

GENERAL CONDITIONS OF SOFTWARE LICENS

1. OBJECT

The present agreement regulates and describes the approaches and terms with which FST Srl (henceforth “**Licensor**”) concedes to the “**Licensee**” the user license of the software with the technical features reported in the catalogue (available on the website www.fomsoftware.com) and the conditions of the economic offer, to be considered as integral part of the present general conditions.

1.1. User License

The Licensor concedes to the Licensee a non-exclusive and non-transferable user license of the software, of which he is legitimate owner, in the form of object, for the supply of services and functionalities specified in the catalogue. The user license permits the Licensee to use and view the software only in the ways and within the limits envisaged by the provided documentation and by the present conditions, only for internal commercial use, for an indefinite or fixed-term and for the number of work stations expressly provided for in the economic offer, for which a specific hardware key, software or license server will be delivered. A license for each work station to use the software on, is required. The configurability of a transfer of exclusive rights to utilize the software economically by the Licensee is expressly excluded.

1.2 Updates and improvements

In addition to the user License, the Licensor puts the assistance and update service of the software at the Licensee’s disposal. The Licensee, by compiling the specific “Registration form” and following the instructions provided together with the software installation pack, receives some credentials through which he will be allowed to access the assistance and update service.

The service provides for:

- a) the release of updates that the Licensor will implement over time, increasing and improving the software granted in the License of use. Updates will be made available through the internet. Downloading updates made available by the Licensor is an exclusive Licensee’s duty, being any responsibility of the Licensor expressly excluded for any damage, malfunctioning or errors of the software arising from not updating it. Downloading updates made available by the Licensor is an exclusive Licensee’s duty, being any responsibility of the Licensor expressly excluded for any damage, malfunctioning or errors in the software arising from not updating it. Licensee acknowledges that improvement and update do not constitute a concession of a second user license of the software.
- b) assistance with the use of the software, in the manner set out in the “Terms of Service” document you can find in your Reserved Area of www.fomsoftware.com. The maintenance and assistance service do not comprise the correction of malfunctions due to improper use of the software by Licensee or its staff.

2. DEFINITIONS

For the purpose of the present agreement, the terms reported below have the following meaning:

Technical Database: Technical data of profile systems and of accessories, it includes: descriptions, sections in DXF format, drawings and pictures, sizing data, weights, usage rules, moment of inertia, thermal transmittance of the system and of nodes, shape and dimensions of the procedures.

Hardware key: A device connected to the USB port whose content is read by the program to enable the execution of its functions.

Software key: A file usable only on a work station with a data Machine ID whose content is read by the program to enable the execution of its functions.

Source Code: Set of instructions written in a formal high-level language, that constitute the program if considered as a whole.

Remote Desktop: Remote access to the graphical interface of the operating system in an interactive way, it allows to remotely perform all possible processes in a local access, using the mouse input/output devices, keyboard and printer as if they were connected to the remote PC.

Hardware: The total amount of technical, mechanical, electrical and electronic equipment of a pc on which the software is installed and through which the software is used.

Machine ID: Univocal code that identifies a pc on the basis of hardware serial numbers and of characteristics of the operating system installed.

Floating License: The software can be installed on an unlimited number of work stations but can be contemporaneously used by as many work stations as the licenses enabled in the license server.

Minimum Requirements: Minimum characteristics that the computer used must have to let the software work and / or for it to provide the user experience expected.

License server: An application running on a server the program is connected to via LAN or WAN to enable the execution of its functions.

Assistance service: Additional service distinct from the user license, provided by the Licensor to help the Licensee in carrying out tasks of the supplied product.

Update service: Additional service distinct from the user license, provided by the Licensor to make software updates released, available via internet.

Software: systematized and structured set of instructions in any format or on any support directly or indirectly able to execute or obtain a particular result through an electronic information processing system. Storage support: fixed or mobile supports the software lies on.

Storage medium: The fixed or mobile media on which the software resides.

3. SOFTWARE OWNERSHIP

The Licensor has the ownership of the original software and of all the copies, independently from the support used or from the format.

The program keeps being of exclusive ownership of the Licensor. The Licensee is expressly forbidden to distribute them to the public or to sublicense to third parties or, in any way, to allow their use by third parties both free of charge and against payment.

All registered and unregistered trademarks, as also every and any distinctive sign or registered name put on the program and its related documentation, remain property of the Licensor, without the stipulation of the present agreement leading the Licensee to have right on the same. The Licensee cannot use them in any form and way and commits not to destroy, alter or move those trademarks, distinctive signs and registered names. The "PROF2" trademark is exclusive property of the FST S.r.l.

3.1. Source Code

User license does not grant the Licensee any right on the original source code.

All the techniques, algorithms and processes enclosed in the software, included the additional modules and the related documentation information are protected by copyright and are property of the Licensor, therefore, they cannot be used in any way by the Licensee for purposes different from those reported in the present agreement and in the Annexes.

4. CONTRACT DURATION

The present agreement is intended concluded at the time of the subscription of the order by the Licensee.

In any case, at the time of the software installation, the Licensee, by typing the virtual negotiation button, confirms to have read and accepted the present agreement including the documents referred to therein.

The software user license can have a determined duration of 1 (one) year or of a different period reported in the Offer. In those cases, at least 60 days before the expiration, the Licensor will communicate to the Licensee the expiration date of the agreement, together with conditions and instructions to proceed with the renewal, in any case to be intended not automatic. In case of non-renewal, the Licensee will not be able to use the software anymore.

The update and assistance service have a minimum duration of 1 year.

At least 60 days before the expiration, the Licensor will communicate to the Licensee the expiration date of the agreement, together with conditions and instructions to proceed with the renewal, in any case to be intended not automatic.

5. SUSPENSION AND INTERRUPTION OF THE SERVICE

The Licensee expressly authorizes the Licensor to suspend and/or interrupt the update and maintenance service, in any moment and without notice obligation, in case, as an example:

- a) there is motivation to believe a violation of the clauses provided for in the present General Conditions;
- b) in case of breakdowns of the network and of the service supply devices dependent on fortuitous circumstance or force majeure, as well as in the event of non-programmable, unforeseeable and/or technically essential modifications

or maintenance that temporarily impede the access to the website where to download updates, or the availability of technical assistance; c) if occur serious reasons of security and/or guarantee of confidentiality.

6. FEES AND PAYMENT TERMS

For the concession of user license rights referred to in the present agreement and for the fruition of additional assistance and update services, the Licensee commits to deposit the contracted payment under the terms and methods referred to in the order.

All sums and prices specified in the general conditions or in the offer are intended net of VAT.

The Licensee will not be able to assert rights or raise exemptions of any kind unless he has first properly and fully proceeded with the payments in the agreed way.

In the event that the Licensee does not pay the amount due, even partially, the Licensor reserves the right to interrupt and/or suspend the assistance and update service with immediate effect.

In case of non-payment or delayed payment of any sum due under the Agreement, the Licensee will automatically lose the benefit of the term and default interest will accrue on the amounts due to the extent provided for by Legislative Decree 231/2002.

7. OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

7.1 Licensor's Obligations and Responsibilities

The Licensor undertakes to concede user license of a software fully conform to the technical features described in the catalogue, under the economic conditions referred to in the order.

The Licensor commits to make software updates and improvements available as well as to conscientiously provide the technical assistance needed to allow the Licensee to properly use the software object of the license.

7.2 Licensee's Obligations and Responsibilities

The Licensee undertakes for himself and his staff, consultants and agents who have access to the software, to take any adequate and necessary measure to ensure the confidentiality regime of the software and documentation. The Licensee commits not to allow unauthorized third parties to use, even sporadically, the software, the extraction of even partial copies, as well as its consultation.

The Licensee undertakes to prove that the hardware and software IT structures needed to use the software and to access the assistance and update service, comply with the minimum requirements designated by the Licensor and specified in the catalogue.

The Licensee will have to use equipment and accessories type-tested according to the standards in force, in perfect operating state and such as not to disturb or damage the use of the program. The Licensor makes no guarantee available regarding the perfect compatibility of the equipment and programs used by the Licensee with the software subject to the user license.

The Licensee is considered the unique responsible in relation to the uploading of its own data for the utilization of the software.

The Licensee undertakes to use the Service solely for legal and not conflicting purposes with obligatory rules of law, customs, habits and due diligence rules, assuming all responsibility in case of non-compliance with the provisions mentioned.

As a mere non-exhaustive example, the Licensee commits to use the program in compliance with the Licensor's intellectual and industrial property rights and not to use or make third parties use, directly or indirectly, the program in breach of the present agreement and of the current regulation.

The Licensee relieves the Licensor from any responsibility and from any prejudicial consequence, including losses, damages, costs, duties and expenses that may be incurred or undergone as a consequence of the Licensee's non-fulfilment of the obligations assumed by him with the acceptance of the present general conditions, even in the event of compensation for damages claimed by third parties for any motivation.

7.3 Guarantees for the Licensee

The Licensor protects the Licensee against any third party claims with regard to demanded copyrights on the software referred to in this agreement.

The Licensor ensures that the software, during installation, will be in perfect operating conditions, conforming with what described and expected by the technical specifications indicated in the catalogue. That guarantee is subject to the status of the workstation where the program is installed, according to the technical compatibility with the

software that is the Licensor's duty to check: the guarantee provided by the Licensor is conditioned to the correct operation of the machines and the related system program in use by the Licensee.

The Licensor will not be able to be held liable in any circumstance for disservices and/or damages caused by the use of the software object of the present agreement in case of:

- a) tampering or interventions that compromise the correct functioning of the software, carried out by Licensee personnel or by third parties not authorized by the Licensor;
- b) improper use of the software by the Licensee or by operators authorized by the Licensee;
- c) irregular functioning of hardware or software used by the Licensee, whose maintenance is not directly carried out by the Licensor;
- d) use by the Licensee of hardware or software incompatible with the software object of the present agreement, or lacking the necessary homologations and licenses.

It is also understood that any change to the software directly made by the Licensee, in addition to the consequences deriving from the illicitness of such a conduct, will result in the immediate termination of any guarantee by the Licensor.

The Licensor offers a guarantee against any defects in the support material on which the software is supplied for a period of 12 months from the installation of the software. In that case, the Licensor will substitute the defective support free of charge at its own unquestionable discretion. That guarantee does not apply if the defects of the support are attributable to an improper use or to application errors: in such cases the support will be replaced upon payment.

The Licensor does not ensure that the software object of the present agreement perfectly fits particular purposes or even only partially different from those communicated by the Licensee in the moment of the conclusion of the agreement.

Any form of explicit or implicit guarantee is expressly excluded, as far as this does not oppose to the current regulations.

In any circumstance the Licensee commits to promptly and not later than 12 calendar hours, communicate to the Licensor any irregularities or malfunctions in the software object of the user license. Any damages caused by a not very timely communication will be considered as an exclusive Licensee's responsibility.

7.4 Intellectual property rights

Any material that constitutes object of intellectual and industrial property rights that is made available to the Licensee pursuant to the present agreement, must be used by the latter in compliance with the licenses and current reference regulation.

The Licensee assumes all responsibility in this regard, committing to indemnify and hold harmless the Licensor from any prejudicial consequence that may derive from a non-compliant utilization.

In the case that the Licensee violates the Licensor's intellectual and industrial property rights, the Licensor reserves the faculty and the right to terminate the agreement according to what provided for in art. 11 "Immediate termination clause".

7.5 Data confidentiality

Terms and conditions of the present agreement, together with any additional information provided, are confidential and will not be, orally or in writing, disclosed by the Licensee to third parties without previous written consensus by the Licensor.

The Licensor undertakes to protect with caution and confidentiality the data and information of the Licensee whom he will get in touch with following his interventions.

This is without prejudice to the Licensor's faculty to transmit data or information to subjects delegated by him to carry out the services associated with the object of the present agreement, communicated exclusively within the scope of the service provided.

In the event that the dissemination to third parties of material or information deemed confidential was caused by acts or facts directly attributable to the parties, their employees or suppliers, the manager will be required to compensate the other party for any damage related to the breach of the confidentiality obligation.

8. AUTHENTICATION CREDENTIALS AND HARDWARE KEY

The assistance and update service provide for the use of an identification code and/or a keyword assigned by the Licensor. The Licensee acknowledges and accepts that third party knowledge of his authentication credentials could allow the latter to illicitly use the services.

For this reason, the Licensee commits to keep and use these credentials and the delivered hardware key together with the software installation package, with the highest confidentiality and diligence, exempting the Licensor from any responsibility for damages suffered as a result of illicit access or use.

9. PROHIBITION OF TRANSFER

The Licensee cannot, totally or partially, transfer to third parties, the agreement, the rights and obligations deriving from it, unless upon express and written consensus of the Licensor.

10. LIMITATIONS OF RESPONSIBILITY

In any circumstance the Licensor assumes any responsibility for the information, data and contents input and processed by the Licensee when using the program.

The Licensor provides no guarantee on the adaptation of the Service to particular scopes: any responsibility can be attributed to him if the provision of the Service, with the specific characteristics demanded by the Licensee, is conditioned by the fact of the Third party or the Licensee.

The program integrates a database enclosing technical information on the profiles and accessories for the windows supplied to the Licensor by the producers of the aforementioned profiles and accessories, later named **technical database**. For this reason, the Licensor cannot exclude the presence of errors or omissions and is not responsible for any damage caused to the Licensee or to third parties due to the aforementioned errors or omissions. In any case, the Licensee is invited to validate the correctness of the technical information of the **technical database** incorporated in the program directly from the producer.

In any way, the Licensor is not responsible for the damages directly or indirectly suffered by the Licensee, as a consequence of the use of the program object of the present agreement and of the additional services, except in case of fraud or gross negligence.

The Licensor commits to ensure the best Service functionality, but assumes no liability for delays, suspension and/or interruption in the provision of the assistance and update services that are determined by a cause he cannot be attributable to, as an example:

- a) fortuitous event, catastrophic events and force majeure;
- b) breakdown or non-compliance of the connection devices used by the Licensee;
- c) tampering or interventions on the equipment performed by the Licensee or by third parties;
- d) improper or non-compliant use of the Service by the Licensee.

In these cases, the Licensor will not be held responsible for any loss, damage and injury suffered or to suffer in the future by the Licensee.

11. IMMEDIATE TERMINATION CLAUSE

The present agreement is intended as terminated as of right pursuant to and for the purposes of art. 1456 of C.C., if the Licensee:

- a) transfers, totally or partially, the agreement to third parties, without the prior written consent of Licensor
- b) does not provide for the payment of the fee required in the agreed terms and reported in the order;
- c) uses the Services in a different way with respect to what communicated to the Licensor or as authorized by him, in which case the Licensor reserves the right to withhold the amounts paid by the Licensee as a penalty, except for the compensation for the greater damage suffered;
- d) breaches the regulation provided for in art. 3.1 of the present agreement.

In the above-mentioned cases, the resolution takes place by right through a unilateral declaration by the Licensor to be accomplished through registered letter or certified e-mail (PEC) to send to the Licensee at one of the addresses specified by him, as a result of which the Licensor will be authorized to interrupt the assistance and update services with any further notice.

The Licensee does accept and acknowledges that the amounts paid can be withheld as a penalty, except for the compensation for the additional damage.

12. FINAL REGULATIONS:

No change or additional clause to the present agreement will be valid and effective between the Parties, unless specifically and expressly approved in writing.

The potential, total or partial, ineffectiveness and/or invalidity of one or more clauses of the present General Conditions will not result in the invalidity of the others, which must be considered fully valid and effective.

13. APPLICABLE LAW AND COMPETENT COURT

With regard to what not expressly provided for in the present General Conditions, express reference is made, as far as this is compatible, to the rules of Italian law in force at the time of the conclusion of the agreement.

For any and every dispute related to the agreement the Court of Rimini will be the exclusively competent court.

14. PRIVACY POLICY

The Licensor notifies that the personal data related to the Licensee and the contact data of the Licensee personnel in charge of the management of the Agreement will be processed in compliance with the regulation in force on the protection of personal data and obligations deriving from the Agreement. The data will be processed in relation to the contractual needs and the consequent fulfilment of legal, administrative accounting and contractual obligations deriving from them, as well as for the purpose of protecting their rights and to guarantee the systems security. In particular, the Licensor also processes the data related to the used IP for security reasons and with the aim to improve the quality of the service. The provision of data marked as mandatory during the compiling of the contractual set of forms, and of those identified as such during the collection of additional data in the course of the contractual relationship, is necessary and crucial to establish and manage the Contract itself.

The data will be processed in written form and/or on magnetic, electronic or telematic support.

The data will not be disseminated or communicated to third parties, except for tax, legal or business consultants, credit institutions, public entities and administrations and/or subjects legitimated by law to receive this information and to accomplish the Agreement obligations toward the Licensee, external data processors who perform IT services or who can provide support activities in relation to the Cloud Services, and the data center services provider where the IT infrastructures for the delivery of the Services reside, also with the aim to maintain and manage the IT system and the data recovery. The data will be processed for the entire duration of the contractual relation and, after its termination, where necessary to fulfil the legal obligations, for the times provided by the tax and civil law or for the rights protection in court proceeding. The Parties agree that the Licensor can proceed with the elaboration and use of only statistical information, on an aggregate basis, collected in relation to the use of the Services by the Licensee for study and statistical scopes. It being understood that the Licensor assumes no responsibility with respect to the consequences arising from the Licensee's non-compliance of his obligations as data controller. The Licensee commits to indemnify and hold harmless the Licensor from any prejudice, duty, sanction or claim that he could suffer or receive by reason of the violation of such obligations by the Licensee.

The provision of the Licensee's data, with reference to the accounting management, is mandatory.

The Licensee may request, at any time, to assert all the rights granted by art. 15-22 of the EU Regulation 2016/679.