán v okamžiku jeho převzetí **Objednatel**em v místě plnění po akceptaci Software. Akceptací se rozumí ověření úspěšné instalace Software na systémech **Objednatele**, spuštěním jednotlivých komponent a ověřením jejich základní funkcionality. O předání a převzetí **Software bude vyhotoven** předávací protokol, který musí být podepsán oběma smluvními stranami. **Objednatel** není povinen převzít Software v případě, že nespĺňuje podmínky uvedené v této Smlouvě.
- 5.2 Předávací protokol bude obsahovat:
- označení **Software** včetně uvedení čísla licence,
  - označení **Objednatele** a **Dodavatele**,
  - datum a místo,
  - podpis zástupce Objednatele a Dodavatele**.

## 6. ZÁRUČNÍ PODMÍNKY

- 6.1 Záruční podmínky se řídí podle podmínek výrobce, které jsou uvedeny v Příloze č. 2 této Smlouvy.

## 7. TECHNICKÁ PODPORA

- 7.1. Technická podpora se řídí podle podmínek výrobce, které jsou uvedeny v Příloze č. 1 této Smlouvy.

## 8. OPRÁVNĚNÉ OSOBY

- 8.1 Každá ze smluvních stran jmenuje oprávněnou osobu, popř. zástupce oprávněné osoby. Oprávněné osoby budou **zastupovat** smluvní stranu v obchodních a technických záležitostech souvisejících s plněním této Smlouvy.
- 8.2 Oprávněné osoby nejsou zmocněny k jednání, jež by mělo za přímý následek změnu této Smlouvy nebo jejího předmětu.
- 8.3 Smluvní strany se dohodly na těchto oprávněných osobách:
- za **Objednatele**:  
[REDACTED]
  - za **Dodavatele**:  
[REDACTED]
- 8.4 Smluvní strany jsou oprávněny změnit oprávněné osoby, jsou však povinny na takovou změnu druhou smluvní stranu písemně upozornit.

## 9. SANKČNÍ UJEDNÁNÍ

- 9.1 V případě prodlení **Dodavatele** s termínem dodání Software dle odst. 4.1 této Smlouvy se zavazuje **Dodavatel** uhradit **Objednateli** smluvní pokutu ve výši 0,3 % z celkové ceny bez DPH, a to za každý i započatý den prodlení.
- 9.2 Pro případ prodlení **Objednatele** se zaplacením faktury je **Dodavatel** oprávněn požadovat zaplacení zákonného úroku z prodlení.
- 9.3 **Splatnost** vyúčtovaných smluvních pokut a úroků z prodlení je 30 dnů od data doručení písemného vyúčtování příslušné smluvní straně a za den zaplacení bude považován den odepsání částky smluvní pokuty nebo úroku z prodlení z účtu příslušné smluvní strany ve prospěch účtu, který bude uveden ve vyúčtování smluvní pokuty nebo úroku z prodlení.
- 9.4 Smluvní pokuta dle této Smlouvy se nezapočítává na úhradu škody, která vznikla v souvislosti s porušením povinností stanovených touto Smlouvou a tyto nároky lze uplatňovat nezávisle na sobě v plné výši.

- 9.5 Smluvní pokuty je **Objednatel** oprávněn započíst proti pohledávce **Dodavatele** na úhradu celkové ceny.

## 10. PLATNOST A ÚČINNOST SMLOUVY

- 10.1 Tato Smlouva nabývá platnosti dnem jejího podpisu oběma smluvními stranami a účinnosti dnem uveřejnění Smlouvy v **registru smluv v souladu s** příslušnými ustanovením zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv (zákon o registru smluv), ve znění pozdějších předpisů (dále jen „zákon o registru smluv“) v případě, že tato Smlouva vyžaduje uveřejnění v **registru smluv ve smyslu** tohoto zákona. Pokud ne, nabývá Smlouva účinnosti v den podpisu oběma smluvními stranami.
- 10.2 Každá smluvní strana je oprávněna odstoupit od této Smlouvy pouze z důvodů stanovených touto Smlouvou.
- 10.3 Objednatel je oprávněn odstoupit od této Smlouvy v případě
- 10.3.1 prodlení Dodavatele s dodáním **Software** po dobu delší než **20 dnů** oproti termínu plnění stanovenému v této Smlouvě,
- 10.3.2 **pokud dodavatel v průběhu trvání Smlouvy ztratil způsobilost řádně plnit závazky vyplývající ze Smlouvy, tzn. pozbyl oprávnění uvedené v odst. 1.2 Smlouvy.**
- 10.4 Dodavatel je oprávněn odstoupit od této Smlouvy v případě prodlení Objednatele se zaplacením ceny dle této Smlouvy po dobu delší než 60 dnů.
- 10.5 Každá ze smluvních stran je oprávněna písemně odstoupit od této Smlouvy, **pokud:**
- 10.5.1 na majetek druhé smluvní strany je prohlášen úpadek, smluvní strana sama podá dlužnický návrh na zahájení insolvenčního řízení nebo insolvenční návrh je zamítnut proto, že majetek nepostačuje k úhradě nákladu insolvenčního řízení (ve znění zákona č. 182/2006 Sb., o úpadku a způsobech jeho řešení (insolvenční zákon), ve znění pozdějších předpisů); nebo
- 10.5.2 druhá smluvní strana vstoupí do likvidace.
- 10.6 Účinky odstoupení od Smlouvy nastávají dnem doručení písemného oznámení o odstoupení druhé smluvní straně, popř. pozdějším dnem uvedeným v písemném oznámení o odstoupení.
- 10.7 Ukončením účinnosti této Smlouvy nejsou dotčena ustanovení Smlouvy, z jejichž povahy vyplývá, že mají trvat i po zániku účinnosti této Smlouvy, např. nároky ze smluvních pokut, pokud vznikly před ukončením této Smlouvy.

## 11. ZÁVĚREČNÁ USTANOVENÍ

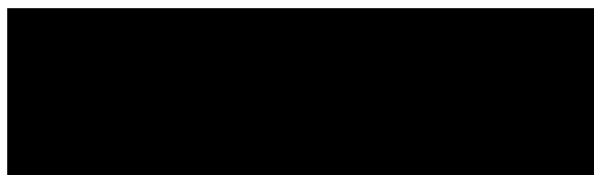
- 11.1 Práva a závazky touto Smlouvou neupravené se řídí právním řádem České republiky, zejména občanským zákoníkem a **autorským zákonem**, s vyloučením kolizních norem.
- 11.2 V případě zániku Dodavatele bez právního nástupce je Objednatel i nadále oprávněn využívat Software dle této Smlouvy.
- 11.3 Změnit nebo doplnit tuto Smlouvu mohou smluvní strany pouze formou písemných dodatků, které budou vzestupně číslovány a podepsány oprávněnými zástupci smluvních stran.
- 11.4 Smluvní strany se dohodly, že v případě rozporu mezi ustanoveními příloh a ustanoveními této Smlouvy jsou rozhodná ustanovení příloh této Smlouvy.
- 11.5 Pokud by se kterékoliv ustanovení této Smlouvy ukázalo být neplatným nebo nevykonatelným nebo se jím stalo po uzavření této Smlouvy, pak tato skutečnost

nepusobí neplatnost ani nevynutitelnost ostatních ustanovení této Smlouvy, nevyplyvá-li z donucujících ustanovení právních předpisů jinak. Smluvní strany se zavazují takové neplatné či nevynutitelné ustanovení nahradit platným a vynutitelným ustanovením, které je svým obsahem nejbližší účelu neplatného či nevynutitelného ustanovení.

- 11.6 Dodavatel nemůže bez souhlasu Objednatele postoupit svá práva a povinnosti plynoucí ze Smlouvy třetí straně.
- 11.7 Veškeré spory mezi smluvními stranami vyplývající nebo související s ustanoveními této Smlouvy budou řešeny vždy nejprve smírně vzájemnou dohodou. Nebude-li smírného řešení dosaženo v přiměřené době, bude mít kterákoliv ze smluvních stran právo předložit spornou záležitost k rozhodnutí místně příslušnému soudu. V souladu s § 89a zák. č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, se za místně příslušný soud k projednávání sporu z této Smlouvy prohlašuje obecný soud Objednatele.
- 11.8 Tato Smlouva je vyhotovena ve třech stejnopisech, z nichž Dodavatel obdrží jeden stejnopis a Objednatel dva stejnopisy.
- 11.9 Nedílnou součástí této Smlouvy tvoří příloha č. 1 – licenční a jiné podmínky uvedené k nabídce.
- 11.10 Smluvní strany prohlašují, že Smlouva včetně příloh Smlouvy neobsahuje obchodní tajemství ve smyslu § 504 občanského zákoníku a Smlouva včetně příloh Smlouvy tak může být v plném rozsahu uveřejněna v registru smluv ve smyslu zákona o registru smluv.
- 11.11 Smluvní strany shodně prohlašují, že jsou si vědomy všech právních důsledků touto Smlouvou vyvolaných, souhlasí se všemi jejími ustanoveními, s nimiž se podrobně seznámily.

V Brně dne 16. 10. 2018

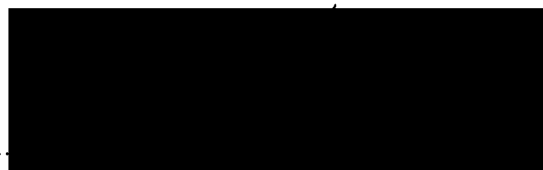
V Brně dne 16. 10. 2018



Vysoká škola báňská – Technická  
univerzita Ostrava



Děkan FEI



TransTech Electronic s.r.o.



Příloha č. 1: Licenční a jiné podmínky

Příloha č. 2: Všeobecné obchodní podmínky



# COMPUTER SIMULATION TECHNOLOGY ACADEMIC PROGRAM

*Electromagnetic and multiphysics simulation have numerous advantages in the academic world, both for teaching and for research. The CST® academic program offers academic and research institutions a range of highly discounted educational and research options, allowing students and academics access to the same cutting-edge simulation tools used in leading labs and companies.*

Of particular interest to universities are the classroom and educational versions of our simulation tools CST STUDIO SUITE™ and Antenna Magus™ which are primarily intended for teaching and training purposes and are offered at a much reduced rate. For research purposes, an extended educational or a research license may offer more flexibility. In addition, for learning purposes, students themselves may download and use the free CST STUDIO SUITE – Student Edition in a personal capacity.

A general description of the license types available as part of the CST academic plan is shown below. Licenses (excluding the CST STUDIO SUITE – Student Edition) have to be applied for by an authorized university staff member, and can only be used at academic institutions.

## PRODUCTS AND LICENCES

### LICENSES USED PRIMARILY FOR EDUCATION AT UNIVERSITIES

The primary purpose of this group of licenses is to assist with the learning process of students and to introduce them to industry-standard simulation tools without the cost normally associated with the software. Academic staff can obtain classroom licenses for teaching purposes such as

tutorials or other practical exercises to be performed by a group of students.

#### CLASSROOM LICENSE

This type of seat-based license supports 30 frontends/25 processes. It is ideal for use in a classroom environment, where the license is administered centrally. It can be granted as a free add-on to other university licenses on request. This license has some restrictions but extra modules can be added on.

#### EDUCATIONAL LICENSE

Educational licenses are seat-based (see below), and most of the missing options can be added to a seat for a discounted extra charge. The setup is through a LAN license. Assuming that research results obtained with the software are non-confidential (see "Usage restrictions" for more details) and the project is not externally funded, this license can be used for research purposes.

### LICENSES TO SUPPORT RESEARCH ACTIVITIES AT UNIVERSITIES

If your main goal is to do research that goes beyond what is allowed by an educational license and you are part of an educational institution, then this is the right group for you. Note that all license types can only be issued if the usage will be exclusively at an academic institution (conditions

#### PERSONAL

##### Student Edition

Limited free version for students to use at home

##### Classroom

Limited version for students to use in the classroom

##### Educational

Full featured version for non-confidential non-profit research

##### Extended

Full featured version for non-confidential funded research

##### Research

Full featured version for confidential research

*The range of academic licenses. The highlighted licenses are of particular interest to universities.*

apply to these licenses. Your CST sales contact can assist you in determining which of these licenses is suitable for your research purposes.

#### Extended University

The Extended University license allows a flexible feature setup through a CAN License without any restrictions regarding the feature selection. The extended university license can be used on research projects that are externally funded, as long as research results obtained with the software are non-confidential (see "Usage restrictions" for more details).

#### Academic License

The only academic license type which can be used if research results are confidential (see "Usage restrictions" for more details). It allows for a flexible feature setup.

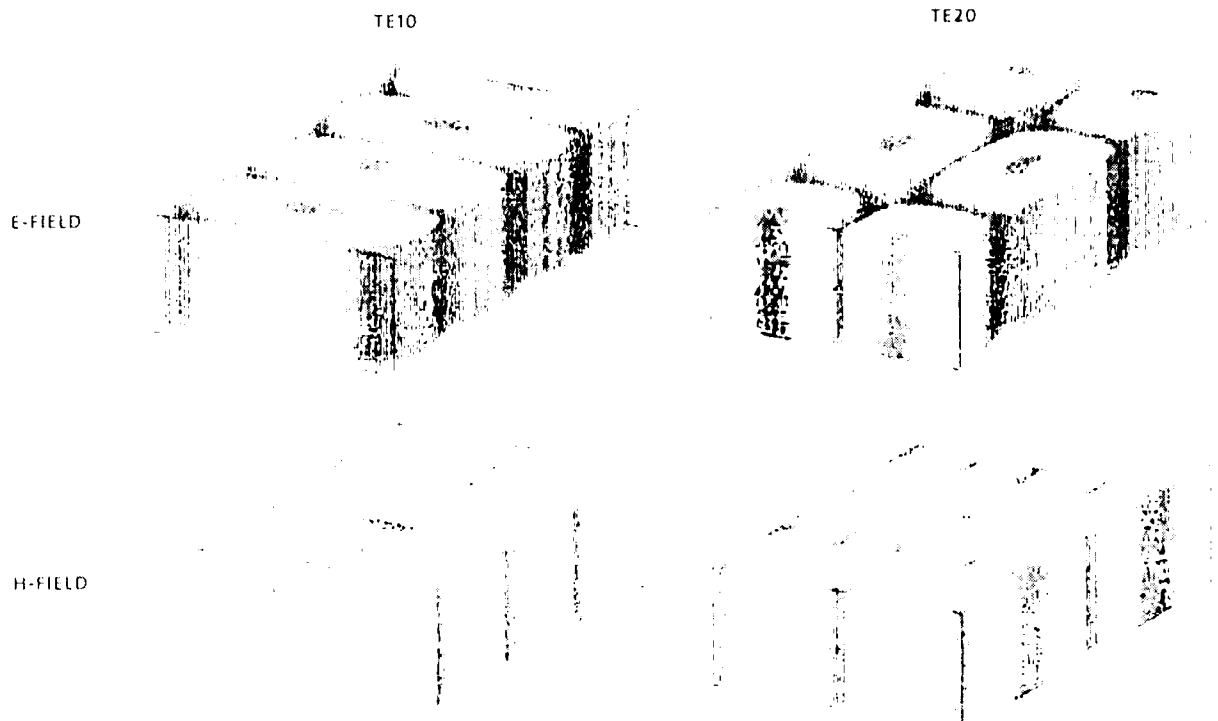
## ANTENNA MAGUS

Antenna Magus is an antenna design and Knowledge management tool which can export antenna models suitable for simulation with CST STUDIO SUITE. CST offers three different types of Antenna Magus license for use at educational institutions. All versions of Antenna Magus will include two antenna types that are readable by the CST STUDIO SUITE – Student Edition.

The Classroom license of Antenna Magus offers 20 antennas, all of which are typical of antennas used in a classroom environment. Educational, University and Extended University licenses are also available for Antenna Magus.

*"Electromagnetics is just so much easier to learn and understand with pictures. CST has been a great tool for my students."*

**Cynthia M. Furse (PhD)**, Professor, Uhet & Computer



# LICENSE FUNCTIONALITY

In this chapter we will highlight the features of the Classroom, Educational, Extension, and Research licenses and explain the main differences between them.

Classroom and Educational licenses are available as CST STUDIO SUITE seats. The solver set-up of Extended University and Research licenses can be flexibly configured.

License	Features consist of
Classroom License	3D-Modeling, Simulation, Post-Processing
Educational License	3D-Modeling, Simulation, Post-Processing, Meshing
Extended University License	3D-Modeling, Simulation, Post-Processing, Meshing, Parallelization
Research License	3D-Modeling, Simulation, Post-Processing, Meshing, Parallelization, GPU Acceleration

Possible Add-ons on to the CST STUDIO SUITE seat are Acceleration Token, Asymptotic Solver, Multilayer Solver, Chip Interface, Particle In-cell, CST BIO Models, Multi Platform.

With each installation of the CST STUDIO SUITE software, documentation is supplied. For all institutional licenses printed versions of the documents are also supplied.

All institutional academic licenses are LAN based, meaning that a central license manager controls the usage of the software in a networked environment. The Student Edition is a node-locked license which can be downloaded directly from the software.

All valid institutional licenses include access to the support area on our website.

This site contains FAQs, application notes and other information helpful to users of the software. Limited individual technical support is available to the authorized technical representative of the CST licenses at your institution. This support is given via a ticketing system.

## Usage Restrictions

One significant difference between the university licenses are the usage restrictions. Of the full-featured licenses, the Educational license may be used for non-confidential, non-profit research, the Extended licenses may be used for non-confidential, externally-funded research, and the Research license can be used for confidential research. "Non-confidential" here means that the results can be shared at any time with CST employees.

The Classroom license is intended solely for educational purposes, and additionally has a mesh cell restriction of 320,000 hexahedrons or 40,000 tetrahedrons, and 1000 2D mesh elements.

## Discounts and Licenses

Discounts are usually possible for most of our academic license types. Please contact your CST Sales contact for further information.

CST also offers campus-wide licenses. Please contact CST for further information.

The described options and Licensing policy are subject to change, and are correct as of January 2017.

Our standard terms & conditions are available at:

Terms & conditions relating to the CST STUDIO SUITE – Student Edition are available at:

*"The CST EM simulation software provides an outstanding platform for numerical study of intricate wave interaction with structures such as metamaterials. In my group, we have been using the CST MICROWAVE STUDIO for the past several years, and we have been very happy with its capabilities and functionalities. The CST software has become an important tool in our research efforts."*

**Nader Engheta (PHD)** | H. Nedwill Ramsey Professor, University of Pennsylvania



# CST STUDIO SUITE STUDENT EDITION



*The CST STUDIO SUITE – Student Edition is intended for private use by a student. This type of license is available as a personal node-locked license to any student who is registered at an educational institution and is free of charge. It requires a user-based online registration and is restricted both in terms of mesh cells and features – currently simulation models with up to 30000 hexahedrons or 10000 tetrahedrons are supported.*

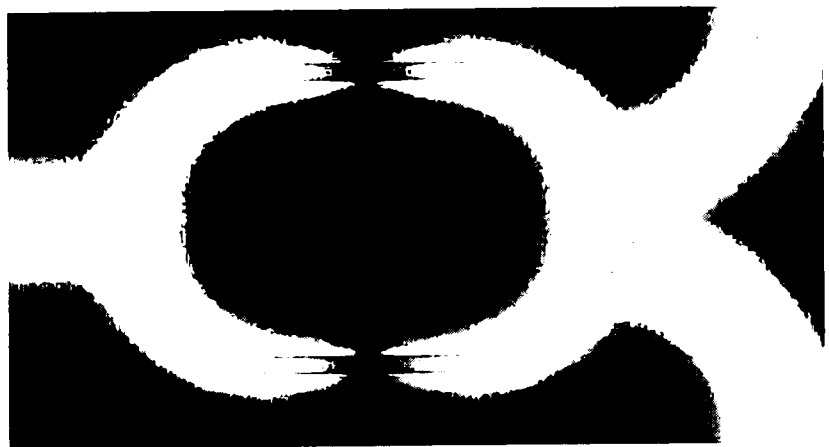
CST STUDIO SUITE 2016

*"For over 10 years, I've used CST simulation tools to get students acquainted with EM field in lectures and in hands-on exercises. I very much appreciate the userfriendly modelling workflow and visualization possibilities. Sometimes, a field plot supports the students' understanding better than any experiment. The students start to further explore the model, and they start to learn from themselves and from each other"*

**Herbert De Gersem (PhD)**, Professor, Technische Universität Darmstadt

The software can be downloaded by the student from our website. An internet connection is required in order to register the software installation. The Student Edition has its own file format, which is only available in the Student Edition. The transferring of files between a regular version and the student edition is not supported (please see the

for a detailed description of the features (and functional restrictions) of CST STUDIO SUITE – Student Edition.



*The Wilkinson Power Divider is one of several worked examples include available from [www.cst.com/academia](http://www.cst.com/academia)*

#### Trademarks

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CST STUDIO SUITE is a CST product

© CST – Computer Simulation Technology AG, Bad Nauheimer Str. 19, 64289 Darmstadt, Germany

**General Terms and Conditions for the Provision and Maintenance of Standard Software (May 2018 Version) of  
CST GmbH, Bad Nauheimer Strasse 19, D-64289 Darmstadt (hereinafter referred to as „CST“)**

**A GENERAL**

**1 Scope and Application**

- 1.1 These general terms and conditions (hereinafter the "General Terms and Conditions") shall govern the conclusion, content and implementation of contracts for the use and maintenance of standard software (hereinafter "Standard Software") by end users<sup>1</sup> (hereinafter "End User" or "End Users"). Other services, such as advice on the selection of Standard Software, installation, implementation, instruction and training are not part of the provision, use and maintenance, and therefore require execution of an express, separate, written agreement between CST and the End User (hereinafter together "The Parties" or individually "Party").
- 1.2 The General Terms and Conditions set forth herein apply to all offers made by CST to End Users (hereinafter "CST Offers") for provision, use and maintenance of Standard Software which refer to the terms and conditions set forth herein.
- 1.3 According to the following terms and conditions, special conditions apply to Standard Software and third party data sold together by CST (hereinafter "Third Party Software"). These special conditions are set out in Section 18 hereunder. However, otherwise only these General Terms and Conditions and any statements made in the relevant CST Offer shall apply. No other terms or conditions shall apply, and no other conditions (for example the End User's own purchasing or ordering conditions) shall form part of this Agreement, even if CST does not expressly object to them.
- 1.4 In the event of any contradiction between the General Terms and Conditions on the one hand and the statements and regulations contained in CST Offers on the other, the latter shall always have precedence.

**2 Offer and Conclusion of Contract**

- 2.1 A contract shall be formed when the End User accepts the CST Offer. CST can require a written contract from the End User. Where there is doubt, the CST Offer shall apply.
- 2.2 Any CST Offer shall be binding during the period specified therein. If no other period is stated therein, then CST shall be bound by the Offer for a period of 30 calendar days from the CST Offer date.

**3 System Requirements**

- 3.1 The requirements for running the system (for example hardware environment and system software), which have to be established by the End User, shall either be included in the currently applicable product specification or may be obtained from CST.
- 3.2 Representations in the documentation and in the product specifications are not guarantees of condition or quality.

**B Conditions of Software Use**

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<sup>1</sup> There are separate contractual conditions applicable to sales partners and resellers who do not acquire the Standard Software exclusively for their own internal use.

**4 Copyright**

All intellectual property rights to Standard Software delivered by CST, and in particular the comprehensive copyright, together with all rights in the Standard Software, documents and information provided as part of the Agreement's preparatory phase and during its performance (including warranty and maintenance), shall remain, as regards the End User, with CST and its licensors. This legal status enjoyed by CST and its licensors shall remain unchanged by the grant to the End User of rights to use the Standard Software (hereinafter "License") in accordance with these General Terms and Conditions.

**5 End User's License**

- 5.1 The Standard Software Licenses granted by CST to the End User are not exclusive and are limited in accordance with the provisions of these General Terms and Conditions and the statements in the relevant CST offer.
- 5.2 Unless expressly specified otherwise in the relevant CST Offer, the right to utilise and use the Standard Software is limited to use of the Standard Software on a single computer (PC or server) ("Node Locked License"). If the End User wishes to use the Standard Software on more than one computer at the same time, then it shall obtain corresponding Licenses from CST beforehand. In addition, the Licenses shall be limited to other conditions of use as defined in the CST Offer and applicable licensing guide located on CST's Website (<https://www.cst.com/company/terms-and-conditions>) such as but not limited to the agreed number of "Simulation/Solver Processes" (the number of calculations to be performed simultaneously), "Frontend" (the number of entry windows to be opened simultaneously), modules and additional options. In addition, use on a local network (LAN) always requires the End User to acquire beforehand a corresponding network license ("Floating License"). Network use beyond local networks (LAN) is not permitted without separate, prior, written agreement by CST.
- 5.3 The End User will inform CST before undertaking any deviation from the Licenses stipulated herein or in the relevant CST Offer. The End User shall be allowed to use the Standard Software differently only if CST has expressly permitted the mode of use notified by the End User. CST may make its consent to modified use dependent upon a corresponding price adjustment if higher or additional compensation for such modified use is payable according to the current CST prices. CST shall refuse its consent to such modified use for good cause only. Such good cause shall lie, in particular, when the End User does not pay the relevant extra charge or when there are technical reasons that oppose such modified use (for example because the Standard Software delivered by CST would not be executable in the new system environment).
- 5.4 The Standard Software shall be provided to the End User for its own, internal use only. The End User is not permitted to hire out the Standard Software in whole or in part, in whatsoever form or for whatsoever purpose. The End User may pass on the Standard Software to a third party only within the parameters of Subsection 7.2 of these General Terms and Conditions.
- 5.5 The End User shall not lend the Standard Software, in whole or in part. Subsection 5.4 applies *mutatis mutandis*.

5.6 The Licenses under these General Terms and Conditions are granted subject to the condition that the Standard Software is operated by End User itself and not by any third parties (e.g. by a service company). If it is End User's intention that the Standard Software is to be operated by third parties, then such use shall be governed by other terms and conditions. Prior to transferring the operation of the Standard Software to the respective third party, End User shall be required to enter into the necessary written agreement with CST. This shall apply, in particular, if End User plans to avail itself of third party services in the area of Outsourcing, Facility Management or Disaster Recovery.

5.7 The statutory right under Section 69e of the German Copyright Act (*Urheberrechtsgesetz* ("UrhG")) namely the right to translate the programme code back into the source code (de-compilation) if and to the extent that the information thereby obtained is indispensable for purposes of establishing inter-operability with another independently created computer programme and such information is not otherwise automatically available to the End User, remains unaffected. The End User shall, however, request CST for, and give CST an opportunity to provide within a reasonable time, the necessary operational information and documents for establishing inter-operability before it carries out any de-compilation in accordance with Section 69e UrhG. The End User may exercise its rights under Section 69e UrhG only if CST fails to comply with the aforesaid request.

5.8 All copies made pursuant to the statutory provisions shall be true and complete copies, and shall include all copyright notices, trademarks and commercial descriptions as well as all other notices (e.g. legal notices) on or in the original.

## 6 License Types and Term of Use

6.1 The Licenses shall be granted either on a perpetual basis (purchase) (hereinafter "Perpetual License") or for a limited term (hire) (hereinafter "Limited License"), depending on what is specified in the relevant contract. The Licenses shall commence at the time specified in the CST Offer, but not before delivery. If the CST Offer does not state the commencement date of the Licenses, then this date shall be the date on which CST delivers the Standard Software in accordance with its contractual obligations.

6.2 For a Limited License, the term of the License is fixed in the relevant CST Offer. If not otherwise agreed, the term shall begin on delivery or, where a test period has been previously agreed, no later than on the first business day following the end of the test period. After the expiry of this term and any further extension thereof, the Limited License shall be extended on the same terms (subject to any price adjustments pursuant to Sections 11.1 or 11.4), for a further contract year, provided that neither Party has terminated it in writing by three months written notice to the end of a contract year.

6.3 If a Limited License is cancelled, for whatsoever legal reason, then the End User is required, on the expiry of the Limited License, to cease all use of the Standard Software and any accessories delivered with it (e.g. dongle) and, without request by CST, to return all original versions of the Standard Software delivered by CST (including accessories), and to destroy or delete all copies and partial copies thereof. CST may require from the End User a written confirmation that the destruction or deletion has been carried out.

## 7 Transfer of the Standard Software

7.1 The End User may not transfer Limited Licenses, even for a limited time or free of charge.

7.2 In the case of Perpetual Licenses (purchase), transfer is permitted only on condition that the End User ceases all use of the Standard Software and any accessories that may have been delivered with it (e.g. dongle), does not keep any copy thereof in any form, causes the party acquiring the License to agree in writing to observe the License conditions applicable between the End User and CST, notifies CST prior to the transfer of the transferee's name and address, and does not ship the Standard Software for use outside the territory of the European Union and that of the European Economic Area. This condition applies equally to any transfer to an affiliate within the meaning of Section 15 of the German Stock Corporation Act (*Aktiengesetz* ("AktG")). (Affiliates are legally independent entities that are related to one another, whereby one is majority owned and one is majority held by the other, or one is dependent and one controls, both are group companies, both have a reciprocal interest in the other, or both are parties to a controlling, profit transfer or other inter-company agreement.

## 8 Programme Key

8.1 In the event a dongle is provided with the Standard Software (at CST's discretion), CST shall provide the End User with the programme key and dongle necessary for it to exploit the License as granted. Title to the dongle shall pass to the End User upon delivery thereof FCA (Incoterms 2010) CST's premises as designated by CST. The End User shall ensure that the programme key and the dongle are kept in a safe place.

8.2 In order to verify that the License is used in accordance with contract, CST reserves the right, even in the case of Perpetual Licenses, to provide programme keys for a limited period only, and to always renew them if the agreed limitations on use have been complied with.

8.3 The End User bears the risk of dongle loss (including through theft and other forms of loss). If the dongle is lost, the End User shall purchase a new license of the Standard Software if it wants to continue to use the Standard Software in accordance with the contract and CST may at its own discretion provide or not a new dongle for such license.

8.4 The dongles are provided "as is" at no charge except of a handling fee if mentioned on the applicable invoice. No maintenance nor warranties shall apply to the dongles.

## 9 User Manuals

9.1 The provision of user manuals (hereinafter "User Manuals") to accompany the Standard Software forms part of the scope of delivery. CST shall decide at its discretion whether to provide the User Manuals in hard copy or in digitalised form on data carriers. If the User Manuals are delivered in digitalised form, then the further provision in hard copy form is not required. If the End User wants a hard copy of the User Manuals, then it is recommended that it makes an appropriate copy before commencing use of the computer programme and that such copy be carefully kept thereafter.

9.2 The User Manuals shall be delivered in English unless expressly specified otherwise in the CST Offer.

9.3 The End User may copy and use the digitalised User Manuals in the required environment for use in accordance with the contract. User Manuals delivered in hard copy form may not be copied. Any use made of the User Manuals over and above that provided for herein requires the prior consent of CST and may be subject to payment in accordance with the then current prices.

## 10 License for Test Purposes

- 10.1 If CST hands over the Standard Software to the End User for test purposes, then the Licenses of the End User shall be, contrary to Section 5 through 7 hereof, limited to those acts required to verify the Standard Software's suitability for the End User's intended purposes. In particular, the End User has no right to undertake a de-compilation, even under the preconditions set out in Subsection 5.6 hereof. Subsection 7.1 applies accordingly.
- 10.2 CST recommends that the Standard Software be tested only on a computer which is not used for productive purposes (test computer), in order to avoid any incompatibility with other programmes or the other system environment being able to lead to system crashes or other impairments to the operations. If required, the productive system environment shall be simulated on the test computer.
- 10.3 The test period begins with the day of delivery and lasts for a maximum of 30 days, unless expressly agreed otherwise. After the test period ends, the Standard Software shall be returned to CST and all copies destroyed or deleted in the same way as provided in Subsection 6.3. The End User may continue to use the Standard Software only if it has previously acquired from CST either a Perpetual License (purchase) or a Limited License for the extended period at the then applicable price.
- 10.4 CST reserves the right to require a test fee (hereinafter "Test Fee") to be paid as consideration for provision of the Standard Software for testing purposes. If CST intends to charge a Test Fee for Standard Software provided for testing purposes, then it shall notify the End User in writing before delivery of the Standard Software. The Test Fee is payable on commencement of the testing after invoicing by CST and without any cash discounts. A refund of the Test Fee on return of the Standard Software after the end of the agreed test period is not permitted. If the Standard Software is not returned after expiry of the test period, then the Test Fee shall be credited against the amount payable by the End User for use of the Standard Software.
- ## 11 Fee for Use of the Standard Software and Price Adjustments
- 11.1 The respective fee for the Licenses granted to the End User (hereinafter "Fee") is as provided in the applicable CST Offer. The Fee takes into account the agreed limitations on use (e.g. the number of "Simulation/Solver Processes" or "Frontends" as well as the modules and additional options). The License may be expanded only with the consent of CST. If the then current prices of CST provide for an additional charge or supplemental Fee to be paid in respect of the modified License, then CST can make its consent dependant upon such a payment.
- 11.2 The then current CST price shall always be payable on all further orders.
- 11.3 Unless the contrary is expressly stated in the relevant CST Offer, CST shall grant Perpetual Licenses (purchase) against a one-off payment, which it shall invoice on delivery and which shall be paid at the latest within 15 calendar days of the invoice date, without cash discounts.
- 11.4 For Limited Licenses, periodic payments of the Fee shall be made over the term of the License as a fee for acquisition of the relevant Licenses. The relevant invoice period (e.g. annual payments) and the amount of the charges shall be derived from the relevant CST Offer. CST reserves the right to adjust the agreed charges, with effect from the next respective contract year, such that they are in line with CST's then current prices. If the ordinary contractual termination period has already

expired at the time that the price increase is notified to the End User (e.g. through sending the invoice which contains such increases), then the End User shall enjoy a right to extraordinary termination from the moment the price increase comes into effect. The right to extraordinary termination shall not apply to price increases that occur by reason of expansion of the License as provided in Subsection 11.1 hereof.

## 12 Export Regulations

Export to End User of Standard Software and Documentation including updates, upgrades or new releases provided within the scope of Software Maintenance as applicable (hereinafter "CST Product") is subject to all applicable countries' export and re-export laws and regulations. CST and its licensors shall have no liability towards End User if necessary authorizations, licenses or approvals are not obtained. End User shall not export or re-export, either directly or indirectly, CST Products when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. End User hereby warrants to CST that all CST Products ordered hereunder shall not be used in violation of any applicable export laws, including for proliferation of any nuclear, chemical or biological weapons or missile delivery systems and shall not be diverted to any country, company or individual if prohibited by the applicable export laws of any country. End User recognizes that End User Data may be transferred to or stored in any country. End User undertakes to abstain from, and shall ensure all users abstain from, processing, storing or uploading on its data sharing environment any information or data, the export of which is controlled, regulated or subject to any permit or license under any applicable law or regulation. End User shall be deemed to be the exporter of End User Data. CST may terminate this Agreement and all licenses and access to any services hereunder upon written notice if End User violates these provisions.

## C SOFTWARE MAINTENANCE

### 13 Scope of the Maintenance

- 13.1 CST shall provide the following software maintenance services "Software Maintenance":
- 13.1.1 Help with interruptions (hereinafter "Help") caused by programme errors, by providing advice on error prevention, circumvention and correction, in so far as this is technically possible for CST at justifiable cost. The principal Help medium is CST-Support. Maintenance requests may be sent via the Online Ticketing Systems or the Support E-Mail address provided on CST's homepage. The error reports shall be processed on business days, not including Saturdays, between 9 a.m. and 5 p.m. (CET). Maintenance requests may also be made telephonically to the telephone number if provided on the CST homepage during the aforesaid hours. CST offers Help only in German and English or another language as available.
- 13.1.2 Delivery of general, new programme updates with general error corrections and further developments (e.g. adaptations to new releases of the operating software officially supported by CST), which CST offers generally on the German market for Software Maintenance. New functions separately offered by CST to the general public (all customers and interested parties) as independent modules, programmes or additional options shall be excluded.
- 13.2 The End User is responsible for the installation of new programme updates for Software Maintenance.
- 13.3 Software Maintenance services will be carried out only for the most current programme release at the time. The

License in respect of the Software Maintenance services corresponds to the License in the Standard Software for which they are performed.

- 13.4 Software Maintenance will be provided by CST or a CST authorized service provider. End User acknowledges and is aware that such Software Maintenance might involve support or development personnel in different countries or having the citizenship of different countries and will not send models or materials falling under any export control restrictions nor information End User considers confidential.

#### **14 Contractual Basis for Software Maintenance**

- 14.1 An End User shall be entitled to Software Maintenance only if and when the relevant License has been granted to it. However, during the Test Period there shall be no right to software maintenance.
- 14.2 If a Limited License is agreed, the Software Maintenance is a constituent part of the License relationship, and can be terminated only together with such relationship.
- 14.3 If the Parties have agreed upon a Perpetual License (purchase), then the Software Maintenance shall be carried out without separate charge during the applicable limitations period, i.e., during the first twelve months following commencement of the License (see Sections 6.1 and 6.2 in relation to commencement), unless agreed otherwise. Thereafter, the End User shall have a right to Software Maintenance only if the parties have entered into an appropriate Software Maintenance agreement.

#### **15 No Software Maintenance Fees for Limited Licenses (Hire)**

If a Limited License is agreed to, unless specified otherwise, Software Maintenance shall be included in the periodic Fees.

#### **16 Software Maintenance Fees for Perpetual Licenses (Purchase)**

- 16.1 The amount of the Software Maintenance Fees for Perpetual Licenses shall be specified in the CST prices current at the time of invoice.
- 16.2 If Software Maintenance Fees are expressed as a percentage of the current applicable Fee for perpetual use, CST can fix anew the percentage for each pending new maintenance period. If the ordinary notice period for the following period has already expired at the time that the price increase is notified to the End User, then the End User shall have a right to extraordinary termination with effect from the entry into effect of the new percentage rate.
- 16.3 In cases where the Parties agree to expand the License and additional charges or additional License Fees are therefore payable by the End User in accordance with Subsection 11.1, the Maintenance Fees shall be adjusted upon commencement of the expanded License to correspond with the then current CST prices.

#### **17 Term of Software Maintenance Agreements for Perpetual Licenses**

- 17.1 If the Parties enter into a Software Maintenance Agreement following the free maintenance period in accordance with sentence 2 of Subsection 14.3, then such agreement shall be automatically renewed by a further twelve months each time (including after each renewal) unless it is terminated in writing by either party giving 30 days' notice to the expiry of the then current term.

- 17.2 If the End User interrupts the Software Maintenance after expiry of the free maintenance period, then, in order to bring its software up to date, the End User must - at the election of CST - either pay in arrears the Software Maintenance Fees for the period during which provision of such maintenance was interrupted as well as an additional re-instatement fee at CST's discretion, or purchase a new license of the latest release of the Standard Software concerned. The End User shall have no right to resumption of the Software Maintenance.

- 17.3 Software Maintenance is subject to change. However, any changes will not become effective until the commencement of the immediately following maintenance term.

#### **18 Maintenance of Third Party Software**

- 18.1 CST shall provide Software Maintenance for Third Party Software only if this is expressly provided for in the CST Offer or expressly offered in writing afterwards.
- 18.2 End User acknowledges and is aware that such Software Maintenance might involve support or development personnel in different countries or having the citizenship of different countries and will not send models or materials falling under any export control restrictions nor information End User considers confidential.

#### **D JOINT CONDITIONS**

#### **19 Payment Conditions, Set-Off, Right of Retention, Retention of Title and Value Added Tax**

- 19.1 All invoices from CST are due and payable without cash discounts within 15 calendar days from the invoice date, unless expressly provided otherwise in the CST invoice concerned or in an express, written agreement between the Parties.
- 19.2 Set-off against CST's claims is permitted only if confirmed in a final and binding (res judicata) judgment or when the set off amount is undisputed by CST. The End User shall be permitted to withhold payment only in respect of claims arising in respect of the same contractual relationship.
- 19.3 CST shall retain ownership in, inter alia, the disks or User Manuals that have been delivered, until it has received all monies due to it under the agreement in question. The End User shall immediately inform CST in writing if a third party interferes with the goods subject to the retention of title by CST, and shall inform the third party about CST's rights.
- 19.4 All prices in CST Offers and other documents do not include currently applicable Value Added Tax or any other applicable taxes. End User shall be responsible for payment of any and all taxes, including fees, duties, excises, import VAT, or similar charges of any nature whatsoever, now in force or enacted in the future, that are levied, assessed, charged, withheld, or collected for or in connection with the transfer or usage, to the extent authorized hereunder, of the Standard Software or Software Maintenance provided hereunder or otherwise arising in connection with these General Terms and Conditions, but excluding domestic taxes based on CST's net income. If End User is required to withhold, deduct, or pay for any tax from the amount of fees to be paid under these General Terms and Conditions, then End User shall pay such additional amount to CST as is necessary to ensure that CST receives a sum equal to what would have been received had no such withholding, deduction or payment been required.

#### **20 Agreed Intended Condition of the Standard Software**

- 20.1 CST shall deliver the Standard Software (executable computer programme in object code together with the

associated User Manuals) in accordance with the product specification and the details contained in the respective CST Offer.

- 20.2 The Parties agree that the Standard Software must be in the condition documented in writing in the relevant product specification that was applicable and made available to the End User upon acceptance of the CST Offer. Upon request, CST will provide the End User with the relevant product specification for inspection prior to acceptance of the CST Offer.

## 21 Warranty

- 21.1 CST warrants Standard Software one (1) year for each Perpetual License from the initial delivery of each Standard Software that the release of any Standard Software will materially conform to its Documentation provided it is properly used in the operating environment specified by CST. If such Release of the Standard Software does not conform, and End User has notified CST within this warranty period, CST will attempt to make it conform as warranted. CST may request End User to install a corrective patch or a new release for such performance. CST may remove any and all non-conformity at its choice by correction, workaround or redelivery. If CST has not corrected the non-conformity within ninety (90) days from the date of such notification, End User may within thirty (30) days, either reduce the fee paid for the non-conforming Standard Software or rescind this contract and receive a full refund of all fees paid for the non-conforming Standard Software. For any and all claims for damages, the limitation of liability as set out in Section 22 shall apply. This represents CST's sole liability and End User's sole remedy for breach of warranty. In case the dongle does not conform, section 8 shall apply.

- 21.2 CST disclaims all liability for any use or application of any CST Offering or the results or decisions made or obtained by users of the Standard Software. CST does not warrant that (i) the functions of any Standard Software will meet End Users requirements or will enable it to attain the objectives End User has set for itself, (ii) the Standard Software will operate in the combination or environment selected for use by End User, or (iii) the operation of the Standard Software will be uninterrupted or free of errors. In all instances, End User shall be solely responsible for ensuring that the results produced by Standard Software comply with quality and safety requirements of End User's products or services. No employee or agent of CST is authorized to give a greater or different warranty. End User shall have exclusive responsibility for (a) selection of the Standard Software to achieve End User's intended results, (b) installation of the Standard Software, (c) taking adequate measures to properly test, operate and use each Standard Software, and (d) results obtained therefrom.

CST EXERCISES NO CONTROL OVER, AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY CUSTOMER CONTENT OR THIRD PARTY CONTENT, INCLUDING DATABASES, 2D AND 3D MODELS, PROVIDED OR PUBLISHED VIA THE CST OFFERS.

For each term license the following applies in addition: a termination right of End User for not granting the use of a Standard Software acc. to § 543 Sec. 2 Sentence 1 No. 1 BGB (German Civil Code) is excluded, as far as rework or replacement has not failed. Also a liability of CST without a fault for errors in a Standard Software existing at the time of conclusion of the Agreement acc. to § 536a Sec. 1 BGB (German Civil Code) is expressly excluded. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS

FORSTANDARD SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON INFRINGEMENT.

- 21.3 CST will defend End User against any claims made by a third party that a Standard Software delivered under this contract infringes a copyright in any country or a patent of the United States, Japan, or a member state of the European Patent Organization, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against End User by a court of competent jurisdiction or agreed to in a written settlement agreement signed by CST arising out of such claim, provided (i) End User provides CST with prompt written notice of the claim, and (ii) End User gives CST sole control of the defence of the claim and any related settlement discussions and provides reasonable cooperation in the defence and settlement of the claim.

If such a claim is made, or in CST's reasonable opinion a Standard Software is likely to become the subject of such a claim (or likely to be made), CST may at CST's expense, either secure the right for End User to continue using the applicable Standard Software, modify it so that it is not infringing, or replace it with another program which is functionally equivalent. If none of the foregoing options is available on terms which are reasonable in CST's judgment, CST may terminate the licenses to the Standard Software. For Perpetual Licenses, CST shall either refund or provide a credit to End User, at End User's option, in an amount equal to the corresponding one-time fee paid for the licenses, depreciated on a straight-line over three (3) years upon return or destruction of all copies of the affected Standard Software as certified by an officer of End User. For Limited Licenses, if applicable, CST shall refund all prepaid but unused fees paid hereunder for licenses.

CST shall have no obligation to defend or indemnify End User against any claim related to (i) any modification of a Standard Software by anybody other than CST, (ii) the use of one or more Standard Software in combination with other hardware, data or programs not specified CST, (iii) Customer or third party content including databases, 2D and 3D models provided or published via the CST Offers or (iv) the use of corrective patches or Releases other than the most recent one.

This Section states CST's entire liability and End User's exclusive remedy for any claim of infringement of intellectual property rights.

## 22 CST's Liability

- 22.1 CST SHALL BE LIABLE WITHOUT LIMITATION FOR PERSONAL INJURIES AND DAMAGES CAUSED BY GROSS OR WILLFUL NEGLIGENCE AND FOR SUCH DAMAGES, WHICH HAVE ACCRUED THROUGH THE BREACH OF A GUARANTEE ASSUMED WITH THE CONCLUSION OF THIS AGREEMENT, FOR DAMAGES CAUSED BY ORDINARY NEGLIGENCE, REGARDLESS OF LEGAL GROUND (E.G. EVEN CLAIMS FROM BREACH OF CONTRACT, TORTUOUS ACT ETC.), CST SHALL BE LIABLE FOR EACH DAMAGE CASE UP TO AN AMOUNT OF FIVE HUNDRED THOUSAND (500.000,00) EUROS OR UP TO THE AMOUNT CORRESPONDING TO CHARGES ACTUALLY PAID BY CUSTOMER IN THE PRECEDING TWELVE (12) MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE CAUSE OF ACTION GIVING RISE TO THE CLAIM FOR THE USE OF THE CST OFFERING WHICH CAUSED THE DAMAGE IN THE EVENT THIS VALUE IS HIGHER. IN THE EVENT OF ORDINARY NEGLIGENCE CST SHALL NOT BE LIABLE FOR INDIRECT DAMAGES AND ALL CONSEQUENTIAL DAMAGES (INCLUDING,

BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, ADDITIONAL EXPENDITURE OF PERSONNEL, LOSS OF SALES AND LOSS OF DATA) WHETHER OR NOT CST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS INCLUDES THE REIMBURSEMENT OF FRUITLESS EXPENDITURES TO THE EXTENT SUCH EXPENDITURES ARE CONSIDERED INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE HEREUNDER.

Any legal action against CST must be filed with the appropriate judicial jurisdiction within two (2) years after the applicable cause of action has arisen.

## 23 Software Compliance

- 23.1 CST undertakes legal measures to eliminate unauthorized use of CST's Standard Software. In this context, such Standard Software may include a security mechanism that can detect the installation or use of illegal copies of a Standard Software, and that is able to collect and transmit data about illegal copies only. Data collected will not include any data created by End User with the Standard Software. By using the Standard Software, End User consents to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. CST also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to, and use of, any Standard Software. End-User may not take any steps to tamper with, circumvent or disable any such measures. Use of any Standard Software without any hardware lock device, license administration software and/or license authorization key provided by CST is prohibited.
- 23.2 During the term of these General Terms and Conditions and for a period of three (3) years thereafter, End User shall establish and maintain accurate information records relating to the use of each Standard Software including, without limitation, the list of users accessing and using such Standard Software. When applicable, such information shall include destruction of the Standard Software and the measures put in place by End User to protect the access to and the use of each Standard Software. CST shall have the right at any time, at its own expense and under reasonable conditions of time and place, to audit and copy these records and/or the End User's use of each Standard Software. End User also hereby authorizes CST to verify its compliance with the terms of these General Terms and conditions. For such purpose, CST may conduct an audit on End User's premises during normal business hours, in a manner that minimizes disruption to its business. CST may require End User to provide it, or any third party CST engages to conduct such verification, with machine access, copies of system tools outputs, or other electronic or hard copy system information as appropriate. If the audit reveals unauthorized use of any Standard Software, End User shall promptly pay to CST any amounts owed as a result of such unauthorized use at the then current list price. If such unauthorized use is five percent or greater of End User's authorized use for the applicable Standard Software, then in addition to End User paying the applicable charges, End User shall reimburse CST for the cost of such audit. By invoking the rights and procedures described above, CST does not waive its rights to enforce these General Terms and Conditions or to protect its intellectual property by any other means permitted by law.

## 24 Sub-contractors, Place of Performance

- 24.1 CST shall have the right to use third parties in the performance of its contractual obligations.
- 24.2 Place of performance for all of the services that CST shall perform in accordance with the aforementioned provisions is its registered office.

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## 25 Confidentiality

The End User undertakes to keep confidential any and all documents, information and data relating to the Standard Software and/or CST, of which it becomes aware in connection with the contractual relationship, exercising in that respect the care of an ordinary salesman, acting in compliance with the relevant provisions of the German Data Protection Act (*Datenschutzgesetz*), unless such matter is already in the public domain. The End User shall be liable for any infringement of this duty of confidentiality by its employees.

## 26 Transfer and Assignment

Unless otherwise provided herein, any subcontract, assignment, delegation, or other transfer (including without limitation, by way of merger, acquisition, divestiture, or change of control or contribution in kind) of this Agreement, or any of End User's rights, duties, benefits or obligations hereunder is subject to CST's prior written approval. Any attempt to do so without such consent is void, unless applicable law provides otherwise. Any approved transfer of licenses may be subject to an adjustment charge. This Agreement shall be binding upon, and inure to the benefit of CST and its successors and assigns. CST may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without End User's consent.

## 27 Data privacy

Customer acknowledges and agrees that it is and shall at all times remain the sole data controller of the Personal Data that will be processed as part of its access to and use of a CST Offer and therefore, shall be responsible for complying with all Applicable Data Protection Legislation including, but not limited to, (i) transfer of Personal Data, (ii) information of data subjects and (iii) access, modification and deletion rights of data subjects. CST as the data processor will collect, store and process the Personal Data in accordance with the Agreement

For the purpose of this Section 27:

Applicable Data Protection Legislation means as from 25 May 2018, the Regulation (EU) 2016/679 (General Data Protection Regulation) and any delegated and implementing acts adopted in accordance with the General Data Protection Regulation and the member state's laws specifying the provisions of the General Data Protection Regulation applicable to the Processing implemented.

Personal Data means any kind of information relating to an individual about whom information is collected which can, individually or together with other information on the individual, lead to directly or indirectly identifying such individual.

Sub-Processor means any Processor appointed by CST or by any other Sub-Processor of CST which receives, from CST or from any other Sub-Processor of CST, Personal Data for the sole and exclusive purpose to Process activities to be carried out on behalf of Customer in accordance with the terms of this Agreement and the terms of a written subcontract

"Controller", "Data Subject", "Personal Data", "Process/Processing", "Processor" and "Personal Data Breach" shall have the same meaning as in the Applicable Data Protection Legislation

**Data Privacy** - The following shall apply as from May 25th 2018:

Location of Data Processing. In order for CST to provide the online services and support services, Customer

appoints CST as Processor and agrees that Personal Data provided by Customer (Customer's Personal Data) may be transferred to, stored, accessed and processed in any country in which CST or its subcontractors are located. CST will ensure that the same data protection obligations as set forth in the Agreement shall be imposed on the Sub-Processors by way of a contract and/or the standard contractual clauses from the European Commission in such a manner that the Processing will meet the requirements of the Applicable Data Protection Legislation.

**CST Obligations.** CST, as a Processor, will:

to the maximum extent permitted by applicable law and for the duration of use of the CST Offers, process Customer's Personal data in accordance with this Agreement and Customer's written reasonable instructions, which shall in all circumstances be consistent with such Agreement;

ensure that the persons who are authorized to Process Customer's Personal Data are bound themselves by an appropriate obligation of confidentiality;

reasonably assist Customer in ensuring compliance with its obligations as a Data Controller regarding sections 32 to 36 of the General Data Protection Regulation, taking into account the nature of Processing as described in the Agreement. If CST has reason to believe or is convinced that a Personal Data Breach impacting Customer has occurred, CST will (i) notify the incident to Customer without undue delay after becoming aware of such Personal Data Breach, (ii) provide Customer with available information allowing it to comply with its notification obligations with competent supervisory authority;

reasonably assist Customer to fulfil its obligations in response to requests from Data Subjects to exercise their rights under Applicable Data Protection Legislation in a manner consistent with the use of the CST Offers and CST's role as a Processor

make available to Customer all necessary information in its possession to demonstrate Customer's compliance with its obligations provided for by the Applicable Data Protection Legislation and reflected in this section and, in case compliance with Applicable Data Protection Legislation cannot be evidenced through the appropriate documentation provided by CST, allow for, an audit. Such audit will be (i) notified to CST in writing at least thirty (30) days in advance by indicating its scope which shall be limited to assess Customer's compliance where the documentation provided by CST is not relevant (ii) conducted by an independent auditor mandated by Customer at Customer's costs and performed not more than once every twelve (12) months;

keep a list of the Sub-Processors that will be involved in the Processing of Customer's Personal Data due to the Processing activities implemented on behalf of Customer and inform Customer of any intended changes concerning the addition or replacement of other Sub-Processors, thereby giving the Customer the opportunity to object to such changes. Customer will be notified at least 15 (fifteen) days in advance before authorizing any new Sub-Processor to Process Customer's Personal Data with a mechanism to obtain notice of that update, except in case of emergency. Customer may reasonably object to CST's use of a new Sub-Processor if (i) such new Sub-Processor Processes Customer's Personal data, (ii) Customer demonstrates it has a legitimate interest, and notifies CST in writing, within fifteen (15) days after receipt of the notification, it being specified that in the absence of an objection from Customer, the Sub-Processor is deemed to be accepted by Customer. If Customer notifies its objection related to the new Sub-Processor within the above timeframe, Customer may terminate the CST Offer impacted by this change of Sub-Processor before the end of the notice period of fifteen (15) days after receipt of the notification;

upon termination or expiration of the Agreement, delete or return all Customer's Personal Data to Customer, at Customer's choice, and delete all existing copies, in accordance with the terms and timelines of such Agreement, except where applicable law requires retention of such Customer's Personal Data or where such Customer's Personal Data is necessary for proof purposes during the applicable statute of limitation.

## **28 Miscellaneous**

28.1 Alterations or additions to the Agreement must be made in writing.

28.2 These General Terms and Conditions, and all legal relations between the Parties arising therefrom, shall be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on the International Sale of Goods and the conflict of laws rules under private international law shall not apply.

28.3 Exclusive forum for any and all legal disputes between the Parties arising from or in connection with these General Terms and Conditions or an agreement concluded on the basis of their provisions is Darmstadt.

28.4 These General Terms and Conditions have been drafted in English and possibly in another language for information purpose. For purposes of interpretation of these General Terms and Conditions and in case of any possible conflict between English text and the other language if applicable the English version shall be decisive and shall prevail.