

General Terms and Conditions of MTS Mathematisch Technische Software AG (Status as of 2/15/2005)

1. Preamble

- 1.1. These general terms and conditions (hereinafter referred to as the "GTC") of MTS Mathematisch Technische Software AG (hereinafter referred to as "MTS AG") are applicable to all the software license agreements regarding the sale and distribution of grinding software, provided that MTS AG as the licensor concludes the license agreement.
- 1.2. The **GTC are included in the contract negotiations** and thus are part of the specific agreement, if MTS AG has made its GTC generally known to the licensee (hereinafter referred to as the "licensee") before concluding the agreement, be it through delivery to the licensee or in print in catalogs resp. documents, in offers, order confirmations, bills of delivery or invoices..
- 1.3. Any **change or nullification** of these GTC must be made in writing and must be characterised explicitly as such. If individual agreements or assertions made between the contractual parties contradict these GTC in the individual case, namely, in offers, order confirmations or bills of delivery, the individual provisions take precedence. If these GTC contradict the GTC of the licensee, then the GTC of MTS AG take precedence in every case, with the GTC of the licensee having no validity.
- 1.4. These GTC are valid indefinitely and thus are valid also for all **subsequent services**, as long as no deviating written agreement has been made between the contractual parties.

2. Purpose of the license agreements

- 2.1. With its license agreement MTS AG grants the licensee the non-transferable and non-exclusive obligatory right to use the grinding software delivered for utilisation and operation of CNC grinding machines. Grinding software are those programmes made available in machine-readable form for the operation of CNC grinding machines.
- 2.2. The simple license for use granted by the software license agreements conveys to the licensee the obligatory entitlement for the commercial use of the grinding software, unlocked by means of a hardware dongle, for the operation of CNC grinding machines. The licensee is not granted any material right to the grinding software, nor are any other proprietary rights other than use of the software transferred to the licensee.

3. Formation of the agreement, Conclusion of the agreement

- 3.1. Offers on the part of MTS AG are delivered in writing by mail, by fax or by e-mail, likewise any possible order confirmations. If the licensee requests deliveries, products or service that are not contained in the offer resp. order confirmation of MTS AG, these will be billed in addition.
- 3.2. The offer delivered on the part of MTS AG is valid for 30 days, provided nothing else has been agreed to in writing. After the expiration of this period of the time, MTS AG is no longer bound by its offer.
- 3.3.
- 3.3 All of the documents, designs, calculations, etc. submitted with the offer remain the property of MTS AG. Third parties may not

be allowed to view the documents in the offer without the written consent of MTS AG.

- 3.4. The offer made by MTS AG is accepted by the licensee declaring its acceptance to MTS AG in writing by mail, fax or e-mail within 30 days. The time of mailing resp. dispatch is authoritative.

4. Scope, Limits of the right of use

- 4.1. Use in terms of the license agreement is the loading, in whole or in part, of the grinding software unlocked by means of a hardware dongle provided by MTS, into the CNC grinding machines for the purpose of operation of the same. Any further use of the grinding software is not permitted.
 - 4.2. The grinding software unlocked by the hardware dongle conforms to the actual scope of the order. The licensee is consequently entitled to use only within the scope of what has been unlocked. The same applies to any expansion of the software occasioned by a subsequent order on the part of the licensee. In this case, this hardware dongle will be exchanged for a new one or will be reprogrammed.
 - 4.3. MTS AG retains all rights of change or revision, with the licensee not being permitted to modify the unlocked software. All modifications and expansions of the software must occur through MTS AG and will be provided only at the request of the licensee in accordance with separate, written agreements.
 - 4.4. The licensee is prohibited from giving a third party access to the grinding software or the hardware dongle without the consent of MTS AG. The giving, renting and selling of the grinding software as well as of the hardware dongle by the licensee is thus expressly prohibited.
- ## 5. Terms of payment, Delay in payment, Security assignment
- 5.1. The flat rate fees negotiated in the agreement are in Swiss francs, excl. value-added tax, packing, dispatch, any possible duties (esp. customs) and auxiliary services, such as installation, training, etc., so long as nothing to the contrary has been agreed to in writing.
 - 5.2. Lacking a special agreement, payment of the flat rate license fee shall occur without deduction in two instalments. The first instalment in the amount of 50% of the flat rate fee owed becomes due 10 days after dispatch of the order confirmation or upon acceptance of a possible counteroffer by MTS AG, the second instalment in the amount of the remaining 50% of the fee 10 days after the successful installation of the grinding software and delivery of the hardware dongle. If no flat rate fee has been agreed to by the parties, then the standard license fee for the software delivered will be deemed agreed to and owing.
 - 5.3. When the aforementioned instalment payments become due, if the licensee, without reminder, falls into arrears at any time, the licensee shall pay interest of 5% from the point of their becoming due. MTS AG reserves the right, moreover, to claim any damages incurred by the delay.
 - 5.4. The licensee is not entitled to assign claims against MTS AG to a third party without its express and written consent.

- 5.5. The offsetting of the flat rate fee with counterclaims on the part of the licensee is excluded, likewise the right of retention against any claims against MTS AG.

- 5.6. The claim with regards to the flat rate fee to be paid on the part of the licensee has been assigned by MTS AG to CNC Consulting AG, Binningen, holder of the proprietary rights as concerns the grinding software in terms of Art. 899ff of the Civil Code. Unless there is communication to the contrary on the part of CNC Consulting AG, however, the licensee, shall pay the flat rate fee to MTS AG.

6. Data carrier, Hardware dongle, Documents

- 6.1. The data carriers provided in the context of delivery of the grinding software remain the property of MTS AG and are accordingly to be kept secure on the part of the licensee and upon expiration of the license agreement or with the delivery of an update to be returned to MTS AG or destroyed as requested
- 6.2. The hardware dongle provided in the context of the delivery of the grinding software remains the property of MTS AG and is accordingly to be returned on the part of the licensee upon expiration of the license agreement or delivery of a replacement to MTS AG at its initial request.
- 6.3. All of the documents, designs, illustrations, drawings, calculations, etc. to which the licensee has been given access may not be reproduced nor made accessible to a third party without the express authorisation of MTS AG. All of the property rights and proprietary rights to the aforementioned items are retained by MTS AG.

7. Updates, Installation, Support, Training

- 7.1. MTS AG makes updates of the version of the grinding software delivered and unlocked available free of charge to the licensee in the context of the license agreement concluded between these parties. If additional installation or instruction in the new software is needed, the supplementary services will be provided on the part of MTS AG in accordance with an agreed upon daily rate. If no daily rate is agreed to between the contractual parties then the standard daily rate for this work will apply.
- 7.2. The installation of the grinding software as well as any possible updates, the support as well as the training requested shall be carried out on the part of MTS AG at a daily rate agreed upon. If no daily rate is agreed to between the contractual parties then the standard daily rate for this work will apply.

8. Reproduction protection

- 8.1. The grinding software is equipped with a hardware dongle as protection against unauthorised reproduction. The licensee is prohibited from engaging in manipulations of the hardware dongle and of the

actual grinding software or to permit a third party to do so.

- 8.2. Consequently, the licensee is not permitted to reproduce or change the licensed software, beyond the use in accordance with the agreement, without the consent of MTS AG. After successful installation of the grinding software the data carriers made available to the licensee are to be considered the backup copy and shall remain for the term of the license agreement in the possession of the same.
- 8.3. MTS AG reserves the right, in case of manipulation of the hardware dongle as well as unauthorised copy or change of the grinding software to carry out an extraordinary termination of the license agreement as well as to claim any damages caused on the part of the licensee.

9. Proprietary rights

- 9.1. The grinding software provided by MTS AG for use free of charge is protected as to the proprietary rights by national law as well by international treaties.
- 9.2. The licensee is obliged, consequently, to respect and preserve the proprietary rights and to use the grinding software only within the scope negotiated in the agreement. In case the licensee becomes aware of a breach of proprietary rights the licensee shall provide immediate notification thereof.

10. Order, Dispatch, Packing

- 10.1. The order by the licensee shall occur in writing and be sent to MTS AG.
- 10.2. Upon receipt of the order MTS AG shall confirm the order within a reasonable period of time. Return of the order with changes to the agreement undertaken on the part of MTS AG shall to be considered a repeat offer and shall be accepted on the part of the licensee.
- 10.3. The shipment of the grinding software and the hardware dongle as well as any possible return shipment shall occur at the expense of the licensee by means of a secure mailing route (registered mail/ return receipt).
- 10.4. The costs of packing are to be borne by the licensee.

11.1. Transfer of risk, Place of performance

- 11.1. The risk of loss is transferred to the licensee with the shipment and the transfer of the of the grinding software and the hardware dongle to a carrier/ postal service.

12. Inspection and notice of defects, Warranty

- 12.1. The software delivered has been developed in conformity with scientific due diligence and the recognised rules of technology and programming. The functions of the software released were professionally inspected before delivery and are consistent with the programme specifications agreed upon. No further assertions will be made, especially, also not regarding freedom from error of the grinding software.
- 12.2. The licensee is obliged to check the software delivered in the context of a programme test within a period of a max. of 7 days from receipt and installation and to confirm the running of the grinding machine free from error and thereby the performance of the grinding software delivered as being in accordance with the agreement or to identify any defects

that arise in writing. Should the licensee exceed this period of time the grinding software shall be considered approved as delivered, provided it is not a matter of defects that are not detectable during an inspection consistent with established practice. The placing of the software delivered in operation will be considered the equivalent of a test.

- 12.3. If defects that were not detectable in the context of the regular programme test should arise after the expiration of the period of time allotted for the aforementioned inspection and defect identification, the licensee must notify MTS AG in writing within 7 days of their discovery, failing which the software as regards these defects shall also be considered approved. MTS AG shall repair free of charge any defects of the kind discovered during 6 months after the delivery of the software, provided the licensee has made notification of them consistent with period of time and form thereof. Any further warranty is excluded by MTS AG.

- 12.4. The aforementioned defect and notice periods are granted, if the licensee describes the defects claimed in detail in his written defect identification or notification and identifies the defective files and sends them with.

13. Liability

- 13.1. MTS AG is liable for indirect personal injuries or material damages only if these happen to the licensee in the context of the legitimate use of the grinding software and as a result of a deliberate act or gross negligence on the part of MTS AG. Indirect injury or damage is that expense necessary for restoration of the damaged article or for the recovery of the person injured. Any further liability is excluded to the extent permissible by law.
- 13.2. Any possible liability will be limited in amount to CHF 10,000.00 per case of damage or injury.
- 13.3. Any liability for direct damages (damages in consequence of defects) is excluded to the extent permissible by law. likewise the liability for auxiliary persons.

14. Commencement, Term, Termination of the license agreements

14.1 The license agreement goes into effect with the signing of the license agreement. The term of this agreement is 1 year and may be extended automatically for another year, if MTS AG or the licensee, observing a period of 1 month for giving notice, do not give notice in writing by means of a registered letter before the automatic renewal of the agreement.

- 14.2 In case of the sale of a grinding machine equipped with grinding software and hardware dongle on the part of the licensee, the licensee may, with the consent of MTS AG, leave the software and the hardware dongle in the machine, if the buyer of the grinding machine declares in writing that he is ready to take the place of his predecessor as the new licensee and to take over the present licensing agreement. If MTS AG refuses its consent, then the licensee shall remove the grinding software as well as the hardware dongle before delivering the machine in question to the purchaser. Until the orderly termination of this agreement on the part of the licensee the licensee remains obligated to this agreement.

- 14.3 The software license agreements are extraordinarily terminable for both contractual parties for important reason. Especially a lasting breach of contract despite a reminder that has occurred with a reasonable fixing of a time

limit as well as the breach of the proprietary rights of MTS AG shall be considered important reason.

- 14.4 With ordinary as well as extraordinary termination the licensee loses the right of use granted in the agreement, and the licensee is obliged, consequently, to delete the grinding software from the CNC machines and to return the data carriers that are the property of MTS AG as well as the hardware dongle within 30 days of the withdrawal of the license agreement.

15. Final Provisions

- 15.1. MTS AG reserves the right to terminate the agreement extraordinarily for breaches of contract as well as for breaches of the present GTC and/or to file claim for the damages resulting from the breach.
- 15.2. Alterations of a license agreement that has been concluded must be made in writing; oral supplementary agreements have no validity.
- 15.3. The invalidity of individual provisions in these GTC as well as in the license agreements does not result in the invalidity of the GTC or of the whole of the license agreement. Taking into consideration the economic interest of the parties involved, discontinued provisions and any possible gaps are to be filled so that the purpose of the GTC and the license agreement may be fulfilled as much as possible.

16. Place of jurisdiction, Applicable law

- 16.1. **The place of jurisdiction for all contract disputes that may result is the domicile of the branch office of MTS Mathematisch Technische Software AG in Pratteln / Switzerland, provided that the federal law governing place of jurisdiction in civil matters (GestG) does not provide for a mandatory place of jurisdiction. MTS AG shall also be at liberty to bring action against the other contractual party at its domicile /place of residence.**
- 16.2. All agreements concluded on the part of MTS AG with outside third parties are subject to the material law of Switzerland excluding the Vienna Convention or other international conventions and agreements.