

License Agreement (January 2018)

The conditions below shall apply to all software products provided by NUMERIK JENA GmbH ("NUMERIK JENA") on a temporary or permanent basis (free or paid) for which use is permitted, irrespective of the delivery of associated hardware, including any program descriptions, program libraries, sample files, operating instructions as well as any other accompanying documentation, irrespective of whether the software products are made available for download or are activated or are supplied by means of a data medium (hereinafter referred to as "software"). For software, updates, upgrades, and the like that refer to software that was made available for use, in its original version, as part of or in conjunction with the delivery of the associated hardware, only the NUMERIK JENA General Conditions of Sale are applicable.

Software in the sense of this License Agreement further comprises software for interfaces, databases, individual software code lines, code snippets, firmware, beta versions, release candidates (RC), cycles, hotfix versions, and sample NC programs. The provisions in this License Agreement shall apply to firmware, but firmware may only be used or passed on to third parties together with the associated hardware for which it has been released.

The conditions below shall apply exclusively and for any type of use of the software provided by NUMERIK JENA. A user is any legal entity or natural person that uses the software to practice professional or other activities on a commercial or freelance basis. The software is not intended for private use. Any conditions stipulated by the user shall not become terms of the contract, even if they are not expressly excluded by NUMERIK JENA.

Subject to any deviating provisions made in the conditions herein, the download, the installation, and any other use of the software shall be considered as the user's consent to these conditions.

1. Rights of use

1.1 The software is made available to the user for the intended use either on a data medium or for download. The software is exclusively supplied in machine-readable form (machine code). The user is not entitled to claim supply of the source code.

1.2 The system prerequisites required for the use of the software are communicated to the user; compliance with these system prerequisites is the sole responsibility of the user. Since it is not possible to test the functionality of the respective NUMERIK JENA software under all conceivable conditions of use, the user shall further be responsible to test the software the user intends to use within the scope of his/her own production environment in a secured and shielded test environment.

1.3 The software is protected by copyright. Subject to the payment of corresponding license fees - if applicable - and if not specified otherwise in the Supplemental License Terms according to Appendix I, NUMERIK JENA grants the user the non-exclusive, non-transferable right to use the software for the designated purpose as intended by NUMERIK JENA and for which it was made available by NUMERIK JENA.

If the software is legitimately passed on to a third party, the user shall guarantee that the purchaser of the software acknowledges the conditions herein and assumes all user rights and duties resulting therefrom. If not agreed otherwise (e.g. as specified in the following sections), the user shall be entitled to use the software on each hardware platform available to the user. The user shall be entitled to simultaneously store, hold available, or utilize the software - e.g. for the use by multiple corporate employees. The software provided may also be used within a company network.

If a software product is protected by a dongle (hardware key), SIK (system identification key), or license code, this dongle, SIK, or license code shall represent and limit the right of use of the software. The loss of or damage to a dongle shall be equal to the forfeiture of the right to use the software. In case of loss of a dongle, NUMERIK JENA is not obliged to replace it. In case of damage to a dongle, NUMERIK JENA is only obliged to replace it if this damage was caused by a defect on the dongle not attributable to the user within the period of warranty.

1.4 The user is not authorized - except in cases for which Section 69e of the German Copyright Law shall apply (decompilation) - to modify, to perform reverse engineering on, or to translate the software, to create software derivative works, to disable functions of the software, or to extract any software elements. The user must not remove alphanumeric and other identifiers from the data media and is obliged to transfer them in unchanged form to each backup copy.

Furthermore, the user is not authorized to remove or modify copyright notices or other features used to identify the software and the manufacturer.

1.5 The aforementioned conditions shall also apply to all updates, upgrades, and plug-ins/add-ons for the software that are made available by NUMERIK JENA for download or on data media, provided that these updates, upgrades, and plug-ins/add-ons are not subject of a separate agreement. In this case, solely the provisions applicable to the corresponding update/upgrade or plug-in/add-on shall apply.

1.6 During the term of the license and within one (1) year following its termination or expiration, NUMERIK JENA has the right to verify compliance with the conditions herein by auditing the relevant data (accounts, records, computers, etc.) of the user. The user shall be notified of a planned audit in advance within a reasonable time.

2. Third-party products / Open-source software

2.1 For software for which NUMERIK JENA only owns a derived right of use and that is not open-source software (third-party product), additionally and preferentially the terms of use agreed between NUMERIK JENA and its licensor shall apply, as far as they affect the user (such as an End User License Agreement); NUMERIK JENA shall inform the user about them and shall make them accessible to the user upon request.

2.2 For open-source software, the terms of use that the open-source software is subject to shall take precedence over the provisions of this section. NUMERIK JENA shall inform the user about the existence of the terms of use related to open-source software made available and shall make the terms of use accessible to the user or hand them over to the user where this is stipulated in the terms of use.

2.3 Any infringement on the terms of use for third-party products by the user not only entitles NUMERIK JENA, but also its licensor to enforce claims arising therefrom on their own behalf.

3. Claims for defects

3.1 Subject to any particular provisions according to Number 4, the supplied software shall be deemed free from material defects if it fulfills the functions that are specified in the program description valid at the time of contract conclusion or agreed separately. NUMERIK JENA does not guarantee that the program functions comply with the user's requirements.

Liability for defects can only be accepted if the defect is reproducible. The user must provide a sufficient description of the defect.

3.2 However, a material defect does not exist if the error does not appear in the latest version of the software provided and the use of this version is acceptable for the user.

3.3 If the software is defective, NUMERIK JENA shall remedy the defect at its own discretion either by means of subsequent improvement or by supply of error-free software (subsequent performance). NUMERIK JENA is entitled to remedy defects by providing a new copy, an update, or a new program version.

This does not imply an obligation to provide new program versions or updates; periodic maintenance would need to be specified in a separate agreement. NUMERIK JENA is alternatively entitled to provide a hotfix or a service pack for the software affected. The user is not entitled to claim a particular type of remedy of defects. If the user customized the software in a manner permissible within the scope of the license purchased, the user is obliged to make sure, at the user's own risk and expense, that these customizations of the software are compatible with the upgrade, hotfix, service pack, or the new program version, before installing upgrades, hotfixes, service packs, or new program versions.

This also shall apply if NUMERIK JENA provided such a customization within the scope of a service contract.

If a supplied data medium or a documentation is defective, the user may merely claim that NUMERIK JENA replaces the defective data medium or documentation with one that is free from defects.

3.4 The user is not entitled to make claims based on defects in the following situations:

- a) if there is only an insignificant deviation from the agreed quality
- b) if the usability is only affected insignificantly
- c) for damages that are caused by inappropriate or negligent handling
- d) for damages arising from particular outside influences that are not assumed in the contract
- e) for modifications or extensions performed by the user or third parties and the consequences arising therefrom
- f) with respect to the assumption that the software provided is compatible with the data processing environment utilized by the user.

3.5 Notices of defects must be given immediately or at the latest two (2) weeks after delivery. Defects that could not be detected within this period, even by very close examination, must be reported immediately or at the latest two (2) weeks after their detection.

3.6 Claims of the user based on defects shall expire twelve (12) months after delivery. In the case of injury to life, body or health and deliberate or grossly negligent breach of duty by NUMERIK JENA as well as in the case of fraudulent concealment of a defect or if a guarantee of quality has been assumed, the statutory periods of limitation shall apply.

3.7 Otherwise, the regulations below with respect to "Liability" shall apply for claims for damages. Further claims of the user with respect to defects shall be excluded.

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

By way of derogation from the above provisions of Number 3, the following shall apply with respect to software provided free of charge as well as to software provided in the form of source code: NUMERIK JENA neither guarantees that the software meets the expectations and requirements of the user nor that the software is operational in combination with hardware or user software supplied by a third party. Likewise, NUMERIK JENA does not guarantee error-free and permanent operability of the product or the remedy of defects. Furthermore, NUMERIK JENA does not guarantee that the product is free from third-party rights.

Software provided in the form of source code is not intended for use in the form in which it has been provided. The software is rather designed to be adapted and modified by the user for the user's own use. Here, it is up to the user to check the software for applicability and interface compatibility. The above section shall not apply if and to the extent that NUMERIK JENA fraudulently concealed a material defect or a defect of title.

5. Liability / Warranty

5.1 Liability for software provided free of charge

Due to the free provision of the software, the liability of NUMERIK JENA and its legal representatives and vicarious agents for indemnification of any damage incurred is limited to deliberate or grossly negligent erratic behavior. Any claims according to the law on product liability remain unaffected.

5.2 Liability for purchased software

5.2.1 Claims for damages made by the user, on whatever legal ground, in particular with respect to a breach of duties resulting from contractual obligations or from tort, are excluded.

5.2.2 This shall not apply if the following liability conditions apply:

- a) product liability act is applicable
- b) in the case of intent
- c) in the case of gross negligence on the part of owners, legal representatives, or senior managers
- d) in the case of malice
- e) in the case of non-compliance with an assumed warranty
- f) due to intentional or negligent injury to life, body, or health
- g) due to intentional or negligent violation of material contractual obligations.

However, the claim for damages resulting from the breach of primary contractual obligations is limited to damage that is typical for the contract and foreseeable, unless one of the other cases mentioned above applies.

5.2.3 If liability on the part of NUMERIK JENA is accepted according to the above sections, the liability for data loss is limited to the typical data restoration effort that would have been necessary if the user had performed periodical data backups reflecting the actual risk.

6. Notice of termination

6.1 NUMERIK JENA has the right to terminate the license in writing with three (3) month's notice to the end of each calendar year.

6.2 In the event of intentional or negligent violation of the provisions of this License Agreement, in particular in the event of a violation of the granted scope and content of the right of use by the user, NUMERIK JENA has the right of termination without notice.

6.3 Upon termination of this license, the right to use the provided software shall expire. The user is obliged to return all original data media, backups, dongles (hardware keys), or other copies of the software stored on separate data media, along with the provided program documentation to NUMERIK JENA and to delete the software copies installed on the user's system. Upon request, the user shall confirm in writing and furnish proof in suitable form to NUMERIK JENA that all requested items have been duly returned and all requested data has been duly deleted.

7. Data acquisition and use of data

The software offered by NUMERIK JENA gathers certain pieces of personal information that is exclusively collected and processed for the purpose of login and use of the software functions and/or for the purpose of order processing. When registering with the HESIS including Filebase area, the user agrees that NUMERIK JENA may collect, process, and use the contact data specified in the context of login as well as the personal user-related data entered optionally in connection with the use of the available services, as far as this is necessary to provide the contractual service. For more information, refer to the NUMERIK JENA Data Protection statement.

8. Export control

In cases where the software is subject to an export license according to Appendix I of the EU Dual-Use Regulation, NUMERIK JENA will inform the user of this fact. The user is responsible for complying with any applicable national and international regulations set forth in the foreign trade legislation as well as other applicable export requirements. If the user gives the software away to a third party, the user is responsible for complying with any applicable national and international regulations set forth in the foreign trade legislation as well as other applicable export requirements. The user thus releases NUMERIK JENA from all corresponding obligations.

9. Applicable law and place of jurisdiction

These terms and the contractual relations between the user and NUMERIK JENA are subject to German law, excluding conflicts of laws provisions. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The sole place of jurisdiction is Jena, Germany. However, NUMERIK JENA also has the right to choose the user's place of business.

10. Final provisions

Further to this License Agreement, the NUMERIK JENA Terms of Use in their respectively current edition shall apply. Should any provision in this License Agreement be or become invalid, this shall not affect the validity of the remaining provisions or agreements.

Appendix I

Supplemental License Terms

The Supplemental License Terms below shall take precedence over and supplement the provisions of the present License Agreement with respect to the software products described in more detail below and the affected areas of regulation. Otherwise, the terms of the License Agreement shall apply in unchanged form.

1. RemoTools SDK

By way of derogation from Number 1.3 of the License Agreement, the customer is entitled to integrate the function library into one or more software products created by the user and to use it exclusively in this form and to distribute it exclusively for the use of the application created by the user. Passing on the SDK, or merely the function library, for the purpose of creating further software, even if only on behalf of a service provider, is not permitted.

2. Beta versions and release candidates

For software products designated as beta versions or release candidates (RC), the following particular provisions shall apply:

Software products designated as beta versions or release candidates (RC) are provided to the user free of charge, expressly as unfinished software versions still under development, and exclusively for trial and evaluation purposes. Any use for other purposes, in particular for productive purposes in or as part of production systems is expressly prohibited.

The user is obliged to make sure that, by using beta versions / release candidates (RC), no systems will be affected that are relevant to the safety of persons or goods in any form whatsoever. NUMERIK JENA expressly points out that the software provided does not contain all software functions intended for the final version. Accordingly, the user may not claim that the requested task can be solved with the beta version of the software.

Furthermore, it is not guaranteed that functionalities contained in the beta version / RC will also be part of a later final version. Accordingly, the user is aware of the fact that software beta versions / RCs are provided without any warranty of quality, without any intended use whatsoever, and without any promises related to safety / reliability. Therefore, any information about the software shall not be binding, even if indicated otherwise. In addition, any suitability for common use or usual quality are ruled out.

This means that no corresponding warranty or guarantee for this software can be granted. This further means that any liability by NUMERIK JENA to this effect in case of damage will already be excluded due to the lack of any breach of a corresponding obligation. The aforementioned software is used exclusively at the user's own risk. If NUMERIK JENA is held liable by a third party because the third party has suffered damage, the user shall release NUMERIK JENA from all justified claims resulting from this liability.

3. Software for the EnDat interface

The user is granted permission to use the provided software for the EnDat interface in subsequent electronics for position measuring devices. "Position measuring devices" in the sense stated above are products that supply signals regarding the actual position values of moving machine components and possibly supply other signals which support generation of the position. "Subsequent electronics" in the sense stated above are products to which position measuring devices are connected, and which process the signals provided by the position measuring devices for purposes of open-loop control and/or closed-loop control.

The user is not granted permission to use the provided software for the EnDat interface directly in position measuring devices and/or to install it in electronics integrated in position measuring devices. In this matter, using the associated documentation for the above-stated purposes is also prohibited.

Furthermore, the user is not granted permission to transfer the right of use of the provided software or the associated documentation to any third parties or to grant any sublicenses; in particular, the user is expressly prohibited from giving the VHDL source code or the associated documentation to third parties.

4. Hotfix versions

Hotfixes are intended to fix individual and specific errors; however, in each case this is restricted to only those systems showing such errors.

Since matters of urgency preclude hotfix versions from being thoroughly tested, they are always to be categorized as test versions. Accordingly, the user is aware of the fact that hotfix versions are provided without any warranty of quality, without any intended use whatsoever, and without any promises related to safety or reliability. This means that no corresponding warranty or guarantee can be granted for these hotfix versions.

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