

Terms of use

TERMS OF USE / LICENCE AGREEMENT WITH RESPECT TO STANDARD SOFTWARE, DATA, INFORMATION, INFORMATION SYSTEMS, AND SIZING SOFTWARE PROVIDED BY WITTENSTEIN cyber motor GmbH. IMPORTANT - PLEASE READ CAREFULLY!

Preamble

These Terms of Use are part of a legal Licence Agreement between you as an individual or legal entity and WITTENSTEIN cyber motor GmbH (hereinafter: WITTENSTEIN). By installing, copying, downloading, deploying, activating, or otherwise using this Product, you agree to be bound by all of the terms of this Licence Agreement.

1. Subject Matter of the Agreement, Scope of Application and Grant of Licence

1.1 The user of this Product (Licensee) wants to use the MotionGUI program (Software) provided by WITTENSTEIN (Licensor) for internal purposes.

1.2 The Software includes proprietary components of WITTENSTEIN as well as components that are governed GNU Lesser General Public license and WinPcap licence. For the rest, the licence is granted subject to the terms and conditions contained in this Agreement.

1.3 Subject to the condition that the Licensee complies with all of the terms of this Agreement and has paid the fees charged for paid modules in full, the Licensor grants to the Licensee a non-exclusive, worldwide, non-sublicensable, non-transferable, royalty-free licence, limited to the term of the Agreement specified in Section 3 and limited to one user, to use the Software that is the subject of this Agreement as well as data and such other material provided by WITTENSTEIN for this purpose. WITTENSTEIN reserves the right to charge any fees for certain modules. The Licensor retains all copyrights and rights to make commercial use of the Software and materials provided; such rights are not part of this Licence Agreement. It is the Licensee's responsibility to authorize the user and grant the user access to the Software.

1.4 WITTENSTEIN reserves the right to adjust the fee charged for using paid modules of the Software to the economic conditions then prevailing. The terms of payment agreed to when making the order will apply.

2. Copyright

2.1 The entire Software used is protected by copyright in accordance with the provisions on the protection of computer programs. The protection by copyright and other intellectual property rights covers, in particular, the program code, technical and graphical documentation, the design, structure and organization of program files, the name of the program, logos, and other display formats and data incorporated in the Software.

2.2 WITTENSTEIN being the creator and manufacturer retains all rights in the Software used by the Licensee arising from the copyright, unless otherwise provided in this Agreement.

2.3 WITTENSTEIN assures the Licensee that the Software used by the Licensee, including the data packet and program library, is free of third-party rights or that the Licensor has obtained the necessary licences or sublicences where applicable. This shall apply mutatis mutandis to both Parties in cases where additional components are added in order to enhance or change or adapt the system.

2.4 The Licensee may use the Software and the data provided as well as WITTENSTEIN's know-how related thereto exclusively for the purposes defined in this Agreement or in any other agreement or contract, etc. made on the basis of this Agreement. Any disclosure of data or application know-how, or any portion thereof, to third parties that goes beyond the purpose of this Agreement requires the prior written approval of WITTENSTEIN. Any use of the Software other than for the purpose of this Agreement, made by reselling or labelling the Software, creating new software, distributing the Software under a different name, or distributing the Software by selling data, systems, and/or any portion thereof, requires the prior written approval of WITTENSTEIN.

2.6 The right to reproduce the Software is limited to the right to install the Software on a computer that is in the immediate possession of the Licensee for the purpose defined in this Agreement, and to reproduce it to the extent to which it is required to load, display, operate, transfer, and save the Software, and to the right to make a backup copy of the Software exercised by a person that is authorized to do so pursuant to Section 69d, Subsection 2 UrhG (German Copyright Act).

2.7 The right to adapt the Software is limited to operations required to maintain or restore the agreed functionality of the Software.

2.8 The right to decompile the Software is granted subject to the conditions set forth in Section 69e, Subsection 1, Nos 1 to 3 UrhG and subject to the restrictions set forth in Section 69e, Subsection 2, Nos 1 to 3 UrhG.

2.9 The Licensee does not acquire any right to use the Software other than the rights specified in this Agreement.

3. Term of the Agreement; Termination

3.1 Unless otherwise agreed, this Licence Agreement shall be effective for a period of 12 months from the date on which the Software is activated for the first time or on which the user ID is given to the Licensee. The term of this Agreement will be automatically extended for successive periods of 12 months each, unless the Agreement is terminated with at least 4 weeks' notice in writing before the then-current expiration date. Returning an item sent by post or returning an invoice will not be deemed to be a notice of termination; the Agreement may be terminated only by the Licensee's explicit written notice of termination.

3.2 WITTENSTEIN may terminate the licence to use the Software at any time without giving reasons. If the licence is terminated or expires for any other reason, the Licensee must return to the Licensor the Software as well as any copies thereof and the documentation related thereto, or destroy and erase them as instructed by the Licensor. Upon request, the Licensee must confirm to WITTENSTEIN in writing that the Software, the copies thereof, and the relevant documentation have been erased or destroyed as requested. If WITTENSTEIN terminates the Agreement in accordance with the 1st Sentence of Section 3.2, WITTENSTEIN must refund the fees paid for modules on a pro rata basis.

3.3 The foregoing does not in any way affect the Parties' right to terminate this Agreement for good cause without prior notice.

4. Updates

The Licensee agrees to install the updates provided by the Licensor and to always use the then current version of the Software. The Terms of Use will remain in effect.

5. Liability

5.1 The Licensee may not claim damages on any ground whatsoever, unless the Licensor is liable according to law: (i) for wilful default; (ii) for gross negligence of the owner / a governing body or an executive employee; (iii) for defects that have been fraudulently concealed or the absence of which the Licensor has guaranteed; (v) for defective products, provided WITTENSTEIN is liable for damage to person or property that is used for private purposes under the German Products Liability Act and such liability cannot be excluded by law.

5.2 If the Licensor is at fault for violating material contractual obligations, the Licensor shall also be liable for gross negligence of non-executive employees as well as for slight negligence; in case of slight negligence the Licensor's liability will be limited to damages which are a reasonably foreseeable consequence of the relevant breach of contract. The foregoing provisions are not intended to shift the burden of proof to the Licensee.

5.3 In particular, WITTENSTEIN will have no liability for false information or false results that are produced on the basis of incorrect data or information provided to WITTENSTEIN by third parties, unless WITTENSTEIN is liable in accordance with Section 5.1 above.

6. Liability for Defects

6.1 The Software provided by the Licensor principally conforms to the product description. No defective product claim may be brought in case of a minor departure from the agreed or required quality or if the usability of the Software only is insignificantly reduced. Product descriptions shall not be deemed to give a guarantee, unless otherwise agreed in writing.

6.3 If the Software should be defective, the Licensee's sole and exclusive remedy will be to request that remedial action is taken. If remedial action taken in respect of a defect fails for

the second time, the Licensee may withdraw from the Agreement or claim reduction of the fee payable, and may claim damages or reimbursement of expenses. Remedial action may also be taken by providing or installing a new version of the program or a workaround. If the defect does not adversely affect the functionality of the Software at all or if the defect only affects it insignificantly, the Licensor may, to the exclusion of any other remedy, cure the defect by providing a new version or an update of the Software as part of the Licensor's release schedule for new versions, updates or upgrades.

6.4 Defects must be reported immediately in writing, accompanied by a reasonable description of the error symptoms and, if possible, supported by documentary evidence, hard copies, or any other documents that illustrate the defect. The defect complaint should enable the Licensor to analyse the defect. The foregoing does not in any way affect the Licensee's statutory duties to inspect the goods and report defects.

6.5 Defective product claims are subject to a limitation period of 12 months. The limitation period begins when the Software is activated for the first time.

6.6 Claims for damages are subject to the limitations set forth in Section 5.

6.7 In no event will the Licensor be liable for defects caused by the Licensee's improper use of the Software or the Licensee's operating conditions or the Licensee's use of unsuitable equipment.

6.8 The Licensor may refuse to take remedial action until the Licensee pays to the Licensor the fee charged for paid modules minus a portion of the fee that is a suitable recompense in relation to the economic relevance of the reported defect.

7. Remedies for Title Defects

7.1 The Software delivered or provided by the Licensor is free of third-party rights that would hinder the Licensee from using the Software for its intended purpose. The foregoing does not include third-party rights arising from retention of title.

7.2 If a third party claims to have such rights and brings forward claims based on these rights, the Licensor will make every effort to defend the Software against these third-party claims at the expense of the Licensor. The Licensee will notify the Licensor of such third-party claims immediately in writing and grant to the Licensor any power of attorney or such other authority that is required for defending the Software against these third-party claims.

7.3 If there is a title defect, the Licensor (a) may at its option (i) remove those third-party rights that hinder the Licensee from using the Software for its intended purpose by taking lawful remedial action, or (ii) remove the claims based on such third-party rights, or (iii) modify or replace the Software in such a way that it no longer infringes third-party rights, provided such modification or replacement will not adversely affect the functionality of the Software to a considerable extent; and (b) the Licensor is obligated to reimburse the Licensee

for the reimbursable necessary expenses incurred by the Licensee for defending against third-party claims.

7.4 In addition, Sections 6.5, 6.6, and 6.8 shall apply mutatis mutandis.

8. Final Provisions

8.1 The Parties are authorized to store and continue using non-personal data and/or non-business-critical data - even after the Agreement terminates (in accordance with the retention periods prescribed by law). The Parties hereby agree to such continued use of data.

8.2 This Licence Agreement shall be governed by German law, to the exclusion of the UN Sales Convention (CISG).

8.3 The place of the Licensor's registered office shall be the place of jurisdiction for all disputes arising from this Agreement in connection with transactions in business, including summary proceedings based entirely on documentary evidence including cheques and bills of exchange ("Urkundenprozess, Scheckprozess, Wechselprozess"). The Licensor may bring an action against the Licensee also before the courts that have jurisdiction over the place of the Licensee's registered office.

8.4 The Parties are not authorized to transfer rights or obligations arising from this Agreement or its performance to third parties without the other Party's consent. However, such rights or obligations may be transferred to affiliates within the meaning of Section 15 AktG (German Public Companies Act).

8.5 The WITTENSTEIN Group's data protection regulations available at <http://www.wittenstein.de/en-en/privacy-statement/> are applicable

8.6 The Parties acknowledge and agree that the Software may be subject to export or import control regulations. In particular, the Software may require a special permit or licence, or the use of the Software or technology related to the Software may be subject to certain restrictions in other countries. The Licensee will comply with all applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as any other applicable rules and regulations. The Licensor's performance of the Agreement will be conditioned upon the performance not being hindered by or in conflict with any national or international export or import control regulations or any other rules of law.

8.7 The Licensee's standard terms and conditions will not be applicable, even if the Licensor does not expressly refuse to accept them.

8.8 The Parties have not made any side agreements. Any modification or amendment to this Licence Agreement must be made in writing in order to take effect. This shall also apply if the Parties want to waive this requirement of written form.



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8.9 If all or part of any provision of this Agreement, existing now or in the future, should be invalid or unenforceable, or if it should be found to be invalid or unenforceable hereafter, the remaining provisions of this Agreement shall remain in full force and effect. The same shall apply if any provision is found to have been omitted in the Agreement. The Parties will replace the invalid or unenforceable provision, or cure the omission in the Agreement, by an appropriate valid provision the effect of which, to the extent permitted by law, is as close as possible to the intended effect of the invalid or unenforceable or omitted provision, or, having regard to the purpose of the Agreement, to what the Parties would have intended if they had been aware of the problem when the Agreement was made.