

## INTES Terms and Conditions of Use PERMAS for Education (PERMAS4EDU)

### 1. Subject Matter of the Contract

1.1 These INTES Terms and Conditions of Use (hereinafter also 'Terms and Conditions') of INTES GmbH, Breitwiesenstr. 28, 70565 Stuttgart, (hereinafter 'INTES') regulate the temporary use of software from INTES transferred to the PERMAS4EDU user by INTES on the basis of an INTES license agreement of the INTES software PERMAS, VisPER, PERMlic and all corresponding Tools like PERMAS Control Center and PERMASgraph (hereinafter cumulated: 'Software' and/or 'PERMAS') in object code.

1.2 INTES grants the PERMAS4EDU user the rights of use to the Software for educational and non-commercial, personal use. The PERMAS4EDU may not be used for any commercial activity, such as:

- commercial production design,
- commercial design validation,
- commercial design assessment work,
- commercial manufacturing engineering work,
- commercial research,
- consulting work, and
- training of commercial company employee

1.3 INTES hereby grants the PERMAS4EDU user the rights of use to the Software specified in subsections 3 to 6 of these Terms and Conditions, so as to use the Software, the user documentation and all other accompanying material exclusively for own use on the basis of and pursuant to the provisions of these Terms and Conditions.

1.4 INTES shall transfer to the PERMAS4EDU user a copy of the Software in executable condition, as well as a digital version of the corresponding user documentation.

### 2. General / Scope of Application

2.1 These Terms and Conditions shall apply to all present and, as a framework agreement, for all future business transactions between INTES, as manufacturer of the Software, and the PERMAS4EDU user using the INTES Software, without INTES having to refer the PERMAS4EDU user to these Terms and Conditions in each individual case.

### 3. Scope of Services and Duties of the PERMAS4EDU user (License)

3.1 The PERMAS4EDU user shall receive a non-exclusive, temporally restricted to the term of the Agreement, non-transferable and non-sublicensable right of use to the Software in the extent specified in the following sections 4 to 6 of these Terms and Conditions and in the Lease Agreement, as well as in the user documentation. Inter alia, the Lease Agreement specifies:

- the degree of activation of the edition is one, one PERMAS calculation runs can take place simultaneously **and/or** one single execution of VisPER,
- the execution of the version, i.e. the maximum number of degrees of freedom the computational model may possess,
- no consultancy is given for communications and the processing of consultancy enquiries during a use period,
- specification and purpose of use of the components of the PERMAS program system for which rights of use are granted.

The Software may only be used simultaneously to the extent offered by the level of activation, i.e. corresponding to the number of licenses. Permissible usage includes installation of the Software, loading on the internal memory and use by the PERMAS4EDU user in accordance with the applicable conditions. The number of licenses and type and scope of use is otherwise determined by the Agreement. The PERMAS4EDU user is not granted any further rights of use and exploitation rights to the Software.

3.2 The PERMAS4EDU user shall not be entitled to transfer the copy of the Software that it has received or any of the backup copies made pursuant to subsections 5.2 and 5.3 of these Terms and Conditions, if applicable, to third parties. In particular, the PERMAS4EDU user shall not be permitted to sell, lend, rent or otherwise sublicense the Software and corresponding documentation or to pass this on or make this available to the general public, through either wired or wireless technology, or to make this available to third parties, irrespective of whether in return for remuneration or free of charge, e.g. by way of application service providing or as 'software as a

service'. Section 7 of these Terms and Conditions shall not be affected.

3.3 If the PERMAS4EDU user infringes against the above provisions of subsections 3.1 and 3.2 or against the provisions of sections 4 to 6 of these Terms and Conditions, all rights of use granted under this Agreement shall be rendered ineffective with immediate effect and shall be automatically surrendered back to INTES. In this case the PERMAS4EDU user shall immediately and completely discontinue use of the Software, shall delete all installed copies of the Software from its systems, as well as all backup copies made, if applicable, or return these to INTES, and shall pay the specified list prices for any unwarranted use.

3.4 The specifications of PERMAS and the hardware and software environment within which PERMAS is to be deployed are/is specified in detail in the Agreement, as well as if applicable in the product specification of PERMAS. The information contained therein is to be understood as performance specifications and not as guarantees. A guarantee shall only be granted if it is expressly specified as being such.

3.5 Under reservation of regulations to the contrary expressly put in place by the parties, the following services are not included in the services to be performed by INTES:

- installation and configuration services
- training
- support services by INTES during the analysis and processing of disruptions resulting from improper use or from circumstances not connected with the Software itself.

All of these services shall be invoiced separately by INTES on the basis of the valid price lists for such services at the time of performance.

3.6 The PERMAS4EDU user shall be responsible for the selection of the Software best suited for the applications of the PERMAS4EDU user and for the testing of the Software for specific purposes, as well as for data security. The use of PERMAS shall not release the PERMAS4EDU user from the obligation to conduct plausibility checks on the results of the calculations carried out.

3.7 The PERMAS4EDU user shall be entitled to make use of the open architecture of PERMAS. In order to avoid name collisions with internal PERMAS names, the PERMAS4EDU user shall name the developed subprograms (SUBROUTINE, FUNCTION) and the common memory areas used therein (COMMON) using names that begin with the prefix 'U:'.

### 4. Property Rights

4.1 Insofar as the PERMAS4EDU user is not granted statutory rights and the rights expressly granted in these Terms and Conditions, all rights to the Software and to all copies of the Software made by the PERMAS4EDU user – in particular copyrights, the right to or on inventions, data, designs, models, drafts and know-how, as well as all technical industrial property rights – shall be due exclusively to INTES. This shall also apply to any possible processing of the Software by the PERMAS4EDU user.

4.2 The PERMAS4EDU user shall use the designation 'PERMAS' for the Software system delivered by INTES. PERMAS is a registered trademark belonging to INTES. Proprietary notices (such as copyright holder notices or brand names), serial numbers and other notices serving for the identification of the program may not be changed within the Software or removed from the Software, either in its electronic form or in the form of printouts.

### 5. Restricted Right to Duplicate

5.1 The PERMAS4EDU user may duplicate the delivered Software, insofar as the respective duplicate is necessary for the use of the Software. The necessary duplicates include in particular the installation of the Software on the mass storage facility of the used hardware and the loading of the Software on the internal memory.

5.2 Furthermore, the PERMAS4EDU user may make a duplicate for backup purposes. However, in principle only one single backup copy can be made and archived. This backup copy of the transferred Software is to be labelled as such and clearly marked with the INTES copyright notice.

5.3 If, for reasons of data security or for the purposes of the rapid reactivation of the computer system after a complete failure or internal or external auditing, the regular backup of the entire data stocks, including the deployed software, is necessary, the PERMAS4EDU user may make copies to the extent

that is strictly absolutely necessary. The respective data carriers are to be labelled accordingly. The backup copies may only be used exclusively for archiving purposes.

5.4 The PERMAS4EDU user shall not be entitled to duplicate the Software over and beyond the cases specified in section 3 and subsections 5.1 to 5.3 of these Terms and Conditions.

### 6. Multiple Use and Network Application

6.1 The use of the transferred Software within a network or another multi-station computer system is – because this entails the creation of the possibility of the simultaneous multiple use of the Software – not permissible.

### 7. Delivery, Installation

7.1 Installation shall be carried out by the PERMAS4EDU user in accordance with the procedure described in the user documentation. Installation by INTES shall only take place on the basis of a separate agreement and in return for additional remuneration.

7.2 The parties are aware of the fact that the Software may be subject to import and export restrictions. In particular there may be obligations to obtain permits and/or the use of the Software or technologies connected with it may be subject to restrictions in foreign countries. The PERMAS4EDU user shall be responsible for all procedures related to the import and export of the Software, shall bear all costs in respect of this and shall observe all applicable import and export control regulations within the Federal Republic of Germany, the European Union and the United States of America, as well as all other applicable regulations. INTES shall support the PERMAS4EDU user in this. The fulfilment of contract by INTES stands under the reservation that the fulfilment of contract is not obstructed by national and international provisions of import and export law or any other statutory provisions.

### 8. Withholding Rights and Offsetting

8.1 The withholding of payments due to possible claims of the PERMAS4EDU user against INTES shall be excluded, unless the withholding right pertains to claims of the PERMAS4EDU user from the same contractual relations with INTES.

8.2 Offsetting by the PERMAS4EDU user of its own claims against the claims of INTES shall not be permissible, unless such claims are not in dispute or have been determined without the possibility of further legal recourse.

### 9. Term and Termination

9.1 The term is specified for each version of the PERMAS4EDU individually and is not subject to change. The PERMAS4EDU user shall agree in marking the corresponding checkbox.

9.2 Furthermore, the Agreement can be terminated by either party without the observance of a notice period in the event of a compelling reason to do so. A compelling reason entitling INTES to terminate the agreement shall exist in particular if the PERMAS4EDU user infringes against the rights of use granted by INTES by using the Software to a degree that exceeds the permitted extent and if the PERMAS4EDU user fails to discontinue this infringement within a reasonable period despite a warning being issued by INTES.

9.3 In the event of termination, the PERMAS4EDU user shall discontinue use of the Software upon the expiry of the contractual term and shall remove all copies of the program from its computers, as well as, at the discretion of INTES, either returning all backup copies immediately to INTES, if applicable, or destroying these.

9.5 In the event of termination for a compelling reason, the rights of use pursuant to sections 3 to 6 of these Terms and Conditions shall lapse upon receipt of notice of termination by the PERMAS4EDU user.

### 10. Maintenance, Infringement against Property Rights

10.1 The PERMAS4EDU user shall be obliged to notify INTES of defects in the Software in writing immediately after their discovery. In the case of material defects, this shall take place in the form of a description of the time at which the defect appeared and more details on the circumstances.

10.2 If notice of defects pursuant to subsection 10.1 of these Terms and Conditions is issued unjustifiably, INTES shall be entitled to demand that the PERMAS4EDU user reimburses all expenditure incurred by INTES, if the PERMAS4EDU user

culpably fails to recognize that the alleged defect is the result of a circumstance within the area of responsibility of the PERMAS4EDU user.

- 10.3 The PERMAS4EDU user shall notify INTES immediately in writing if a third party enforces property rights (e.g. copyrights or patent rights) in respect of the Software. The PERMAS4EDU user shall authorize INTES to conduct the dispute with the third party alone. At its own discretion and in consultation with the PERMAS4EDU user, INTES shall either defend against or settle the claims. For as long as INTES makes use of this entitlement, the PERMAS4EDU user shall not acknowledge the third-party claims without the express consent of INTES. INTES shall defend against the third-party claims at its own cost and shall indemnify the PERMAS4EDU user against all costs associated with the defense against these claims, insofar as such claims do not concern behavior of the PERMAS4EDU user in breach of duty (e.g. use of the Software in breach of contract). If the PERMAS4EDU user discontinues use of the Software for reasons of mitigation of damages or for other important reasons, the PERMAS4EDU user shall be obliged to notify the third party that the discontinuation of the use of the Software does not constitute acknowledgement of an infringement against property rights.
- 10.4 Claims of the PERMAS4EDU user shall be excluded if and insofar as it is itself responsible for the infringement against property rights. Such claims shall also be excluded if the infringement against property rights results from particular requirements of the PERMAS4EDU user, from an application that is not foreseeable by INTES or from amendments made to the Software by the PERMAS4EDU user.
- 10.5 Claims to compensation for damages under guarantee are excluded.

#### 11. Compensation for Damages

- 11.1 The use of PERMAS Software shall not release the PERMAS4EDU user from liability for the conducting of plausibility checks on the results attained when using the Software. If a defective component of the Software leads – when conducting a plausibility check – to recognizable errors in calculation, claims to compensation of the PERMAS4EDU user shall be excluded.
- 11.2 Unless otherwise regulated in these Terms and Conditions, all claims of the PERMAS4EDU user to compensation for damages, irrespective of type, also claims to the reimbursement of expenditure and indirect damages such as loss of profit, are excluded. This shall apply in particular to claims arising from all breaches of duties under the contract and from liability in tort. Also excluded are the provisions on strict liability laid down in section 536a of German Civil Code [Bürgerliches Gesetzbuch, BGB]. The exclusion of liability shall also apply if INTES has used other representatives or vicarious agents to perform obligations.
- 11.3 In derogation to subsection 11.2 of these Terms and Conditions, INTES shall be liable, irrespective of legal grounds, only – and this also applies if INTES has used managerial employees or other representatives or vicarious agents to perform obligations – if:
- (a) INTES is culpable of gross negligence or willful act;
  - (b) INTES fraudulently conceals a defect or has issued a guarantee for the qualities of the Software;
  - (c) INTES is culpable for loss of life, bodily injury or injury to health; as well as if
  - (d) INTES has breached a so-called 'cardinal contractual duty', i.e.
    - (aa) in the event of material breaches of duty that endanger the attainment of the purpose of the contract, or
    - (bb) in the event of the breach of duties that must first be met in order to at all enable the proper execution of the contract and which the PERMAS4EDU user could normally trust or be entitled to trust to be met ('cardinal duties').
- 11.4 In cases that fall under subsection 12.3(d) of these Terms and Conditions – breach of cardinal duties – the liability of INTES shall be restricted in cases of merely slight negligence to the amount of damages that could be foreseeable and is typical for such cases.
- 11.5 Liability for data losses shall be restricted to the typical amount of expenditure for recovery that would also have been incurred in the event of regular data archiving in a manner appropriate and corresponding to the risk.

11.6 The above restrictions on liability shall not apply to claims under the German Product Liability Act [Produkthaftungsgesetz, ProdHaftG]. An amendment of the burden of proof to the disadvantage of the PERMAS4EDU user is not associated with the above regulations.

#### 12. Data Protection

Data disclosed to INTES by the PERMAS4EDU user shall be archived and processed by INTES for the purposes stated above and also those specified in detail in the respective agreement, inter alia for the purposes of sales and marketing, guarantees and PERMAS4EDU user care. INTES shall observe all applicable data protection regulations. The INTES data protection declaration shall otherwise apply to our Internet presence (link or address).

#### 13. Confidentiality, Security Measures

- 13.1 The PERMAS4EDU user shall treat all confidential information, i.e. all data and information of which it has become aware during the course of contractual relations with INTES (hereinafter: 'confidential information'), such as e.g. illustrations, drawings, drafts, models, designs, calculations, cost estimates and other documentation, with the utmost confidentiality. The PERMAS4EDU user shall be obliged only to use confidential information for the purposes of the Lease Agreement concluded with INTES and not to pass on such information to third parties or to otherwise make such information accessible to third parties without the express prior written consent of INTES.
- 13.2 The PERMAS4EDU user shall be obliged to protect confidential information from access by third parties. In doing this, the PERMAS4EDU user shall use the same degree of diligence that it employs when protecting its own confidential information, at least a commensurate degree of diligence. The PERMAS4EDU user shall be obliged to impose upon its employees the same confidentiality obligations in respect of the confidential information. The PERMAS4EDU user shall inform INTES immediately and in writing if it becomes aware of an impending or already existing breach of the confidentiality agreement or has suspicion of such breach.
- 13.3 The obligation to treat confidential information with confidentiality shall lapse if the PERMAS4EDU user can evidence that
- the PERMAS4EDU user was already aware of this confidential information before it was disclosed by INTES;
  - the PERMAS4EDU user received this confidential information legally from a third party without the imposition of confidentiality obligations and without it being apparent to the PERMAS4EDU user that the third party has breached any confidentiality obligations imposed upon this third party;
  - the confidential information is known to the general public or has become known to the general public without any breach of these confidentiality obligations;
  - this confidential information had been developed or has been developed by the PERMAS4EDU user independently of the disclosure by INTES.
- 13.4 At the request of INTES, the PERMAS4EDU user shall return all received confidential information to INTES without delay. Upon request, all confidential information that is stored on computers is to be deleted.
- 13.5 The confidentiality agreement shall continue to remain in force beyond the expiry of the Lease Agreement for a period of three years.

#### 14. Closing Conditions

- 14.1 The place of performance for the obligations under these contractual relations shall be the place of business of INTES in Stuttgart.
- 14.2 The law of the Federal Republic of Germany shall exclusively apply under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (CISG).
- 14.3 If the PERMAS4EDU user is a businessman, a legal entity under public law or a separate fund under public law, the exclusive place of jurisdiction for all disputes arising under this Lease Agreement shall be the place of business of INTES in Stuttgart. The same shall apply if the PERMAS4EDU user has no general place of jurisdiction within Germany or if its place of residence or place of habitual residence is not known at the time of the initiation of legal proceedings. The claimant is in addition entitled to initiate legal proceedings at the place of business of the respondent.

14.4 These terms and conditions are translated from their original German version. If a possible interpretation of the English terms and conditions lead to a different result than the interpretation of the German terms and conditions, the German version has to be taken.

Status: 12.05.2020