

HERZOG GmbH

GENERAL LICENSE TERMS

- As of July 2020

The following conditions apply to all software products made available by HERZOG GmbH (hereinafter "HERZOG") for a limited period as well as for an unlimited period (against payment and free of charge), which are provided regardless of the delivery of associated hardware, including any program descriptions, program libraries, sample files, operating instructions and other accompanying documentation, regardless of whether the software products are made available or activated for download, or are made available on data carriers (hereinafter "software"). For software, updates, upgrades, etc. that refer to software that was made available for use in its original version as part of or in connection with a delivery of the associated hardware, the general terms and conditions of HERZOG apply exclusively (<https://herzog-online.com/gtc/>).

In addition, software within the meaning of these license conditions also includes PLC programs, visualizations, software for interfaces, databases, individual software lines, code snippets, firmware, BETA versions, release candidates (RC), cycles, HOTFIX versions and CABSoft example programs.

The regulations of these license conditions apply to firmware, but firmware may only be used together with the associated hardware for which it has been released or passed on to third parties.

The following conditions apply exclusively and for every use of the software made available by HERZOG.

The user is the legal or natural person who uses the software in the exercise of their commercial, self-employed professional or other activity. The software is not intended for private use.

Any conditions of the user do not become part of the contract, even if HERZOG does not expressly contradict them.

Unless otherwise specified in these terms and conditions, the download, installation and other use of the software shall be deemed to be the user's consent to these terms and conditions.

1. Usage rights

- 1.1. The software is provided to the user either on a data carrier or as a download for the intended use. The software is provided exclusively in machine-readable form (machine code). There is no entitlement to the transfer of the source code.
- 1.2. The user will be informed about the system requirements for using the software; the user is solely responsible for meeting these system requirements. The user is also responsible for testing the software that he wants to use in his own productive environment in a secure and shielded test environment before such use, as the functionality of the respective software cannot be tested by HERZOG under all possible operating conditions.
- 1.3. The software is protected by copyright.
Subject to the payment of the corresponding license fees - if applicable - and if not otherwise described in the supplementary license conditions in Appendix I, HERZOG grants the respective user the non-exclusive, non-transferable right to use the software as intended for the purpose for which the software is intended by HERZOG and was made available. The user is responsible for ensuring that in the case of an authorized transfer of the software, the respective purchaser recognizes the present conditions and assumes all rights and obligations of the user resulting therefrom.

Unless otherwise agreed (including in accordance with the following sections), the user may use the software on any suitable hardware available to him. The user is permitted to store, hold in stock or use the software at the same time, for example for use by several of their own employees. The use of the provided software is also permitted within a company network.

If software is protected by a software protection key (dongle), a system identification key (SIK) or a license code, this dongle, SIK or the license code represents and limits the right to use the software. The loss of or damage to a dongle amounts to a loss of the right of use. HERZOG is not obliged to replace a dongle if it is lost. If a dongle is damaged, HERZOG is only obliged to replace it if this damage was caused by a defect in the dongle that was not attributable to the user within the warranty period.

- 1.4. Except in the cases of §69e Copyright Act (decompilation), the user is not authorized to change, reverse engineer or translate the software, create derivative works of the software, deactivate functions or extract parts. The user may not remove alphanumeric or other identifiers from the data carriers and must transfer them unchanged to each backup copy. The user is also not authorized to remove or change copyright notices or other features for identifying the software and the manufacturer.
- 1.5. The above conditions also apply to all updates, upgrades and program additions to the software that are made available by HERZOG for download or on data carriers, unless these updates, upgrades and program additions are the subject of a separate agreement. In this case, only the provisions valid for the respective update / upgrade or the program add-on are decisive.
- 1.6. During the term of the license and within one (1) year after its termination or expiration, HERZOG is entitled to regularly check compliance with the present conditions by inspecting the relevant data (books, records, computers, etc.) of the user. A planned audit must be announced in writing to the user in advance with a reasonable period of notice.

2. Third-party products / Open Source Software

- 2.1. For software for which HERZOG only has a derived right of use and which is not open source software (third-party product), the terms of use agreed between HERZOG and its licensor apply in addition and take precedence over the terms of this section, insofar as they concern the user (such as End User License Agreement); HERZOG refers the user to these provisions and makes them available to him on request.
- 2.2. For open source software, the terms of use to which the open source software is subject take precedence over the provisions of this section. HERZOG informs the user about the existence of open source software and the terms of use for the open source software provided. HERZOG will make the terms of use available to the user or, if required by the terms of use, leave them to him.
- 2.3. Any violation of the terms of use for third-party products by the user do not only entitle HERZOG, but also its licensor to enforce the claims and rights arising therefrom in his own name.

3. Claims for defects

- 3.1. Subject to any special provisions in accordance with Section 4, the software supplied is free from material defects if it fulfills the functions that are contained in the program description, which is valid at the time the contract is concluded or that have been separately agreed. HERZOG does not guarantee that the functions of the program correspond to the requirements of the user. The prerequisite for liability for defects is the reproducibility of a defect. The user has to describe it sufficiently.
- 3.2. A material defect does not exist if it does not appear in the version of the software last made available to the user and if its use is reasonable for the user.
- 3.3. If the software is defective, HERZOG will, at its option, either remedy the defect by repairing it or delivering defect-free software (supplementary performance). HERZOG is entitled to remedy defects by providing a new copy, an update or a new program version. This does not result in an obligation to provide new program versions or updates. Regular maintenance requires a separate agreement. Alternatively, HERZOG is entitled to provide a hotfix or a service pack for the software concerned. The user is not entitled to a specific type of removal of defects.

If the user has made permissible individual adjustments to the software within the scope of the license he has acquired, the user is obliged to ensure, at his own risk and expense, before installing upgrades, hotfixes, service packs or new program versions that these individual adaptations of the software are compatible with the upgrade, hotfix, service pack or the new program version. This also applies in the event that HERZOG has made such an individual adjustment within the framework of a service contract.

If a data carrier or documentation supplied is defective, the user can only request that HERZOG replaces it with a defect-free one.

- 3.4. There are no claims for defects:
 - 3.4.1. with only minor deviations from the agreed state
 - 3.4.2. with only an insignificant impairment of usability
 - 3.4.3. in the event of damage resulting from incorrect or negligent handling
 - 3.4.4. in the event of damage caused by special external influences that are not assumed by the contract
 - 3.4.5. for changes or extensions made by the user or third parties and the resulting consequences
 - 3.4.6. from the fact that the software provided is not compatible with the data processing environment used by the user.
- 3.5. Claims must be made immediately, at the latest within 2 weeks after delivery. Defects that could not be discovered within this period even with the most careful inspection must be reported immediately, but no later than 2 weeks after their discovery.
- 3.6. Claims for defects become statute-barred within a period of 12 months from delivery. In the event of injury to life, body or health and an intentional or grossly negligent breach of duty by HERZOG as well as fraudulent concealment of a defect or assuming a quality guarantee, the statutory limitation periods apply.
- 3.7. Apart from that, the following regulations on "liability" apply to compensation claims. Further claims of the user due to defects are excluded.

4. Special provisions for software provided free of charge and for software provided in the source code

Departing from the above provisions of section 3, the following applies to software provided free of charge and to software provided in the source code:

- 4.1. HERZOG does neither guarantee that the software will meet the expectations and requirements of the user, nor that the software will work in combination with hardware or application software provided by third parties. Likewise, HERZOG does not guarantee that the product will function faultlessly and permanently or that defects will be remedied. Furthermore, HERZOG does not guarantee that the product is free from third party rights.
- 4.2. For software provided in the source code it also applies that it is not intended for use in the provided form. The software is rather designed to be adapted and modified by the respective user with regard to their own use. It is up to the user to check the software for applicability and interface compatibility.
- 4.3. The abovementioned section does not apply if HERZOG has fraudulently concealed a material or legal defect.

5. Liability

- 5.1. Liability for software provided free of charge

Due to the free provision of the software, HERZOG and its legal representatives as well as vicarious agents are only liable for compensation for any damage incurred in the event of intentional or grossly negligent misconduct. Claims under the Product Liability Act remain unaffected.
- 5.2. Liability for paid software
 - 5.2.1. Claims for damages by the user are excluded, regardless of the legal basis, in particular due to the breach of obligations from the contractual relationship and from tort.
 - 5.2.2. This does not apply if there is liability as follows:
 - 5.2.2.1. according to the product liability act
 - 5.2.2.2. with intent
 - 5.2.2.3. in the event of gross negligence by owners, legal representatives or chief executives
 - 5.2.2.4. in the case of fraud
 - 5.2.2.5. in the event of non-compliance with an assumed guarantee
 - 5.2.2.6. because of culpable harm to life, body or health
 - 5.2.2.7. due to the culpable violation of essential contractual obligations.

The claim for damages for the breach of essential contractual obligations is limited to the typical, foreseeable damage, unless another of the aforementioned cases exists.

5.2.3. Insofar as HERZOG accepts liability in accordance with the preceding sections, liability for data loss is limited to the typical restoration effort that would have occurred if the user had been at regular risk and making backup copies accordingly.

6. Termination

- 6.1. HERZOG is entitled to terminate the license in writing with a notice period of three (3) months at the end of each calendar year.
- 6.2. In the event of a culpable violation of the provisions of these license conditions, in particular if the user violates the granted scope and content of the right of use, HERZOG is entitled to terminate the contract with immediate effect.
- 6.3. When the license ends, the right to use the software provided expires. The user must return all provided original data carriers, backup copies, software protection keys (dongle) or other copies of the software on separate data carriers together with the provided program documentation to HERZOG and delete the copies of the software installed on his system. Upon request, the complete return or deletion must be confirmed in writing to HERZOG and evidenced in a suitable form.

7. Data collection and use

In some cases, the software offered by HERZOG collects personal data that is collected and processed exclusively for the purpose of registration and to use the functions of the software and / or order processing. Further information can be found in our privacy policy (<https://herzog-online.com/privacy-policy/>).

8. Export control

If the software is subject to an export license in accordance with Annex I of the EC dual use regulation, HERZOG will notify the user of this. The user is responsible for compliance with all applicable national and international regulations of foreign trade law and other applicable export requirements. If the user leaves the software to a third party, the user is responsible for compliance with all applicable national and international regulations of foreign trade law and other applicable export requirements. In this respect, he releases HERZOG from all obligations.

9. Applicable law and place of jurisdiction

These conditions and the contractual relationships between the user and HERZOG are subject to the law of the Federal Republic of Germany, excluding the conflict of laws. The application of the standards of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The exclusive place of jurisdiction is Oldenburg. However, HERZOG also has the right to choose the registered office of the user as place of jurisdiction.

10. Final provisions

- 10.1. In addition to these license conditions, the current version of the HERZOG terms of use applies.
- 10.2. Should a provision in these license conditions be or become ineffective, this shall not affect the effectiveness of all other provisions or agreements.

Oldenburg, July 2020

Appendix I

Supplementary licence conditions

The following supplementary license conditions apply with priority to and in addition to the above listed general license terms with regard to the software products described in more detail below and the affected regulatory areas. Otherwise, the license conditions remain and apply unchanged.

1. Beta versions and release candidates

The following special provisions apply to software products marked as BETA versions or Release Candidates (RC):

Software products marked as BETA versions or release candidates (RC) are expressly provided to the user free of charge as unfinished software versions that are still under development and exclusively for testing and evaluation purposes. Use for other purposes, in particular for productive purposes on production systems or as part of such, is expressly prohibited.

The user is obliged to ensure that the use of BETA versions or release candidates (RC) does not affect any systems that are in any way relevant to the safety of goods or people.

HERZOG expressly points out that the software provided does not contain all the software functions intended for the final version.

Accordingly, the user has no claim that the task set can be solved with the BETA version of the software.

Furthermore there is no guarantee that functionalities contained in the BETA/Release Candidate (RC) version provided will also be contained in a final version.

Accordingly, the user is aware that BETA versions/release candidates (RC) of software are made available completely without properties, without any intended use and without any promises of security. Any information about the software is therefore non-binding, even if marked otherwise. Suitability for normal use and normal properties is also excluded. It follows that there can be no corresponding warranty or guarantee for this software. Moreover it follows that there will be no liability for HERZOG hereof due to a lack of breach of a corresponding obligation.

The use of mentioned software is entirely at the user's own risk and peril.

If a claim is made against HERZOG by a third party because the third party has suffered damage, the user shall indemnify HERZOG in full against all legitimate claims of the third party arising from this claim.

2. HOTFIX versions

HOTFIXES are used to fix individual, specifically named errors, but each is limited to those systems that show the error.

Since HOTIX versions cannot be fully tested due to the urgency, they must always be classified as test versions.

Accordingly, the user is aware that HOTFIX versions are provided completely without properties, without any purpose and without any promises of security. It follows that there can be no corresponding warranty or guarantee for HOTFIX versions.

The use of HOTFIX versions is at the user's own risk.