

# Terms & Conditions

## End User License Terms

[www.designforfeeding.com/digitalmotion](http://www.designforfeeding.com/digitalmotion)

### 1. Scope / General

**1.1** These End User License Terms (the “**Terms**”) apply between RNA Digital Solutions GmbH, Reichsweg 19-23, D-52068 Aachen (“**RNA**”) and the users of RNA’s computer-aided engineering software products (the “**Software**”) or recipients of RNA’s services (in each case, the “**End User**” or “**End Users**”) and shall form an integral part of any agreement between RNA and End User, whether entered into by execution of order forms or other order documents by RNA and End User, by completion of any click-through or other online process, by email correspondence or in any other form (the “**Agreement**”).

**1.2** RNA shall provide the Software to End User subject to payment of fees as software as a service in accordance with the Agreement. The Software is provided solely as software as a service, i. e., for browser-supported and Internet-based use via End User’s end devices. End User shall ensure that the end devices deployed for using the Software and the connections required comply with the minimum system requirements specified by RNA. RNA may, at its sole discretion, subcontract any or all of its obligations under these Terms and any Agreement to third parties.

**1.3** Specifications of the Software are included in the current documentation for the Software (the “**Documentation**”). Any other product information sent to End User, if any, such as marketing material, product descriptions, product roadmaps and the like, shall be for informational purposes only and shall not constitute binding declarations by RNA.

**1.4** The version of these Terms which is applicable at the time concerned shall also apply to all future Agreements between End User and RNA without RNA being required to refer to these Terms in each individual case. These Terms shall be deemed to be confirmed by End User at the latest when RNA grants access to the Software or provides its Services.

**1.5** These Terms shall apply exclusively. Any terms and conditions of End User which deviate from, conflict with or supplement these Terms shall only become part of the Agreement upon explicit prior written confirmation of RNA.

### 2. End User Account / Updates / Availability

**2.1** In order to be able to use the Software in accordance with these Terms, End User shall create a dedicated user account on RNA’s website (the “**End User Account**”) either in the form of a free account (“**Basic Account**”) or a professional account with certain extended features (“**Professional Account**”) as further specified by RNA.

**2.2** RNA reserves the right at any time and at its sole discretion to redesign and/or to partly or fully phase out the Basic Account without replacement.

**2.3** RNA reserves the right to downgrade a Professional Account to a Basic Account, if End User is in default of any fees due.

**2.4** RNA may carry out necessary updates and upgrades to the Software in order to improve the usability, security or stability of the Software or to extend its features or to ensure its compliance with statutory requirements. Updates and upgrades to the Software shall be provided at RNA sole discretion.

**2.5** RNA strives to offer constant availability of the Software but cannot warrant uninterrupted availability thereof. RNA offers the Software as a service and therefore has no influence and is not responsible for End User’s Internet access or Internet connection including its availability, bandwidth or any costs and expenses of End User associated therewith.

### **3. License Grant to the Software / License Restrictions**

**3.1** Subject to these Terms, RNA hereby grants to End User, during the Subscription Term, a non-exclusive, non-transferable, non-sublicensable right and RNA to use the software as a service version of the Software on its end devices for internal business purposes only.

**3.2** For the avoidance of doubt, End User's affiliates (and employees thereof) shall not use the Software without RNA's prior written consent.

**3.3** Except as otherwise expressly provided in these Terms, End User shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, or otherwise generate income from the Software; (b) copy the Software onto any public or distributed network; (c) decompile, reverse engineer or disassemble any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software; (d) modify, adapt, translate or create derivative works based on all or any part of the Software; (e) use any components of the Software other than together with the Software; (f) modify any proprietary rights notices that appear in the Software or components thereof; (g) use the Software in violation of any applicable laws and regulations or outside of the license scope set forth herein; (h) configure the Software to collect (aa) any data that falls within the definition of 'special categories of data' within the meaning of the EU General Data Protection Regulation or a similar concept; (bb) passwords or other authentication credentials; (cc) any payment or other financial data, biometric data or genetic data; or (dd) any data relating to a person under the age of sixteen (16) years old (collectively, "Prohibited Data"); or (i) use the Software to (aa) store, download or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code or malware, or (bb) engage in phishing, spamming, denial-of-service attacks or other fraudulent or criminal activity; (cc) interfere with or disrupt the integrity or performance of third-party systems, or the Software or data contained therein; (dd) attempt to gain unauthorized access to the Software or RNA's systems or networks; or (ee) perform, or engage any third party to perform, authenticated or unauthenticated penetration testing, vulnerability assessments or other security assessments on the Software.

**3.4** End User shall not export or re-export, directly or indirectly, any Software or technical data or any copy, portions or direct product thereof in breach of any applicable laws and regulations. In particular, End User and its affiliates shall comply with the sanctions imposed by the Federal Republic of Germany, the European Union and the United Nations, always insofar as they do not result in a violation of or a conflict with § 7 of the German Foreign Trade and Payments Ordinance (AWV) or a similar applicable anti-boycott statute. End User shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.

### **4. Proprietary Rights**

RNA and its suppliers own and shall retain all proprietary rights, including all copyright, database rights, patent, trade secret, trademark and all other intellectual property rights, in and to the Software and the results of any Services. With respect to any portions of software included with the Software, which is licensed to RNA by its suppliers, such suppliers are third party beneficiaries of this Agreement (§ 328 German Civil Code (BGB)). The Software may only be used by End User as prescribed by the Documentation.

### **5. Use of the Software / Content**

**5.1** Ownership of and responsibility for all designs, analyses, simulations, models, estimations, data and other results uploaded by End User within the Software or generated by End User through End User's use of the Software (collectively, the "**Content**") shall fully remain with End User or its respective owner.

**5.2** End User acknowledges that Content uploaded or generated by End User under a Professional Account (the "**Professional Content**") shall not be accessible by other users of the Software unless End User uses functionality of the Software to share Content with such other users. End User grants to RNA the non-exclusive, unlimited (in terms of time and territory), sublicensable, transferable, royalty-free and irrevocable right to use the Professional Content for the sole purpose of performing RNA's obligations under the Agreement and of improving and

optimizing the Software and specific functionalities thereof, including for bug fixing, testing and rectifying defects as well as for statistical analyses.

**5.3** End User represents and warrants that (a) it has sufficient rights to upload and generate the Content, (b) it has sufficient rights to grant to RNA and other users of the Software the rights specified in clause 5.2, (c) there are no third-party rights, including privacy rights and intellectual property rights which restrict the uploading or generation of the Content by End User and the use of the Content by RNA and other user of the Software pursuant to clause 5.2, (d) the Content does not contain any viruses, worms, Trojan horses, malicious code or other harmful or destructive content, and (e) the Content does not contain any infringing, libelous, or otherwise unlawful or tortious content.

## **6. Warranties**

**6.1** The extent, nature and quality of the services to be performed by RNA are determined by the Agreement and the Documentation. Any other information or requirements do only form part of the Agreement if and insofar RNA and End User so agree in writing or if RNA so confirms in writing. Product descriptions, illustrations, test programs, etc. represent mere service specifications but do not constitute guarantees or agreements on certain specifications. In order to be valid, an agreement on a guarantee requires the written confirmation from management personnel of RNA.

**6.2** Any no-fault liability of RNA for the existence of initial defects under § 536a German Civil Code shall be excluded.

**6.3** End User's claims for damages for a breach of this warranty are subject to the limitations set forth in clause 15.

## **7. Maintenance and Support**

**7.1** RNA shall provide End User with support services for the Software including the rectification of defects in the Software to the extent agreed in the Agreement.

**7.2** End User shall report any defects exclusively via the email support system offered by RNA, the support option within the Software or RNA's help desk telephone number (during normal office hours at RNA's premises).

**7.3** RNA shall keep End User informed at reasonable intervals and to a reasonable extent of the status of the rectification of a defect. RNA makes no assurances as to the time at which a defect shall be removed.

**7.4** In the event of defects of the Software leading to a material reduction of the usability of the Software, RNA shall be required to use commercially reasonable efforts to rectify the defect and if RNA is unable to materially restore such functionality within a reasonable period of time from the date of notice of said defect, End User shall be entitled to terminate the Agreement.

**7.5** Under no circumstances shall End User be entitled to obtain the source code of the Software.

## **8. Legal Defects in the Software**

**8.1** To the extent that claims are made against End User by third parties alleging the infringement of property rights arising from the use of the Software, End User shall notify RNA without undue delay at least in text form (email shall suffice). RNA shall at its own discretion fulfil or defend the third-party claims or end the dispute by way of settlement. End User grants RNA the sole authority to decide on defense of rights and settlement negotiations. End User shall furnish RNA with any powers of attorney which may be required in this regard on a case-by-case basis and End User shall support RNA in the defense in any manner which may be reasonably expected.

**8.2** In the event of an impairment of the permitted use of the Software due to a legal defect, RNA shall remove the reason for the claim for infringement of property rights within a reasonable period. At RNA discretion, RNA shall do so either by acquiring the right to continue to use the relevant services or by amending or replacing the relevant services within a reasonable scope.

**8.3** RNA shall only be liable in respect of the infringement of property rights to the extent that the Software has been used in accordance with these Terms and the Agreement. RNA shall not be liable if the Software is modified by End User or third parties or is combined, operated or used with programs or data not provided by RNA or approved in advance in writing by RNA and third-party claims are derived therefrom.

**8.4** If claims are made against RNA within the scope of the foregoing provisions in clauses 8.3, End User shall indemnify RNA from such claims upon first request.

## **9. Fees / Payment Terms**

**9.1** End User's right to use the Software in accordance with these Terms and the Agreement under a Basic Account shall be free of charge.

**9.2** For the right to use the Software in accordance with these Terms and the Agreement under a Professional Account, End User shall pay to RNA a subscription fee ("**Subscription Fee**") as further specified in the Agreement and/or the End User Account. The Subscription Fee shall be paid upfront either (1) pro rata per month according to the monthly invoice or (b) in full for the following twelve (12) month of the Subscription Term in clause 11.

**9.3** All fees shall be subject to statutory VAT at the applicable rate. In case of monthly payment, all fees shall be due and payable by End User within fourteen (14) days of receipt of an invoice from RNA without discount unless specified otherwise in the End User Account.

## **10. Additional Services**

**10.1** RNA and End User may agree on the provision of additional services by RNA to End User (the "**Services**") on a case-by-case basis. The Services may include but are not limited to training and enablement services and/or general consulting services in connection with the use of the Software by End User. RNA and End User shall agree on the scope of the Services as well as the Service fees and the Service term (if any) on a case-by-case basis.

**10.2** All Services shall be rendered on a time and materials basis. End User shall reimburse RNA for travel and expenses incurred in connection with the Services (if any).

**10.3** When providing the Services, RNA does not owe and shall not be liable for any specific outcome or result vis-à-vis End User (§ 611 German Civil Code).

**10.4** End User agrees to provide reasonable cooperation and information as necessary to permit RNA to perform the Services. RNA staff shall not be integrated into the operational organization of the End User. Instructions to RNA staff must not be given by End User's staff or representatives but only by RNA's representatives.

## **11. Subscription Term / Termination**

**11.1** The term of the Agreement shall initially be twelve (12) months, starting on the date agreed between RNA and End User. It shall always renew by another twelve (12) months unless earlier terminated in accordance with these Terms (the initial term and any renewal term thereof together the "**Subscription Term**").

**11.2** RNA and End User may terminate the Agreement for convenience with effect to the end of the then current Subscription Term with four (4) weeks' prior notice. Any right to terminate the Agreement for convenience with effect prior to expiry of the Subscription Term shall be excluded.

**11.3** The right to extraordinarily terminate the Agreement (§ 314 German Civil Code) shall remain unaffected. Good cause entitling RNA to terminate the Agreement without notice for good cause shall include without being limited to (a) End User being in default of payment by more than forty-five (45) days, (b) End User breaching the use restrictions under clause 3, or (c) End User ceasing its due payments or suffering a significant deterioration in its asset situation.

**11.4** For a period of sixty (60) days following the end of the Subscription Term or following any downgrade of a Professional Account to a Basic Account pursuant to clause 2.3, End User shall have the right to create backup copies of the Professional Content. RNA shall be entitled to restrict End User's access to the Professional Content thereafter. RNA may retain the Professional Content for the purpose of enabling any future use of the Software by End User (if any). Clause 5.2 applies.

## **12. Confidentiality**

**12.1** If RNA or End User receive Confidential Information (as defined below), they may only use such Confidential Information to exercise their rights and fulfil their obligations under the Agreement and shall take reasonable measures to avoid unauthorized disclosure or misuse of Confidential Information. They shall not disclose Confidential Information, except (a) to their employees, subcontractors, or professional advisers who have a legitimate need to know the Confidential Information and are legally bound to keep such Confidential Information confidential, (b) to a potential acquirer of its relevant assets, stock, or business under a strict duty of confidentiality, but only to the extent such potential acquirer has executed a term sheet, letter of intent or other similar agreement to negotiate such acquisition, and (c) as required to be disclosed by applicable law, or judicial or other governmental or regulatory order. These Terms and the Agreement constitute Confidential Information of RNA.

**12.2** "Confidential Information" means any information that is directly or indirectly disclosed or made accessible in connection with the Agreement (a) to RNA by or on behalf of End User, or (b) to End User by or on behalf of RNA, and which is identified as 'confidential' or 'proprietary' or which, given the nature of the information or circumstances surrounding the disclosure, should reasonably be understood by the recipient to be confidential or proprietary, but does not include information that the recipient can demonstrate it already rightfully knew or possessed, becomes public through no fault of the recipient, is received by the recipient from a third party with the legal right to disclose it, or can be shown to have been independently developed by the recipient without reference to the discloser's Confidential Information.

## **13. Data Protection**

RNA and End User shall comply with any applicable laws concerning the protection of personal data including but not limited to the EU General Data Protection Regulation. If required by such laws, RNA and End User shall enter into a separate written agreement on the processing of personal data.

## **14. No Set-off / Limitation of Right of Retention / No Assignment**

**14.1** End User may only invoke a right to set-off and assert a right of retention to the extent that its claims have been (a) finally established by a court of law, (b) are uncontested, (c) or have been acknowledged by RNA.

**14.2** End User shall not assign any of its rights or obligations under these Terms or under the Agreement without the prior written consent of RNA.

## **15. RNA's Liability**

**15.1** RNA shall be unrestrictedly liable for (a) injury to life, body or health, (b) damage caused intentionally or with gross negligence, (c) damage resulting from the breach of RNA's primary obligations whereby primary obligations

are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which End User may rely, (d) damage resulting from the absence of any guaranteed characteristics, and (e) claims under the German Product Liability Act (ProdHaftG).

**15.2** Any other liability of RNA not listed in clause 15.1 shall be excluded.

**15.3** The total liability of RNA arising out of or in connection with these Terms and the Agreement, whether in contract or tort or otherwise shall in no circumstances exceed a sum equal to 150% of the total fees paid (plus fees payable) by End User in the twelve (12) months immediately preceding the event which gave rise to the liability.

**15.4** RNA shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

**15.5** End User agrees and acknowledges that the Software offers an engineering simulation platform that analyses data uploaded by End User and provides simulation capabilities relating to, for example, structural mechanics. As a consequence, RNA is not responsible for (a) the correctness, completeness, integrity and accuracy of any data transmitted to RNA or uploaded into the Software by End User, (b) any Content as defined in clause 5.1, (c) any conclusions drawn by End User or any third party from any simulation, calculation, modelling or other process or operation executed by the Software or by End User using the Software, (d) the technical, scientific, legal and commercial feasibility of any project, product and undertaking of End User or any third party, and (e) the economic and financial viability of any project, product and undertaking of End User or any third party.

## **16. Revision of these Terms**

**16.1** RNA may amend and/or update these Terms with future effect from time to time and as necessary for technical, economic or legal reasons.

**16.2** Any revision of these Terms shall be announced to End User in text form (simple email shall suffice) no later than six (6) weeks before their proposed effective date.

**16.3** End User may either approve or object to the revision before their proposed effective date. The revision shall be deemed approved by End User, unless End User objects to the revision before their proposed effective date. RNA shall expressly inform End User thereof in the respective announcement.

## **17. Applicable Law / Jurisdiction**

**17.1** These Terms and any Agreement and all rights arising from or in connection therewith shall exclusively be governed by German law excluding any of its conflict of laws provisions which lead to the application of the law of a country other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**17.2** If End User is a business or a business person acting in the course of their business, the venue of jurisdiction for all disputes arising from or in connection with these Terms and any Agreement shall be Aachen, Germany. In other cases, the statutory rules on the place of jurisdiction shall apply.

## **18. Written Form / Severability**

**18.1** Amendments and supplements to these Terms and or the Agreement shall be subject to a written agreement by End User and RNA in order to be valid. The same shall apply to any agreement to deviate from or cancel this requirement of written form.

**18.2** Should any provision of these Terms be or become ineffective or invalid in whole or in part, the effectiveness and validity of the other provisions of these Terms shall not be affected. Such ineffective or invalid provision shall

be replaced by a provision which comes as close as legally possible to what RNA and End User would have agreed, pursuant to the meaning and purpose of the original provision and of these Terms if they had recognized the ineffectiveness or invalidity of the original provision. If the ineffectiveness or invalidity of a provision is based on the determination of a certain level of performance or a certain time (deadline or fixed date), such ineffective or invalid level or time shall be replaced by the level or time which comes as close as legally possible to the original level or time. The foregoing shall also apply to any possible omission in these Terms that was not intended by RNA and End User. It is the express intention of RNA and End User that this savings clause does not just have the effect of shifting the burden of proof but that § 139 German Civil Code is entirely dispensed with.

## **19. Miscellaneous**

**19.1** Where the expressions 'in writing', 'written form' or variations thereof are used in these Terms, this shall mean 'in writing' within the meaning of § 126 of the German Civil Code. The electronic exchange of copies of documents signed by hand shall suffice. Unless expressly stated otherwise in these Terms, simple emails shall not suffice.

**19.2** Except as otherwise expressly provided for in these Terms, any notices and declarations submitted by End User to RNA, including but not limited to notices of termination or setting of deadlines, shall be made at least in text form to be valid; a simple email shall suffice if not stipulated otherwise in these Terms.

**19.3** These Terms and/or any Agreement between RNA and End User do not create any company, joint venture, partnership, or any company of any other kind between RNA and End User. No transfer of employees within the meaning of the German Transfer of Employees Act (AÜG) shall take place.

**19.4** References to statutory provisions in these Terms shall be for clarification purposes only. Consequently, statutory provisions shall also apply without such clarification provided that they are not directly amended or expressly excluded by these Terms.