General Terms and Conditions for Access and Use of the Members' Area
www.tmf.iwm.fraunhofer.de
Version September 2022

The following English General Terms and Conditions serve merely as a means of translation support. The German language version of this General Terms and Conditions shall be legally binding in all respects and shall pre-vail in case of any inconsistencies.

1. Scope of application

1.1. The Fraunhofer Institute for Mechanics of Materials IWM (hereinafter: "Fraunhofer IWM") allows interested parties (hereinafter: "Users") to use compiled material subroutines with associated material model parameter sets for various metallic materials, as well as training videos and documents on the theoretical background of the models and their applications within the framework of the finite element programs ABAQUS and ANSYS (hereinafter: "ThoMat tools"). For this purpose, Fraunhofer IWM provides Users with access to the member area of the Fraunhofer ownCloud at www.tmf.iwm.fraunhofer.de. This offer is intended exclusively for natural, legal persons and personal societies with legal capacity who, when concluding a legal transaction, act in the role of their commercial or independent professional activity (contractor within the meaning of § 14 of the German Civil Code (BGB)).

1.2. Fraunhofer IWM is a legally dependent unit of Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., Hansastraße 27c, 80686 München, Germany, register court: local court München, association register number VR 4461(hereinafter: "Fraunhofer"). All rights and obligations regarding the use of ThoMat tools arising out of and in connection with the contractual relationship therefore are in reference to Fraunhofer.

1.3. The following terms and conditions shall apply to the contract regarding the use of the ThoMat tools. Any divergent, conflicting or supplementary conditions formulated by the User shall not constitute an inherent part of these terms and conditions unless Fraunhofer IWM provides its express consent thereto.

The Fraunhofer Institute for Mechanics of Materials IWM is the contact and correspondence address for all questions relating to the use of the ThoMat tools and access to the Fraunhofer ownCloud:
Dr.-Ing. Mario Metzger
Wöhlerstraße 11
79108 Freiburg

Customer service can be reached at:
Phone +49 761 5142-470
Fax +49 761 5142-510
Email: mario.metzger@iwm.fraunhofer.de

2. Subject matter of the contract

2.1. The subject matter of this contract is the use of the ThoMat tools including access to the member area of Fraunhofer ownCloud at www.tmf.iwm.fraunhofer.de which are provided for these purposes.

2.2. The use of the source codes of the material subroutines is not the subject matter of this contract. The provision of a user environment for the use of ThoMat tools is also not the subject matter of this contract. The User is therefore responsible for procuring and installing hardware and software at their own expense and being for the installation thereof (e.g. ABAQUS and ANSYS), which may be necessary in order to use the ThoMat tools within their network.

3. Conclusion of contract; text of contract; language of contract

3.1. The dispatch of information on the ThoMat tools by Fraunhofer IWM does not constitute a legally binding offer to enter into a contract for the use of the ThoMat tools. Rather, it is a non-binding invitation to place an order. Orders placed by the User are accepted via telephone or email. The contract begins as soon as the Fraunhofer IWM confirms the order via email and provides the User with access data to the member area of the Fraunhofer ownCloud.

3.2. The contract language is German. The text of the contract shall be stored on Fraunhofer's internal systems. After placing an order, the user shall receive a confirmation via email with reference to his order data and these General Terms and Conditions. The General Terms and Conditions may also be viewed at any time on the Fraunhofer IWM website at https://www.tmf.iwm.fraunhofer.de/content/dam/iwm/tmf/documents/AGB_Plattform TMF.pdf. Once the contract has concluded, the order data is no longer accessible via the Internet.

4. Availability

The member area for www.tmf.iwm.fraunhofer.de is generally accessible 24 hours a day. However, the Fraunhofer IWM cannot guarantee the accessibility of its service and is furthermore not liable for any interferences on the internet that may occur.

5. User fee; Payment; Increase of User fee

5.1. The User is obliged to pay Fraunhofer an annual user fee for using the ThoMat tools. The annual user fee shall amount to € 9,000.00 for a network license as defined in Section 6.2. In the first year of the contract, the user fee shall be reduced once by € 3,000.00 to € 6,000.00. All prices are net and exclude the statutory VAT applicable at the time the order is placed.

5.2. The user fee shall be charged to the User in advance at the beginning of each contractual year. Unless special payment terms have been agreed upon, invoices from Fraunhofer IWM shall be due for payment within 14 days of receipt of the invoice. Payments shall be made in full to the Fraunhofer account specified in the invoice, including indication of the invoice number.

5.3. In the event that Fraunhofer increases its user fees due to cost increases incurred by Fraunhofer with regard to personnel costs, procurement and maintenance costs for the IT infrastructure, and/or costs of purchasing or creating content for the Fraunhofer ownCloud in general, Fraunhofer shall be entitled to charge the increased user fee to the individual User no earlier than 12 months after the start of the contract. Fraunhofer shall notify the User of the price increase no later than 30 calendar days before it is implemented. In the event of a price increase of more than 5%, the User shall have the right to extraordinary termination without regard to term of contract, which must be enforced in text form (e.g. email, fax, letter) within 14 days of notification of the price increase and which shall terminate the contractual relationship at the time the price increase takes effect. Fraunhofer shall only be entitled to further price increases when at least 12 months have passed since the last price increase.

6. Rights of Use

6.1. Fraunhofer grants the User a non-exclusive, non-transferable and non-licensable right to use the ThoMat tools for the User's own use within the scope of his own business operations for the duration of the contract. This includes, subject to other agreements of the parties, the permanent or temporary, complete or partial duplication by loading, displaying, running, transferring and/or storing the ThoMat tools for the purpose of their execution, including observation, examination and/or testing on a single server of the User as well as the making of necessary backup copies. In particular, the User is not entitled to make the ThoMat tools available for use by third parties, whether by reproduction and/or distribution and/or making them publicly available on the Internet, within intranets, in extranets or in any other way. The User may not remove copyrights, trademarks and other reservations of rights.

6.2. The purchase of a network license entitles the User to use the ThoMat tools within the appointed network on the network server and the workstation computers located in the network (clients). Unless the parties have agreed otherwise, the network license includes the use of the ThoMat tools within a legally independent company at one location. Use by affiliates within the meaning of § 15 of the German Stock Corporation Act (Aktiengesetz) is excluded and requires a separate agreement between the parties. If a maximum number of network workstation computers has been agreed upon, use in excess of this number is not permitted.

6.3. Rights to use the source codes of the material subroutines are not subject to the rights of use according to this Section 6, as these are nonproprietary open source software (hereinafter "OSS"). The function of Fraunhofer IWM is limited to informing the user of the best way to obtain the OSS. It is expressly pointed out to the User that the OSS can only be used and edited if the User respects the license conditions, which can be found in the copyright notices in the appropriate source codes. The source codes of all material routines available in the Fraunhofer ownCloud at www.tmf.iwm.fraunhofer.de are licensed exclusively under the GPL v3 (https://www.gnu.org/licenses/gpl-3.0.de.html).

7. Liability

The following provisions shall apply for all damage claims against Fraunhofer in connection with the use of the contractual rights:

7.1. Unlimited liability: Fraunhofer shall be liable without limitation for willful misconduct and according to the provisions of the German Product Liability Act (Produkthaftungsgesetz). Fraunhofer shall be liable without limitation for negligence in the event of damage arising from loss of life, personal injury, or damage to health.

7.2. Apart from that, the following limited liability applies: the liability for negligence shall be limited to the damage that was foreseeable and typically to be expected upon entering into the contract. Fraunhofer shall be liable for slight negligence otherwise only in the case of the breach of a material contractual obligation that must be fulfilled for due implementation of the contract and that the User can reasonably expect to be fulfilled. This liability limitation also applies in favor of Fraunhofer's performing agents (Erfüllungsgehilfen).

8. Duration and termination of the contract

8.1. The term of the contract shall be one year and shall start upon conclusion of the contract pursuant to Section 3.1 sentence 3.

8.2. The term of the contract shall be automatically extended by a further year in each case if the contract is not terminated by one of the parties at least one month prior to the end of the respective contractual year. Terminations are required to be made in writing (either per mail or via email) in order to become effective (§ 126b of the German Civil Code (BGB)).

8.3. The right to extraordinary termination for good cause shall remain unaffected. A good cause for termination exists if the continuation of the contractual relationship until the agreed termination date and/or until the expiry of the notice period is unreasonable, under consideration of all circumstances of the individual case and the mutual interests. In principle, a warning is required before such termination, unless the relationship and trust is so permanently damaged that immediate termination of the contract appears justified. A good cause exists for Fraunhofer in particular if the user
- falls into arrears with due payments despite two reminders; or
- exceeds the rights of use granted in accordance with Section 6.

8.4. Upon termination of this contract, the User is contractually required to suspend all use of the ThoMat tools. In particular, the User shall refrain from any further use of the modifications of the ThoMat tools created by the User. Section 9 shall remain in force even after termination of the contract.

9. Confidentiality

9.1. Both parties agree that ThoMat tools contain information regarding Fraunhofer that is confidential, in particular the material model parameter sets. The User undertakes to keep the information confidential for the duration of this contract and for a period of 10 years after its termination, to use it only within the scope of contractual use and to disclose it only to employees who are also obliged to confidentiality under labor law, insofar as this is required for the application of the contractual use (need-to-know) as

well as to take appropriate measures to prevent third parties from accessing such information.

9.2. The obligations pursuant to Section 9. 1 shall apply only to the extent that the information (i) was not known by or generally accessible to the User or the public before the information was provided, (ii) did not become known by or generally accessible to the public after the information was provided without the User breaching this confidentiality obligation, unless the information (iii) was independently developed by an employee of the User who was not aware of the provided information, and (iv) corresponds to information disclosed or made accessible to the User by a third party, unless to the Users knowledge that the third party's disclosure of this information breaches a confidentiality obligation.

10. Export control provisions

Where fulfilment of contractual obligations requires a permit due to national, European, United States or international foreign trade law regulations, including an embargo (and/or other sanctions), contractual performance will be subject to authorization by the competent authority; in case the authorization is not granted, there shall be no breach of contract or contractual obligation on Fraunhofer's part. Compensation claims due to delay or performance obstacles shall be excluded.

11. Miscellaneous

11.1. Ancillary agreements, alterations and additions are required to be made in writing in order to be valid. The requirement of written form can only be deviated from in writing.

11.2. This contract is governed by the law of the Federal Republic of Germany excluding the provisions of the UN convention on the international sale of goods (CISG).

11.3. The place of performance for services provided by Fraunhofer shall be Freiburg, Germany. The place of performance for payments made by the client shall be Munich, Germany.

11.4. Should one or more provisions of these General Terms and Conditions become fully or partially void then the validity of the remaining provisions shall remain unaffected. The same shall apply in the event that a necessary provision is missing.

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