



MORE LIGHT

## JENOPTIK

# General Terms and Conditions for the Sale and Use of JENOPTIK Software (EULA)

### 1. General provisions

- 1.1 These general terms and conditions for the sale and use of JENOPTIK software referred to herein as "EULA" shall apply whenever we have referred to it prior to the conclusion of a PURCHASE CONTRACT.
- 1.2 These EULA shall apply in addition to the PURCHASE CONTRACT and JENOPTIK's general terms and conditions of sale (GTCS). In case of contradictions regarding the sale and use of SOFTWARE, the provisions of these EULA shall prevail over the GTCS provided that Section 6.11 and Section 11 of GTCS shall not apply whenever these EULA are applicable.
- 1.3 Any change to these EULA including this provision requires our consent in the form of text (§ 126 b BGB) or in written form (§ 126 BGB).
- 1.4 These EULA shall only apply if the purchaser is an entrepreneur, a legal person under public law or a special fund under public law. The same applies to purchasers engaging in business activities abroad that are comparable to those of a domestic entrepreneur and to foreign institutions comparable to domestic legal persons under public law or a domestic fund under public law. An entrepreneur is a natural or a legal person or a partnership having legal capacity and acting when concluding a legal transaction in the performance of its business or self-employed vocational activity.
- 1.5 These EULA shall apply from August 1st, 2020.

### 2. Definitions

- 2.1 When used in these EULA in capitalized form, the terms set forth below shall have the following meaning.
- 2.2 "**HARDWARE**" means any hardware delivered by JENOPTIK to its purchaser pursuant to a PURCHASE CONTRACT
- 2.3 "**PATCH**" means an amendment or change to a SOFTWARE provided by JENOPTIK after delivery of the SOFTWARE and intended for the correction of functional problems.
- 2.4 "**PURCHASE CONTRACT**" means the purchase contract between JENOPTIK and its purchaser as concluded pursuant to Section 2. of the GTCS.
- 2.5 "**SOFTWARE**" means any software, which is delivered by JENOPTIK or is implemented by JENOPTIK in HARDWARE delivered by JENOPTIK or delivered by JENOPTIK for a specific HARDWARE delivered by JENOPTIK, with pertaining documentation (in electronic format or hardcopy version), including software options and software modules, which (a) is delivered on a data storage or (b) was factory-installed by JENOPTIK on the HARDWARE or (c) can be downloaded in online mode after prior approval of JENOPTIK, as may be appropriate from case to case.
- 2.6 "**SPECIFICATION**" means the description of the functionality of SOFTWARE provided by JENOPTIK in electronic format or hardcopy version.
- 2.7 "**THIRD PARTY SOFTWARE**" means a SOFTWARE which is designated by JENOPTIK as THIRD PARTY SOFTWARE.
- 2.8 "**UPDATE**" means an amendment or change to a SOFTWARE provided by JENOPTIK after delivery of the SOFTWARE and intended for the improvement or enhancement of its functions.
- 2.9 "**UPGRADE**" means an amendment or change to a SOFTWARE or a new version of a SOFTWARE provided by JENOPTIK after delivery of the SOFTWARE and intended for extension of existing functions or amendment of further functions.

### 3. Subject matter

- 3.1 JENOPTIK sells and delivers to the purchaser the SOFTWARE designated in the PURCHASE CONTRACT.
- 3.2 The Sale and delivery of the SOFTWARE only refer to the object code of the SOFTWARE and the delivered storage media (if any).
- 3.3 JENOPTIK does not grant any rights with regard to the source code of the SOFTWARE.
- 3.4 To the extent JENOPTIK delivers THIRD PARTY SOFTWARE, the terms applicable to the THIRD PARTY SOFTWARE shall prevail over these EULA provided that JENOPTIK has notified the purchaser on such other terms in the PURCHASE CONTRACT, the SPECIFICATION or any other written or electronic documentation related to the SOFTWARE.

### 4. Right to Use

- 4.1 Upon payment of the price agreed in the PURCHASE CONTRACT JENOPTIK grants to the purchaser the following non-exclusive rights to use the SOFTWARE:
  - 4.1.1 If the SOFTWARE was factory-installed by JENOPTIK on the HARDWARE or a device used in combination with the HARDWARE, the purchaser is entitled to run and execute the SOFTWARE on such HARDWARE or device for the purposes described in the SPECIFICATION.
  - 4.1.2 If the SOFTWARE was delivered to the purchaser on a data storage other than the HARDWARE or downloaded by the purchaser in online mode for use in combination with a HARDWARE, the purchaser is entitled to install, run and execute the SOFTWARE on such HARDWARE or a device used in combination with such HARDWARE for the purposes described in the SPECIFICATION.
  - 4.1.3 If the SOFTWARE was delivered on a data storage other than a HARDWARE or downloaded in online mode for a use other than in combination with a HARDWARE, the purchaser is entitled to install the SOFTWARE on one device or any other number of devices as specified in the PURCHASE CONTRACT in order to run and execute the SOFTWARE on such device(s) for the purposes described in the SPECIFICATION.
  - 4.1.4 If the PURCHASE CONTRACT specifies a certain number of named or concurrent users of the SOFTWARE, the aforesaid rights to use the SOFTWARE are limited to the specified number of named or concurrent users. JENOPTIK is entitled to measure the number of users with special tools included in the SOFTWARE provided such tools are clearly designated in the SPECIFICATION.
  - 4.1.5 If the purchaser is entitled to install the SOFTWARE on a device other than a HARDWARE, the purchaser may re-install, run and execute the SOFTWARE on a further device after the purchaser has deleted the SOFTWARE on the device on which the SOFTWARE had been installed previously. This further device must be suitable for the purposes described in the SPECIFICATION.
  - 4.1.6 If the SOFTWARE was delivered on a data storage other than a HARDWARE or downloaded in online mode, the purchaser is entitled to make per each delivered data storage or online download one (1) backup copy of the SOFTWARE for the sole purpose of backup. Such backup may only be used to restore the SOFTWARE in the event the data storage on which the SOFTWARE was delivered or downloaded was damaged or destroyed. The purchaser is obliged to clearly mark any backup copy as "backup copy" with a clear reference to the name of the SOFTWARE and JENOPTIK as its supplier and copyright owner.
- 4.2 For the avoidance of doubt, the purchaser is not entitled to
  - 4.2.1 use the SOFTWARE, or any part thereof, beyond the use permitted by the granted rights,
  - 4.2.2 lease or lend the SOFTWARE to third parties,

- 4.2.3 alter the SOFTWARE, or any part thereof, in any way (including, without limitation, changes by way of modification, adaptation, translation),
- 4.2.4 decompile the SOFTWARE, or any part thereof,
- 4.2.5 reverse-engineer or disassemble the SOFTWARE, or any part thereof, or otherwise translate such SOFTWARE into any other format,
- 4.2.6 copy the SOFTWARE, or any part thereof, unless explicitly permitted by JENOPTIK.
- 4.3 The rights of the purchaser pursuant to Section 69d subpar. 2 and 3 and 69e German Copyright Act remain unaffected. On purchaser's request JENOPTIK will provide interface information required to achieve interoperability (Section 69e German Copyright Act) for a reasonable charge.
- 4.4 The purchaser is entitled to permanently transfer to a third party its rights to use the SOFTWARE by permanently transferring the HARDWARE or data storage or device (as the case may be), on which the SOFTWARE was delivered by JENOPTIK or lawfully downloaded and/or installed by the purchaser, together with a copy of this EULA. After such transfer, the purchaser is obliged to cease using the SOFTWARE and to delete any backup copy of the SOFTWARE unless purchaser is required by law to preserve such backup copy for a longer period.

## **5. Warranty Terms**

- 5.1 JENOPTIK warrants that the SOFTWARE complies with the SPECIFICATION, provided that the SOFTWARE will be used in accordance with the SPECIFICATION and the hardware and software environment stated therein. JENOPTIK does not grant any further warranty other than the express warranty stated before. In particular, JENOPTIK does not warrant any special performance or fitness for purpose of the SOFTWARE except the performance and purposes described in the SPECIFICATION.
- 5.2 In the event of a defect, JENOPTIK is entitled to comply with its defect remedy obligation by delivering to the purchaser at JENOPTIK's own discretion PATCHES, UPDATES or UPGRADES to be installed by the purchaser on JENOPTIK's instruction.
- 5.3 The purchaser is not entitled to withdraw from the PURCHASE CONTRACT or to claim damage compensation instead of full performance in the event of minor defects of the SOFTWARE. A defect of the SOFTWARE is minor if the defect does not prevent or significantly impede the use of the SOFTWARE.
- 5.4 The warranty period is 12 months from the date of delivery.

## **6. Patches, Updates & Upgrades**

- 6.1 JENOPTIK is entitled, though not obliged, to provide PATCHES, UPDATES or UPGRADES for the SOFTWARE.
- 6.2 The provisions of these EULA related to SOFTWARE apply to any PATCH, UPDATE or UPGRADE accordingly.

## **7. Audit and inspection rights**

The purchaser is obliged to enable JENOPTIK, at JENOPTIK's request, to verify the purchaser's compliance with these EULA, in particular with regard to the exercise of the granted rights to use the SOFTWARE. For this purpose, purchaser shall provide information to JENOPTIK and grant access to relevant documents and records. Purchaser shall further permit an inspection of the hardware and software environment used in combination with the SOFTWARE by JENOPTIK or an auditing company named by JENOPTIK and acceptable to purchaser. JENOPTIK or the auditing company named by JENOPTIK and acceptable to purchaser may carry out the inspection at the purchaser's premises during the purchaser's regular business hours after prior notice of at least 10 days. JENOPTIK will ensure that the business operations of the purchaser are disturbed as little as possible by the inspection.

## **8. Applicable law, venue**

- 8.1 All legal relations between JENOPTIK and the purchaser shall exclusively be governed by German law to the exclusion of UN sales law.
- 8.2 Exclusive venue for all disputes (including cross border transactions) directly or indirectly arising from the legal relationship between us and the purchaser is the seat of JENOPTIK's head office. However, JENOPTIK is entitled to sue the purchaser also before any court of the purchaser's general venue.