

## **DigiPara Liftdesigner: End User License Agreement (EULA) / Terms of Service (TOS)**

### **1. Subject of License**

- a) The subject-matter of this Agreement is the granting of a non-transferable, non-exclusive right to use the contractual software “DigiPara Liftdesigner” (hereinafter referred to as “Software”) as well as the respective related documentation for the term of the Agreement. The software is provided, not sold.
- b) These terms of license shall apply accordingly to upgrades and/or updates of the Software.
- c) The rights of use are provided to the user (hereinafter “Licensee”) by DigiPara AG (hereinafter “Licensor”).

### **2. Activation of Software/ Software Protection**

- a) The Software is equipped with software protection and must be activated by means of an activation code so that the Software functions can be used. The activation code will be provided to the Licensee by the Licensor upon payment of the agreed license fee. For the issuance of the activation code the Licensee must provide to the Licensor his/her full name, address, phone number and a valid email address. The Licensor provides a registration form for this purpose.
- b) The Licensee may not provide the registration code to third parties in any way whatsoever either by itself or in combination with the Software.

### **3. Scope of Use**

- a) The scope of the right of use is exclusively subject to the content of this License Agreement.
- b) Accordingly, upon issuance of the registration code the Licensee shall obtain a non-exclusive right to use the Software; this right to use shall comprise the right to use the contractual Software and the documentation in accordance with the terms of this Agreement on the number of computer work spaces agreed pursuant to the underlying offer. Other rights are not granted.
- c) Rights of use and/or exploitation which exceed the contractual use of the licensed subject are not transferred. It is not permitted to change, modify, translate, decompile or disassemble, rent out or lease out the Software in any way or to integrate it into another product.
- d) Any modification, manipulation and/or circumvention of the Software or other licensed material are not permitted. The mandatory rights in accordance with Articles 5 and 6 of EC Directive of 14 May 1991 on the legal protection of computer programs and/or Sect. 69 e of the German Copyright Act (UrhG) remain unaffected.
- e) Use within the meaning of this Agreement is constituted by permanent and/or temporary, complete and/or partial reproduction or copying by means of loading onto the main drive, displaying, running, transferring and/or

saving of the machine-readable Software if this is undertaken for the purpose of processing the respective program functions, of establishing the instructions and data contained in the Software or of observing, analyzing or testing the program functions contained therein. Saving, transferring and displaying the Software on data processing equipment and using printed licensed material to assist in the aforementioned actions also constitutes contractual use.

f) The Licensee is not permitted to grant sublicenses in the Software to third parties.

g) The Licensee undertakes to ensure that everyone using the licensed subject complies with the license terms. Further, the Licensee undertakes not to make accessible the Licensor's programs, whether in original form or in form of complete or partial copies. The Licensee will ensure compliance of its employees and/or vicarious agents with these license terms by means of suitable contractual arrangements with them.

#### **4. Protection of Licensed Material**

a) Subject to the rights of use granted pursuant to §§ 1 and 3, the Licensor reserves all rights in the Software and other licensed material including all copies and partial copies thereof made by the Licensee. The property right of the Licensee in data carriers, data storages and other hardware remains unaffected by this provision.

b) The Licensee undertakes to leave unchanged existent protection notices, if any (e.g. copyright notices or other reservations of rights) and to include them in any copies made by the Licensee.

c) The Licensee undertakes to keep records on copies or partial copies of the Software made and to store the copies and/or partial copies in a safe location. Upon request, the Licensee must provide information about the record keeping and the storage.

d) The Licensee undertakes not to make the licensed material accessible to third parties either in original version or in form of complete or partial copies without express written consent of the Licensor. This also applies in case of a complete or partial sale or dissolution of the business of the Licensee. Employees of the Licensee and other persons are not deemed third parties as long as they are with the Licensee in order to exercise the contractual use of the licensed material on its behalf. Any use of the Software on behalf and for purposes of the Licensee which is undertaken by third parties outside of the business premises of the Licensee (outsourcing) requires the prior written consent of the Licensor.

e) Prior to the destruction, sale or other transfer of data carriers and/or data processing equipment the Licensee is obligated to ensure that any contractual Software/ material stored thereon/therein is completely and non-reproducibly deleted.

f) The Licensee is entitled to use any upgrade of the licensed material in accordance with the terms of this Agreement or to refrain from such use. If the Licensee decides upon such a use it is required to return the previously used version of the licensed material and all copies and partial copies thereof to the Licensor within three months after commencement of the productive use of the upgrade and, if they are saved on data carriers, data storages or other hardware of the Licensee, to completely delete them. The retention of an archive copy requires a written agreement.

## **5. License Fee**

- a) The license fees are stated in the offer as annual fee. The due date is reflected in the offer.
- b) All fees stated in this Agreement including annexes are net amounts and do not include the respective applicable legal VAT.

## **6. Warranty/ Exclusion of Liability/ Non-binding Work Result**

- a) The Software has been developed according to state of the art technology and is intended to provide the core functionalities contained in the product description. Special features within the meaning of the German Civil Code are not guaranteed for the Software/ documentation.
- b) Should the Software/ documentation materially deviate from the specifications or should the Software/ documentation be deficient for other reasons, the Licensor is obligated to provide secondary performance. Should the Licensor be unable to eliminate the defect by secondary performance within a reasonable grace period or to thus circumvent it, the Licensor will be granted another reasonable period to provide secondary performance. If the Licensor is unable to eliminate the defect within the second grace period, as well, the Licensee may request a reduction of the fees. If the use of the contractual Software is permanently completely impossible due to a defect of the contractual material the Licensee may terminate the Agreement without adhering to a notice period.
- c) The warranty period shall expire 12 months after delivery of the Software. Any arising defects must be reported by the Licensee immediately after their discovery; this report must be accompanied by a specific description of the defect. Upon request, the Licensee shall provide to the Licensor a reasonable amount of documents and information which the latter requires to analyze and eliminate the defect.
- d) The warranty does not include defects which are caused by a deviation from the usage conditions intended for the Software. Warranty claims are further excluded in case of modified or reworked versions of the Software unless it is demonstrated that the existing faults are not related to the modifications or reworks in any way. This does not apply if the Licensor undertook the modifications or reworks.
- e) Should it turn out during the repair works that any occurring malfunctions are not included in the warranty obligation – in particular in case of misuse or a hardware fault – the Licensor is entitled to a fee for the efforts spent; such fee shall be calculated according to the Licensor's current price list.
- f) To the extent claims because of absence of guaranteed features are not affected, damage claims exist only in case of willful intent and gross negligence or in case of a breach of material contractual duties.

## **7. Third Party Intellectual Property Rights**

- a) The Licensor guarantees that the licensed Software is not subject to third party intellectual property rights which exclude or limit a use in accordance with this Agreement.
- b) The Licensor will protect the Licensee against all third party claims which are based on the infringement of an industrial property right or copy right by the licensed material used in accordance with this Agreement. The Licensor shall compensate the Licensee for all costs and damage payments to which the Licensee is subjected by a court provided that the Licensee immediately informed the Licensor of such claims in writing and provided that all defensive measures and settlement negotiations remain reserved to the Licensor.
- c) If claims pursuant to paragraph 1 are asserted against the Licensee, the Licensor may modify or replace the licensed Software at its expense in a scope reasonable taking into account the Licensee's interests. If this is not possible, the Licensee may terminate the license for the affected program without adhering to a notice period; in this case, the Licensor is liable to the Licensee for the damage incurred by the Licensee because of the termination.

### **8. Contractual Penalty**

Should the Licensee transfer the Software to third parties in violation of the terms of this Agreement or should the Licensee use the Software in a way exceeding the contractual license pursuant to 3b), a contractual penalty in the amount of EUR 10,000.00 is deemed agreed for every infringement event. The assertion of further damage claims remains unaffected.

### **9. Liability**

- a) The Software is merely a tool for the design of elevator installations in the professional area. The work results of the Software constitute merely non-binding planning suggestions which always need to be reviewed for plausibility and correctness by an architect or construction engineer qualified for elevator design. The Licensor does not assume any liability for the substantive correctness of the planning results. Insofar, any liability for damages which are caused by the use of the Software's work results is excluded. The Licensee as user of the Software assumes the sole responsibility for the implementation of the Software's work results.
- b) Each party is liable for damages attributable to it up to an aggregate amount of twice the contractually agreed annual fee (net).
- c) The Licensor does not assume any liability for damages or consequential damages of the Licensee or third parties as a result of lost data, incorrect data entries or the non-availability of the contractual Software due to an outage of the computer system, the programs, the lines or the technical equipment unless the Licensor breaches contractual duties willfully or with gross negligence. In order to mitigate damages the Licensee is required to regularly back up its data.
- d) The limitations of liability in this Agreement do not apply to damages which are caused by gross negligence or willful intent of the Licensor, for damages due to injury to life, body or health and to a liability of the Licensor for the infringement of third party copy rights by the licensed material used in accordance with the terms of this Agreement and to claims based on the German Product Liability Act.

## **10. Duties of the Licensee**

The Licensee is obligated to ensure that its employees and third parties whom it retains to process orders comply with the Software license terms. The Licensee is liable in case of infringements of the license terms by any person used by the Licensee to implement the Agreement or to use the Software/ the material.

## **11. Term of Agreement**

a) This Agreement commences upon activation of the Software. The term of the Agreement is stated in the underlying offer.

b) The Licensor reserves the right to terminate the license agreement without adhering to a notice period if the Licensee is in arrears with paying the licensee fee for more than 4 weeks.

c) The right to terminate without notice period for important cause remains unaffected. An important cause exists if there are facts which make it unreasonable for the terminating party to continue the Agreement any longer, taking into account all circumstances of the individual case and considering the interests of all parties. An important cause exists in particular if

- an insolvency proceeding is opened against the estate of a party or if a respective application is denied due to lack of assets or if an application was filed to open insolvency proceedings and more than three months have passed since the application and if the contractual performance has been suspended;
- if the other party has been deleted from the commercial register due to bankruptcy and if there is no legal successor of this party;
- if the other party permanently and materially breaches its main contractual duties under this Agreement despite the principally necessary written warning;
- if a violation of the provisions pursuant to § 3 “Scope of Use” and § 4 “Protection of the Licensed Material” occurs.

d) Upon termination of the Agreement the Licensee is obligated to return to the Licensor the original as well as all copies and partial copies of the Software. In case of Software recorded on machine-readable recording carriers of the Licensee, the complete deletion of the records takes the place of the return.

## **12. Data Protection**

The Licensor collects, processes and uses personal data solely to the extent this is required for the formation, substantive design and modification of the contractual relationship established with the Licensee. Personal data on the use of the contractual services is only collected by the Licensor in order to enable the use of these services. The

data of the Licensee is not transferred to third parties. Upon termination of the Agreement, the data of the Licensee shall be deleted unless it has expressly consented to a further processing and use of the data. In this case, the stored data may be requested by the Licensee from the Licensor, and the Licensee may have it modified or deleted by the Licensor. The Licensee may revoke its consent at any time.

### **13. Miscellaneous**

- a) This Agreement is subject to the laws of the Federal Republic of Germany under exclusion of UN Sales Law.
- b) The venue applicable to merchants, legal persons of public law is Cologne, Germany.
- c) The invalidity of individual provisions of this Agreement does not affect the validity of the remaining provisions. The parties undertake to replace any invalid provisions with a valid agreement which economically most closely resembles the invalid provision.

Stand August 2017