

End-User License Agreement

THIS IS A CONTRACT. BY INDICATING YOUR ACCEPTANCE BELOW, YOU ACCEPT ITS TERMS AND CONDITIONS INCLUDING, IN PARTICULAR, LIMITATIONS ON THE USE OF THE LICENSED PRODUCTS AND THE LIABILITY.

This End-User License Agreement ("EULA") is a legal agreement between

Eleven Dynamics AG ("Company")
Hauptbahnhofstrasse 7,
4500 Solothurn,
Schweizerland - CH

and you, either an individual or a single entity ("Licensee") for the Licensed Products (as defined below). By installing, copying, or otherwise using the Licensed Products, you agree to be bound by the terms of this EULA. You agree that this EULA is enforceable like any written negotiated EULA signed by you. If you do not agree to all the terms of this EULA, do not install, or use the Licensed Products, and contact Company.

WHEREAS

Company is a producer and supplier of computer software for automating metrology processes, commercialized under the tradename NEXOS;

WHEREAS

Company is the lawful owner of and/or has the right to license the proprietary computer programs, as described in this EULA.

WHEREAS

Licensee wishes to license use of the compiled code of the Licensed Products, subject to the terms and conditions of this EULA.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE COMPANY AND THE LICENSEE ("PARTIES") HEREBY REPRESENT, WARRANT, AND AGREE AS FOLLOWS:

1 Preamble

The preamble is part of the present EULA.

2 Definitions

2.1 Licensed Software

shall mean Software products composed of Company's computer programs in machine-readable compiled code, intermediate code or interpreted form, and associated program updates and upgrades, and related items such as software keys.

2.2 Licensed Materials

shall mean "online" or electronic user manuals and specifications, and any other media, printed materials, and "online" or electronic documentation, provided by Company to the Licensee for use with Licensed Software.

2.3 Licensed Products

shall mean the Licensed Software and the Licensed Materials commercialized under the tradename NEXOS.

2.4 Error

shall mean any reproducible functional defect in the Licensed Software resulting in the Licensed Software not conforming with the Licensed Materials.

2.5 Internal Use

shall mean the use of Licensed Software on the Licensee's computing devices.

2.6 Users

shall mean the directors, officers, and employees of the Licensee or any other person using the Licensed Products.

2.7 Open-Source Library

shall mean object code that is statically or dynamically linked to the Licensed Software and that contains, or is derived from, any computer source code licensed pursuant to a license that is identified as an open-source license by the Open-Source Initiative (opensource.org) or other similar licensing or distribution models for computer code offered free of charge.

2.8 Third Party Library

shall mean object code that is statically or dynamically linked to the Licensed Software, proprietary to Company or licensed by it from Third Party vendors.

3 Scope, general information

3.1 End-User License EULA

- i. This EULA “shall apply to all contracts between Company and the Licensee to the extent that those contracts concern the supply of Licensed Software and/or Licensed Material (trial versions and commercial versions) including user documentation and other accompanying materials (hereinafter referred to as “Software”).
- ii. The EULA also applies to the supply of new versions of the Software (e.g., patches, bug fixes, updates, upgrades, etc.) and user documentation supplied with such new versions or provided for download from the Company's website.
- iii. The EULA applies to the exclusion of any other terms and conditions. Other terms or general terms and conditions of the Licensee shall be applicable only if and insofar as the Company expressly accepts them in writing. Such acceptance shall be required in all cases, even if the Company is aware of the general terms and conditions of the Licensee and commences provision of services to it without protest.
- iv. Individually negotiated agreements between Company and Licensee (including side agreements, additions, and amendments) shall prevail over these EULA in all cases. The content of such agreements shall be set out in a written contract or confirmed in writing by Company.
- v. All declarations and notices of legal relevance issued to the Company by the Licensee after conclusion of the contract (e.g. notices setting deadlines, reporting defects or giving notice of withdrawal from the contract or a reduction in the purchase price) must be sent to info(at)11dynamics.com.

4 License and Responsibility

Company hereby grants Licensee a nonexclusive, non-transferable license to use the Licensed Products solely for its own internal use only and for no other purpose.

Licensed Software is granted either as (4.1) Perpetual (Single) License or (4.2) Subscription License or (4.3) Evaluation License.

Licensee is responsible to clearly advise all Users, as described in section 2.6, of all obligations contained in this EULA. The Licensee shall be liable for all acts and/or omissions of Users, including Users' compliance with the relevant obligations under this EULA, as if they were its own acts or omissions.

4.1 Perpetual ("Single") Licenses

4.1.1 License Period

Purchased perpetual Licenses (other than subscription licenses as well as evaluation licenses) are granted perpetual.

Licensees are not allowed the concurrent use of the Licensed Software on more than one computing device.

4.1.2 Maintenance

Maintenance, support, and access to updates of Licensed Software for perpetual Licenses are excluded, unless Licensee enters an additional support agreement with Company. The maintenance fee will be at max 20% of the original undiscounted software price if purchased yearly, or at max 15% of the original software price if purchased for at least five years.

4.1.3 Maintenance renewal

If an End-User requests maintenance and support with an interruption later than after the first year since the installation date, maintenance and support fees for the time of interruption must be paid also.

4.1.4 Maintenance without SMA

If an End-User request maintenance and support without having an active support agreement the following fees can be charged: 500 CHF/hour excl. VAT and an additional 50% on weekends and public holidays. Those fees do not authorize the end user to get access to updates or upgrades of the software. If issues are discovered that are solved in newer versions of the software, no effort will be made to solve those issues in the user version of the software.

4.2 Subscription Licenses

4.2.1 Subscription Period

Subscription Licenses are granted for Subscription Periods of at least six months and will begin on the day Licensee orders the Licensed Software. After expiration the six months, the Subscription Period is automatically renewed without limitation for further Subscription Periods of six month, unless terminated by the Company or the Licensee with a notice period of one month as per the end of a Subscription Period of six months.

Licensees are not allowed the concurrent use of the Licensed Software on more than one computing device.

Licensee agrees to pay the Subscription Fee payable as per the beginning of each new Subscription Period, if not terminated pursuant to the first paragraph of this section.

Company reserves the right to change the Subscription Fee for any renewal Subscription Periods. Each new Subscription Period will be subject to the same terms and conditions set forth in this EULA, which may be updated by Company from time to time.

4.2.2 Suspension

Company may disable the Licensed Software, either by operation of the Licensed Software or by a remote command from Company, at the end of the Subscription Period if the Subscription Fee has not been paid.

4.2.3 Maintenance

Maintenance and support are included with the Subscription Fee. Company will make reasonable efforts to notify Licensee when updates to the Software are available. It is Licensee's responsibility to download the updates. Support will be provided according to the terms of Company current Software Maintenance and Services EULA which may be modified by Company from time to time.

4.3 Evaluation Licenses

4.3.1 Evaluation Period

The Evaluation Period for the Licensed Software will begin on the day Licensee starts the Evaluation of the Licensed Software and ends according to the defined Evaluation Period. Such Evaluation Period will be defined by Company on a case-by-case base. Licensees are not allowed the concurrent use of the Licensed Software on more than one computing device.

5 Protection of Proprietary Rights

5.1 Right to use Licensed Products

Licensee acknowledges that no right, title, or interest, other than the right to use the Licensed Products, is transferred or granted by this EULA. Licensee is prohibited from selling, renting, leasing, making available to third parties, and sublicensing the Licensed Products.

5.2 Open-Source Libraries

The use and operation of the Licensed Software may require the concurrent use of the Open-Source Libraries. Licensee acknowledges that Company shall be entitled to update the Open-Source Libraries, as the use of Open-Source Libraries varies upon each new release. Company represents and warrants that it has the right to authorize the use of such Open-Source Libraries by Licensee. Licensee's use of such Open-Source Libraries is governed by the licensing terms of such Open-Source Libraries.

5.3 Third Party Libraries

Licensed Software includes as components certain third-party software programs, which may be periodically updated and substituted. Company represents and warrants that it has the right to distribute the Third Party Libraries as Licensed Software components. The property rights of the Third Party Libraries remain with the Company or Third Party vendors.

5.4 Confidential Information

Licensee acknowledges that the Licensed Products constitute trade secrets, are furnished by Company to Licensee in confidence, and contain proprietary and confidential information. The placement, or non-placement of a copyright notice on any portion of the Licensed Products will neither be construed to mean that such portion has been published, nor derogate from any claim that such portion is a trade secret or contains proprietary and confidential information.

5.5 Nondisclosure

Licensee agrees that it will not, under any circumstances, except as expressly authorized hereby, distribute, or disseminate any information contained in or disclosed by the Licensed Products, including but not limited to any technical information, design concepts, processes, procedures, formulae or algorithms, to any person except to those of its Users whose access is necessary for Licensee's use as set forth above.

Licensee will take appropriate action, by agreement or otherwise, with such Users, to inform them of the trade secret, proprietary, and confidential nature of the Licensed Products so as to obtain their compliance with the terms of this section. In the event that Licensee, or any of its Users breach the confidentiality obligations of this EULA, Licensee shall be jointly and severally liable to Company for any loss incurred by Company resulting directly or indirectly from such breach.

5.6 Restrictions on Copying and Adaptions

Company hereby grants the Licensee the right to make copies of the Licensed Products for backup purposes only. No other copying or adaptions are permissible.

5.7 No Reverse Engineering and access to Source Code

Licensee is prohibited from reverse engineering, decompiling, disassembling, or creating any derivative work of the Licensed Products. Licensee shall also not allow anyone to reverse engineer, modify, disassemble, or decompile the Licensed Products, or create any derivative work in any possible way.

The Licensee shall have no access to source code of Licensed Software.

5.8 Relief

Licensee acknowledges and agrees that the Licensed Products, as well as all other information in whatever medium disclosed to Licensee hereunder, are unique and commercially valuable and that any breach by Licensee of the terms of this EULA with respect to protection against disclosure or distribution of the Licensed Products or such information would result in an irreparable and continuing injury to Company for which money damages would be inadequate. In the event of such a breach or anticipated breach by Licensee, Company shall be entitled to immediate injunctive relief or any other recourse and to specifically enforce the terms of this EULA, in addition to any other remedy to which Company may be entitled at law or in equity.

5.9 Non-Reproduction

Licensee agrees that it shall not use the Licensed Products to assist in the development or design of a computer software program or other technology that is intended to provide substantially similar or similar functionalities, or graphical user interfaces (GUI), substantially similar or similar to the Licensed Products.

5.10 Development of Utility

The Licensed Software shall not be used to develop, nor shall Licensee market, any conversion utility or aid specific to the Licensed Software enabling or facilitating users to convert from the Licensed Software to alternative software not marketed by Company.

6 Ownership and Copyright Protection

Company, its affiliates and suppliers retain all right, title, and interest in and to the Licensed Products. The Licensed Products are intellectual property of Company, its affiliates, and its suppliers. The Licensed Products are protected by law, including without limitation the copyright laws of Switzerland, the European Union, and other countries, and by international treaty provisions. Licensee may not alter any trademarks, trade names, product names, logos, copyrights or other proprietary notices, legends, symbols, or labels in the Licensed Products. Licensee acknowledges that no right, title, or interest, other than the right to use the Licensed Products as described herein is transferred by the present EULA.

7 Warranty

7.1 Ownership of Copyrights

Company warrants that it has the right to grant this license to use the Licensed Products as contemplated hereunder.

7.2 Infringement

Company will indemnify and hold harmless Licensee from and against any action brought against Licensee alleging that the Licensed Products infringe third-party intellectual property rights, to the extent that:

- i. Company is notified immediately in writing by Licensee of the claim;
- ii. Company has sole control of the defense of the claim and all negotiations of any settlement or compromise, provided that any such settlement or compromise provide for the general release of all claims against Company;
- iii. the claim is not based on the use of a Licensed Software's version other than the most recent of Company and non-modified by Licensee;
- iv. the Licensee has not prejudiced Company position's in any way by, without limiting the generality of the foregoing, its admissions and/or declarations.

In such case, the Company shall have the option at all times, either before, during or after any proceedings, (a) to provide the Licensee with the right to use such element of intellectual property or (b) replace or (c) amend in order to cease such infringement or (d) to refund Subscription Fees for the time of prohibited use.

7.3 Nonapplication of Warranty

Paragraph 7.2 of this section is not applicable if the claim is based upon:

- i. the use of other than a current unaltered release of Licensed Software if the infringement would have been avoided by the use of a current unaltered release of Licensed Software;
- ii. the combination, operation, or use of any Licensed Products with any programs or software not provided by Company, if the infringement would have been avoided by the combination, operation or use of Licensed Products with other programs, software or data; or
- iii. the use of Licensed Software in other than the operating environment specified for it by Company if the infringement would have been avoided by use in the operating environment specified by Company.

7.4 Limitation of Warranty

Except as expressly provided in this section, Company makes no warranty, express or implied, with respect to the Licensed Products. Without limiting the generality of the foregoing, Company makes no warranty or merchantability or fitness for a particular purpose or that the Licensed Products are error free or that Licensee's use of the Licensed Products will be uninterrupted. Company will correct all errors discovered within a period of ninety (90) days from delivery, upon notification by Licensee, if the following conditions are and were always respected since delivery date:

- i. the error was properly reported through Company support channels and could be reproduced by Company.
- ii. the Licensed Software is and was properly used as set forth in the Licensed Materials;
- iii. the Licensed Products were not changed nor modified by Licensee or a third party upon Licensee's request.
- iv. the Licensed Products have not been subjected to abnormal physical or electrical stress, misuse, negligence, or accident.

7.5 Prerelease Software Product

If the Licensed Software the Licensee has received with this EULA is a precommercial release or beta Software ("Prerelease Software"), Licensee acknowledges that the Prerelease Software version does not represent the final product from Company, and may contain bugs, errors, and other problems that could cause system or other failures and data loss. Consequently, the Prerelease Software is provided to the Licensee "AS-IS", and Company disclaims any warranty or liability obligations of any kind to the Licensee.

8 Technical support

The Licensee shall not be entitled to receive technical support for the Licensed Software unless it has entered into a separate support agreement with Company. Although every effort will be made to provide technical assistance in a timely manner, no guarantee or warranty is given that technical assistance will be given or, if it is given, that it will be accurate.

8.1 Subscription Licenses

Licensees of the subscription-based licensing model automatically enter Company support agreement.

9 Terms for Software Purchases

- i. All payments are non-refundable.
- ii. With the purchase of a license the Licensee only buys the right to use the Licensed Software according to this EULA exclusive any integration work.
- iii. Subscription fees are due payable at the start of each subscription period according to section 4.2.1.

10 Termination

10.1 Extraordinary Termination

10.1.1 Default

Either party may terminate this EULA upon written notice to the other party without advance notice if the other party materially breaches the terms of this EULA, including a default in payment of subscription Fee, and such default continues uncorrected for a period of ten (10) days after notice in writing thereof to such other party.

10.1.2 Bankruptcy or Insolvency

Either party may terminate this EULA upon written notice to the other party without advance notice if the other party becomes insolvent or is adjudged bankrupt; makes a proposal for the benefit of its creditors; has a receiver appointed; files a petition of bankruptcy; initiates reorganization proceedings; causes or permits to occur any similar event under the laws of its domicile; or ceases to conduct its operations in the normal course of business; or is wound up.

10.2 Effect of Termination

10.2.1 License

Upon termination, all licenses granted pursuant to this EULA and any Maintenance and Support Agreement executed by both parties will cease. All payments due until termination remain payable.

10.2.2 Return and Destruction of Proprietary Information.

Licensee will immediately return to Company the Licensed Products and all whole or partial copies thereof, including all backup copies, modifications, and documentation thereof and purge all copies of the Licensed Products from all computer processors or storage media on which Licensee has installed or permitted others to install Licensed Products. Licensee will certify in writing to Company

no later than thirty (30) days after termination that it has entirely complied with this requirement and that no Proprietary Information remains in its possession.

10.2.3 Compliance with EULA notwithstanding Termination.

Notwithstanding the termination of the present EULA, the Sections 5.4 - 5.10, 6, 11 and 12.7 of this EULA remain valid and binding.

11 Limitation of Liability

IN NO EVENT WILL COMPANY, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (1) INDIRECT OR CONSEQUENTIAL DAMAGES, OR (2) ANY DAMAGES RESULTING FROM LOSS OF USE, OR LOSS OF DATA, OR LOSS OF PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS EULA OR THE USE OR PERFORMANCE OF THE LICENSED PRODUCTS OR ANY INFORMATION PROVIDED HEREUNDER, WHETHER IN AN ACTION BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE. IN NO EVENT WILL COMPANY, ITS AFFILIATES OR SUPPLIERS TOTAL LIABILITY FOR ANY DAMAGES AWARDED IN ANY ACTION BASED ON CONTRACT OR TORT ARISING OUT OF OR IN CONNECTION WITH THIS EULA EXCEED THE AMOUNT PAID FOR THE PRESENT LICENSE EVEN IF COMPANY, ITS AFFILIATES OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS.

12 Miscellaneous

12.1 Notice

Any notice, request, instruction, legal proceedings or other instrument to be given, served, or provided under this EULA by either party shall be deemed given and received when in writing and delivered personally or five (5) days after being sent by certified or registered mail, postage prepaid, to Company or Licensee at the address of each as indicated below, provided that either party may change such address, only by written notice to the other party:

If to Company:

Current address of Company as mentioned on the invoice or as otherwise specified by Company.

If to Licensee:

Current address of Licensee as mentioned on the purchase order or as otherwise specified by Licensee.

12.2 Waiver

No delay or failure of either party in exercising any right and no partial single exercise of any right shall be deemed to constitute a waiver of that right or any other right under this EULA. No action arising out of this EULA, regardless of form, may be brought by either party more than one (1) year after the cause of action has accrued.

12.3 Severability

If any of the provisions of this EULA are held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the other provisions of the EULA. The invalid or unenforceable provision shall be deemed replaced by a valid provision, which reaches as closely as possible the economic goal of the invalid or unenforceable provision.

12.4 No Assignment

The rights of Licensee under this EULA may not be assigned, in whole or in part, and any attempted assignment of rights, duties or obligations hereunder without such consent shall be null and void.

12.5 Amendments and Modifications

This EULA may not be amended, altered, or modified and no right hereunder may be waived except by a written EULA signed by authorized representatives of the parties.

12.6 Entire Understanding

This EULA sets forth the entire understanding between the parties with respect to the matters set forth herein and supersedes all prior representations, understandings, or EULAs, whether written or oral, express or implied, with respect thereto.

12.7 Governing Law and Jurisdiction

This EULA is governed by the substantive laws of Switzerland excluding its conflict of laws rules and international treaties (including the United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11.04.1980)EULA.

EULA The exclusive place of jurisdiction shall be with the state courts at the registered seat of the Company. However, the Company shall also be entitled to sue the Licensee at its domicile or registered seat.

12.8 Language

This EULA is in English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this EULA, and any dispute proceeding related to or arising hereunder, shall be in the English language. If there is a discrepancy between any translation of this EULA and this EULA, this EULA shall prevail.