

## TERMS AND CONDITIONS

of

info-key GmbH & Co. KG

Heinz-Fangman-Straße 2, 42287 Wuppertal, Germany

(hereinafter referred to as **info-key**)

towards its customers (hereinafter referred to as **customer**)

Last changed: 10/25/2019

### § 1 Scope of the Agreement

(1) The present Terms and Conditions (hereinafter referred to as Terms) apply to all business relations between info-key and its customers. The Terms apply in particular to the provision of the kinematics software "ASOM" or "ASOMmini" (hereinafter referred to as Licensed Software or the Subject Matter of the License) as well as training courses and consulting services.

(2) The Terms only apply if the customer is a businessman, a legal entity under public law or a special fund under public law.

(3) These Terms shall apply exclusively. Deviating or conflicting conditions of the customer will not be accepted unless info-key has expressly agreed to them.

### § 2 Definitions

(1) "ASOM" refers to various versions of a concept software which enables the performance of technical calculations for the analysis, synthesis and optimization of multi-bar linkages.

(2) "Contract" or "Individual Contract" means a contract concluded under inclusion of these Terms.

(3) "Licensed Software" means the subject matter of the license in compiled form.

(4) "Node" and "Computing Device" means a mobile or stationary computer system capable of executing the licensed software.

(5) "Software Installation" means an operation-ready version, installed on a node, of the subject matter of the license as defined below.

(6) "Businessman" is a natural or legal person or a partnership with legal capacity, which acts in the exercise of its commercial or independent professional activity when concluding a legal transaction. A partnership with legal capacity is a partnership with the ability to acquire rights and incur liabilities. The customer is a "consumer" if and insofar as the purpose of the ordered products and services cannot be predominantly attributed to his commercial or self-employed professional activity.

(7) "Third Users" or "Third Parties" are such natural or legal persons or partnerships with legal capacity that are included in the contractual service relationship by the customer without themselves being a contracting party.

(8) "Educational Institution" means an institution (e.g. a university, university of applied sciences, vocational academy, administrative or business academy, technical college, technical school) which has an original educational mandate in accordance with either a state or a municipal ordinance.

(9) "Members" of the educational institution are its staff, in particular its teachers, as well as students and pupils.

### § 3 Conclusion of Contract

(1) Contracts are concluded through the customer's declaration of acceptance, which has to refer to a particular offer from info-key. Furthermore, a legal obligation may arise as a result of a contract signed by both parties.

(2) Offers made by info-key are subject to change and non-binding, unless the offer is declared as binding in writing.

### § 4 Granting of Licensing Rights

(1) Upon conclusion of the contract, the customer receives the right to install the licensed software and to use it in accordance with the following conditions. info-key enables the customer to download the licensed software after conclusion of the contract. info-key owes the provision of installation and configuration services only if these are agreed separately between the parties.

(2) info-key grants the customer the simple, non-exclusive, non-transferable and non-sublicensable right to use the licensed software. Unless explicitly defined in the contract, the right to use and commercialize the licensed software is limited to use for the customer's own business transactions ("intended use"). The use for third parties, e.g. in the context of Application Service Providing, is not allowed without explicit permission.

(3) The use of the licensed software is by default only permitted in the country in which the customer has his main place of business. Beyond this, the customer may also acquire the explicit right to use the software worldwide.

(4) Unless explicitly stated otherwise in the contract, rights of use granted by info-key for the licensed software are limited in time to the duration of the contract (rental license).

(5) The number of permissible installations of the subject matter of the license and the limits of its simultaneous use are determined according to the license type and the number of licenses granted as follows:

(a) An ASOM single-place or node-locked license permits the installation and use of the subject matter of the license on one node.

(b) An ASOM network or floating license allows a certain number of concurrent uses of the subject matter of the license on multiple nodes as specified in the individual contract, as long as they are located in a non-public network (intranet) operated by the customer and have access to a central license server, also operated by the customer. When a license of this type is granted, the subject matter of the license may be installed on a reasonable number of the customer's nodes.

(c) An ASOM educational license allows members of an educational institution a certain number of installations and simultaneous uses of the subject matter of the license on nodes as specified in the individual contract. These nodes may be owned either by the educational institution or directly by its members. The use of the ASOM educational license is limited to use in teaching. The ASOM educational license permits sublicensing from the licensee to its members.

(6) The customer is not entitled to using the licensed software beyond the intended use in accordance with the above conditions or any special conditions in the individual contract or to having it used by third parties or to making it accessible to third parties. In particular, the customer is not permitted to copy, sell or make available for a limited period of time the licensed software or parts thereof, and is especially not permitted to rent out or lend out the licensed software, unless the customer is permitted to do so in writing.

### § 5 Maintenance

(1) info-key warrants that the contractually agreed quality of the licensed software will be maintained during the term of the contract and that no third-party rights conflict with the contractually agreed use of the software (collectively: maintenance services). info-key will remedy any material and legal defects of the licensed software within a reasonable period of time. The subject of the maintenance services owed under this agreement shall always be the current version of the subject matter of the license.

- (2) The customer is granted the right to use newer versions of the licensed software (updates) and is provided with them as soon as info-key publishes them.
- (3) The documentation will always be adapted to the current version (update) of the licensed software.

### **§ 6 Consulting Services**

- (1) The parties may agree on the provision of consulting services within info-key's area of business on the basis of a separate agreement. The customer is advised that the scope of consulting services that info-key provides is limited to engineering services and certain ancillary services pertaining to the engineering profession. The provision of legal advice or legal services (e.g. the research of industrial property rights) is excluded, unless this is, as an exception, inseparable from another consulting service and is also expressly stipulated in the individual contract.
- (2) During the term of the consulting agreement, info-key is still permitted to perform consulting services for third parties, in particular also for competitors of the customer.
- (3) When providing consulting services under this contract, info-key is generally free to determine the place and time. info-key is, however, obligated to consider the business needs of the customer appropriately.

### **§ 7 Training Services**

- (1) If the parties have agreed on the provision of training services in the form of a training course, these will by default be held at the premises of info-key in Wuppertal, Germany. Workshops and training on the job, on the other hand, will by default take place at the customer's premises. The parties may agree separately that a training course shall instead be held at the customer's premises, though. If a training course is held at the customer's premises, the customer is obligated to provide the necessary technical equipment.
- (2) info-key reserves the right to cancel a training appointment for important causes. In this case, info-key will inform the customer of the cancellation of the appointment as soon as possible and offer alternative dates.

### **§ 8 Force Majeure / Acts of God**

- (1) info-key is released from the obligation to perform if and to the extent that the non-fulfilment of services can be attributed to the occurrence of circumstances of force majeure after conclusion of the contract. Each contracting party must immediately inform the other contracting party of the occurrence of a case of force majeure.
- (2) Circumstances of force majeure include war, strikes, riots, expropriations, cardinal legal changes, storms, floods and other natural disasters as well as other circumstances for which info-key is not responsible, such as in particular water damages, power failures and outage or destruction of data-carrying lines.

### **§ 9 Fees and Terms of Payment**

- (1) License fees depend on the type and number of licenses. Unless otherwise specified in the contract, the license fee shall be payable annually in advance after invoicing.
- (2) Training services as described in § 8, as well as workshops and training on the job, may be scheduled with a variable duration of between 1 to 5 working days and shall be paid at a flat rate per agreed training day after completion of the training and corresponding invoicing. If the training takes place at the customer's premises, the customer shall furthermore pay a flat-rate compensation for travel expenses, which will be described in the corresponding offer. If the customer delays the acceptance of the training services or workshops or training on the job, info-key can demand the agreed remuneration for the services not rendered as a result of the delay without being obligated to provide the services at a later date. This does not apply if, as an exception, the customer makes credible important reasons for the failure to accept the training service as scheduled. In the cases of sentence 3, however, info-key

must allow itself to be credited with the value of that which info-key saves as a result of the failure to accept the service or acquires or maliciously refrains from acquiring as a result of other use of resources originally reserved for the service.

(3) Consulting, development and other services (collectively: services) can only be commissioned in a time contingent of at least 10 hours (minimum duration). This does not apply to maintenance and support services. Services rendered shall be remunerated according to info-key's hourly rates on a pro rata basis for each 15 minutes fully rendered, unless otherwise agreed. info-key will document times rendered in timesheets and submit these together with the invoices. Travel times will be charged at half the hourly rate and included in the time sheet. The customer undertakes to fully use the agreed time contingent within 3 months after conclusion of the contract. If the time contingent is not fully used during this time, it expires. The remuneration for unused time remains payable in the event of time contingent expiry, unless the customer, as an exception, makes credible important reasons for the failure to use the reserved time contingent as agreed.

(4) info-key may demand advance payments for an appropriate percentage of the invoice sum. Unless otherwise agreed, payment claims are due without deduction within 30 days of invoicing.

(5) If the due date is specified in days, weeks or months, the effective due date is calculated based on the invoice date. If the customer is in default of payment, interest shall be charged on the outstanding amount in accordance with § 288 BGB (German Civil Code). This does not in any way preclude the later assertion of further rights.

(6) Subject to an expressly deviating regulation, all amounts stated in the contract documents shall be understood as net amounts, i.e. plus the statutory value added tax. Any applicable import sales tax shall be borne by the customer. If the customer is the debtor of a withholding tax, it is agreed that the customer also has to bear the withholding tax internally, i.e. the customer cannot claim from info-key the withholding tax paid by him internally. info-key will show the effective tax rate and the amount of sales tax separately on the invoice.

## **§ 10 Obligations of the Customer**

(1) The customer is advised that the licensed software is a concept software and that its calculation results have to be verified by the customer through further/independent tests. The customer further acknowledges that for each of the various ends to which the licensed software can be used, the relevant use-case-specific testing standards must be observed.

(2) If the customer commissions info-key to provide consulting services, the customer is responsible for checking and assessing the feasibility of the solution(s) that result from the consultation, in particular with regard to general legal regulations such as applicable patent, design and copyright laws and relevant testing standards. The customer is obligated to verify all results of the consultation through independent tests.

(3) The customer is obligated to notify info-key about defects in the licensed software immediately after their discovery, in writing or in text-form by e-mail. In the case of material defects, this notification shall include a description of the time of occurrence and the detailed circumstances of the defects.

(4) The customer shall ensure that all other software which he uses together with the licensed software on one of his computing devices, is always kept at the latest state of the art and that a uniform release level throughout the whole software system is guaranteed. The customer is obligated to always install the latest version of the licensed software within 30 days of release.

(5) The customer is obligated to remove all installations of the licensed software from his computing devices after the license agreement expires or to otherwise discontinue the use of the licensed software in a timely manner.

(6) The customer shall ensure that the license keys or license credentials provided to him are protected from access by third parties and that his users do not pass them on to unauthorized users.

(7) The customer will not misuse the licensed software or have it misused. In particular, he will not publish or transmit any information or data that could damage the reputation of info-key.

(8) Before the contract expires, the customer shall back up, export or have others export all relevant information in the data produced by the licensed software on his systems. The customer is reminded that he should take precautions such that even after termination of the contract he will still be able to access all relevant information from these data without using the licensed software, since after termination of the contract, access to these data using the licensed software will no longer be possible.

(9) The customer shall refrain from attempting the unauthorized retrieval of information or data, either by himself or by unauthorized third parties, and shall also refrain from interfering or letting others interfere with the internal workings of programs created by info-key, and shall furthermore refrain from penetrating info-key's data networks without authorization.

(10) The customer will indemnify info-key from and against all claims by third parties, which can be attributed to being culpably caused by an illegal use of the licensed software by the customer or with the approval of the customer or which result in particular from data protection law disputes, copyright law disputes or other legal disputes which are connected with the use of the licensed software. If the customer recognizes, or is in a position where he cannot fail to recognize, that such a legal violation is imminent, he is obligated to inform info-key immediately. In the event that third parties assert claims against info-key due to such legal violations, info-key is free to discontinue the use of the contested content in whole or in part (e.g. by removing it from the licensed software).

(11) The customer is obligated to inspect, in a way that meets current professional standards, the provided software as well as all other delivered items and services from info-key immediately after delivery or being provided with them, and to report any defects immediately in writing with a detailed description of the defect, in accordance with the relevant commercial law regulations (§ 377 HGB / German Commercial Code). In their report, the customer shall describe the time of occurrence and the detailed circumstances of the defect.

(12) The customer shall thoroughly test each module of the subject matter of the license with regards to their correct functioning in the specific situation in which each is to be used, before commencing productive use. This also applies to software which the customer receives within the scope of warranty or within the scope of contractually agreed maintenance and consulting services. The customer is obligated to support info-key to the best of his ability in their undertakings to eliminate defects. The customer is obligated to take all reasonable precautions to ensure data security.

### **§ 11 Right of Retention in Case of Use contrary to the Terms of the Contract**

info-key is entitled to block access to the licensed software and to the data residing inside of it in the event of an unlawful violation by the customer, his employees or his third party users of any of the obligations stipulated in these Terms, in particular in the event of a violation of the obligations of the customer stated directly above (see § 10). Access shall only be restored after the violation of the obligation concerned has been permanently eliminated or after, in the case of a copyright infringement or other similar cases provided for by law, the risk of repetition has been eliminated by submitting to info-key an appropriate declaration to cease and desist, subject to penalty.

### **§ 12 Duration and Termination**

(1) Unless otherwise stipulated in the contract, usage agreements for the subject matter of the license shall be limited to a contract period of 1 year. The contract duration begins with the date specified in the individual contract and ends when the limited contract period has elapsed, without the need for explicit termination. The contract duration and the terms of termination for agreements concerning other services are governed by the relevant statutory provisions.

(2) If the customer is a businessman, the right of the parties to terminate the contract without good cause before the end of the fixed contract period is excluded.

(3) Beyond that, a contract can be terminated in writing by either party for good cause, even without notice. A good cause, which entitles info-key to terminate the contract, is given in particular if the customer infringes the rights of use of info-key by using the licensed software beyond the extent permitted

by this contract and the customer does not remedy the infringement within a reasonable period of time after receiving a formal warning from info-key.

(4) Notice of termination must be given in writing. In this case, transmission by means of telecommunications, such as the use of e-mail, is excluded.

### **§ 13 Subcontractors, Transfer of Rights and Obligations**

(1) info-key has the right to use subcontractors to fulfill the contractual relationship, provided that data protection concerns or other legally recognized interests of the customer do not conflict with this in individual cases.

(2) The customer may only transfer claims against info-key to third parties with the written consent of info-key.

### **§ 14 Warranty, Liability**

(1) The owed quality of the licensed software results conclusively from the contract and the user manual. The warranty for material and legal defects shall be governed by the statutory provisions, unless otherwise specified in the following paragraphs.

(2) info-key limits its liability for damages as follows ((3) to (6)).

(3) info-key shall only be liable in accordance with the following provisions in (3a) to (3e):

(a) info-key is liable without limitation for damages caused intentionally or through gross negligence by info-key, its legal representatives or its executive employees, as well as for damages caused intentionally by other vicarious agents; for gross negligence of other vicarious agents, liability is determined according to the provisions for simple negligence listed in (3e) below.

(b) info-key is liable without limitation for damages resulting from injury to life, body or health, caused intentionally or through gross negligence by info-key, its legal representatives or vicarious agents.

(c) info-key is liable for damages due to lack of warranted characteristics up to the amount which was covered by the purpose of the warranty and which was apparent to info-key at the time the warranty was given.

(d) info-key is liable for product liability damages according to the provisions of the German Product Liability Act.

(e) info-key is liable for damages resulting from the violation of cardinal obligations by info-key, its legal representatives or vicarious agents; cardinal obligations are the fundamental obligations that form the basis of all contractual performance obligations, that were essential in the conclusion of the contract, and on the fulfilment of which the customer may rely. If info-key has violated these cardinal obligations due to simple negligence, its liability is limited to the amount that was apparent and appeared typical to info-key at the time of each respective rendering of services.

(4) info-key is only liable for the loss of data up to the amount that would have been incurred in order to restore it if the data had been properly and regularly backed up.

(5) Any further liability on the part of info-key is excluded in principle. In particular, the customer shall release info-key from any strict liability (liability regardless of fault) on their part for initial material defects in accordance with § 536a BGB (German Civil Code).

(6) In case of claims for damages or reimbursement of futile expenses, the limitation period is two years. The limitation period begins with the time at which the customer became aware of the circumstances justifying the claim, or should have become aware of them without gross negligence. The limitation period shall expire at the latest upon expiry of the maximum periods specified in § 199 BGB (German Civil Code). In the case of claims for damages or reimbursement of futile expenses due to intentional actions, gross negligence, warranty, fraudulent intent and in the cases specified in (3b), however, the statutory limitation rules shall always apply.

## § 15 Confidentiality

- (1) The parties agree not to disclose any confidential information.
- (2) The obligation to maintain confidentiality shall continue indefinitely even after termination of the contractual relationship.
- (3) Such confidential information is excluded from this obligation,
  - (a) which were demonstrably already known to the recipient when the contract was concluded or which subsequently are made known to the recipient by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders;
  - (b) which are publicly known at the time of conclusion of the contract or are made publicly known thereafter, unless this is based on a breach of this contract;
  - (c) which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the recipient subject to the disclosure obligation shall give prior notice to the other party and give them the opportunity to take action against the disclosure.
- (4) The parties shall grant access to confidential information only to such consultants who are bound by professional confidentiality or who have previously been required to comply with confidentiality obligations equivalent to those set down in this contract. In addition, the parties will disclose confidential information only to those employees who need to know it in order to implement this contract and will require such employees to maintain confidentiality even for the time after they are no longer employed by the parties of this contract, to the extent permitted by employment law.

## § 16 Data Protection / Data Security

- (1) The customer accepts the data privacy policy of info-key, available at <https://asom.eu/en/company/data-privacy-policy/>.
- (2) info-key and the customer observe the relevant data protection regulations. If the customer is a business customer, the following sections 3 and 4 shall furthermore apply:
- (3) The contracting parties will require their employees to observe data privacy. Furthermore, the parties will conclude an agreement for commissioned data processing if the services agreed upon in this contract include the processing by info-key of any personal data from the customer or if access by info-key to personal data from the customer is unavoidable.
- (4) It is the customer's responsibility to regularly backup their stored data with the due diligence of a responsible businessman. This concerns in particular also such data, which are not stored directly in the licensed software or were produced by it, but which could however potentially be changed in case of a malfunction of the licensed software. Particularly, the customer will carry out a complete data backup of all relevant system and application data immediately before each installation and/or other intervention by info-key or by third parties commissioned by the customer. The data backups must be stored in such a way that it is possible to restore the backed-up data at any time. In addition, the customer must comply with the technical and organizational requirements pursuant to art. 32 GDPR. In particular, they must protect the systems under their control against unauthorized perusal, processing or modification of data as well as against other forms of unauthorized access or attacks of any kind by their employees or any third parties. To this end, they shall take appropriate and proven measures in accordance to the state of the art and to the extent necessary, in particular to protect against viruses and other defective programs or program routines, as well as other measures to protect their equipment, especially against burglary. If systems not under their control are used, the customer must impose equivalent obligations on their contractual partners and monitor their compliance on a regular basis.

## § 17 Individual Agreements, Written Form

- (1) The contract and other individual agreements made between the parties in specific cases (including side agreements, supplements and amendments) shall take precedence over these Terms. Such agreements shall be documented in form of a written contract or they must at least, unless explicitly agreed otherwise, be confirmed by info-key in writing.

(2) Legally relevant declarations and notifications to be submitted by the customer to info-key after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing to be effective if the customer is a businessman. This also applies to the amendment or cancellation of this clause. Electronic documents in text form do not fulfil the written form requirement.

(3) References to the validity of statutory provisions have only clarifying meaning. Even without such clarification, the statutory provisions therefore apply, unless they are directly amended or expressly excluded in these Terms.

#### **§ 18 Mention as Reference, Choice of Law, Place of Jurisdiction**

(1) info-key is entitled to publicly mention the customer as a reference.

(2) The laws of the Federal Republic of Germany shall apply exclusively, with the exception of the *United Nations Convention on Contracts for the International Sale of Goods* of April 11, 1980.

(3) The parties agree that the place of business of info-key shall be the exclusive place of jurisdiction for all disputes arising out of or in connection with the contract, provided that the customer is a businessman ("Kaufmann") as defined by the German Commercial Code ("Handelsgesetzbuch") or that the customer has no registered office in the Federal Republic of Germany at the time of filing an action.

(4) Only the German language version of these Terms is legally binding. If the English language version differs from the German version, the German version shall apply.

--- END OF THE TERMS AND CONDITIONS ---

THESE TERMS AND CONDITIONS (IN THE GERMAN ORIGINAL) WERE CHECKED BY DIREKTKANZLEI,  
LISE-MEITNER-STRASSE 1, 42119 WUPPERTAL.