



EuroSim Standard Terms & Conditions

These EuroSim Standard Terms & Conditions (hereinafter referred to as 'ESTC') do apply to an individual user License Agreement. Each Licensee has to agree and sign an individual License Agreement to obtain the EuroSim Software and a EuroSim License Key.

1. Definitions

EuroSim Software: the software product(s) in whole or in part, as described in the individual License Agreement, including any accompanying documentation, as supplied by the EuroSim Consortium to Licensee subject to the terms and conditions of the ESTC and the License Agreement;

Documentation: the description of the functionality and use of the EuroSim Software provided by the EuroSim Consortium, as specified in the License Agreement, whether or not in machine readable form;

Licensed CPU: a computer system, consisting of a Central Processing Unit and directly connected peripherals as specified in the License Agreement;

License Key: a software key that enables EuroSim Software to run on a licensed CPU for a certain period of time;

License Agreement: the individual software usage agreement on which these standard terms & conditions (ESTC) do apply.

2. License

The EuroSim Consortium grants to Licensee a non-transferable and non-exclusive right to use the EuroSim Software under the conditions and restrictions as set out herein and in the License Agreement.

3. Restriction on use

Licensee shall only use the EuroSim Software, which use includes the execution of the object code, on the licensed CPU(s) of which the Type, the Serial Number(s) and Usage are specified in the License Agreement.

Licensee shall only use the EuroSim Software on another computer system if and as long as a licensed CPU does not function due to defects or maintenance activities. However, this use shall be for a continuous period of 30 days at the maximum and provided that Licensee will notify the EuroSim Consortium in advance of the same in writing.

When the use of the licensed CPU is resumed, the EuroSim Software should immediately be removed from the replacement computer system. The Licensee shall certify that the related licensed EuroSim Software has been removed from the replacement computer system.

4. Copying

Licensee may not copy or otherwise duplicate the EuroSim Software, except as necessary for the use on the licensed CPU(s) and for back-up purposes. The latter is limited to one copy (1) only.

5. Modification - Reverse Engineering

Licensee shall not modify, adapt, translate, disassemble, decompile or otherwise reverse engineer the EuroSim Software.

6. Credits and copyright notices

Licensee shall ensure that all markings on and in the EuroSim Software indicating property right, copyright or any other title, remain thereon and therein and in and on copies (or parts) thereof.

In all advertising, publications, descriptions, packaging, labels or other public notices, in which Licensee makes mention of the use of EuroSim Software, explicit reference shall be made to the rights to use the EuroSim Software, granted by the EuroSim Consortium herein and by means of the License Agreement.

7. Non-disclosure - Transfer

Licensee shall not disclose the EuroSim Software or otherwise make the EuroSim Software available to any third party.

Licensee shall not transfer the EuroSim Software or any data carrier on which it is stored (whether or not as a part of the licensed CPU) to any third party, or grant any third party any (limited) rights to the EuroSim Software.

Licensee shall not disclose any information furnished in confidence to Licensee by the EuroSim Consortium concerning the methods and techniques used by the EuroSim Consortium in the EuroSim Software and Licensee shall on behalf of the EuroSim Consortium impose a similar non-disclosure obligation on all its personnel who are acquainted with said methods and techniques.

8. Ownership

The copyrights and all other intellectual and industrial property rights for the protection of information with respect to the EuroSim Software (including the methods and techniques on which it is based) that have been supplied to Licensee, or that have been reproduced by Licensee and/or merged into Licensee's programs, as well as the appurtenant documentation, shall at all times remain solely and exclusively with the original owner. Nothing herein or in the License Agreement serves to transfer such rights.

Consequently, Licensee may not sell, mortgage, sublet, lend or transfer possession of the EuroSim Software in any (other) way whatsoever.

9. Fee

Upon execution of the License Agreement Licensee shall pay the EuroSim Consortium the Fees Payable stated in the License Agreement. The Fees shall be due within 30 days of receipt of the invoice by Licensee.

10. Warranty

The EuroSim Consortium warrants to Licensee, for a period of 90 days, that the EuroSim Software will perform substantially in accordance with the accompanying Documentation. This warranty period starts on the day of shipment by the EuroSim Consortium of the EuroSim Software, or, if the EuroSim Software is installed by the EuroSim Consortium, starts on the last date of installation by the EuroSim Consortium.

Licensee shall report any defects found in the EuroSim Software in writing and in sufficient detail to indicate the reasons for Licensee's conclusion that the defect is covered by this warranty.

The EuroSim Consortium will use any fair and reasonable effort to remedy any such defects by way of error correction or avoidance action. The EuroSim Consortium's entire liability and Licensee's exclusive remedy under any warranty or legal theory shall be replacement of the Software or return of the price paid. The EuroSim Consortium disclaims all other warranties, either express or implied including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the Software, and the accompanying Documentation. Except for the limited warranty provided above, the Software is provided as is.

11. Maintenance (**OPTIONAL**)

For the duration of the maintenance period as defined in the individual license agreement, Licensee is, against payment of the applicable maintenance fee stated in the individual license agreement, entitled to the following:

- EuroSim Help Desk Support
 - Telephone support during Dutch office hours
 - Initial response to queries submitted via E-mail and fax within one working day
 - Access to a WWW-based SPR database (on request)
- EuroSim maintenance upgrades
 - To receive upgrades to the current functional baseline (e.g. bug fixes)
- Attendance at EuroSim user group meetings



EuroSim Standard Terms & Conditions

12. Liability

The EuroSim Consortium shall have no liability or responsibility to Licensee with respect to any lost revenue, profit or data, or for special, indirect, consequential, incidental or punitive damages whatsoever arising out of, or in connection with the use or inability to use the EuroSim Software. Licensee shall hold the EuroSim Consortium harmless against claims from third parties against who the EuroSim Consortium cannot invoke these terms and conditions, insofar as those claims would not be admissible if those parties were to be bound by the restrictions of the ESTC and the License Agreement.

Should the EuroSim Consortium have liability on the ground of non-performance or inadequate performance of the terms and conditions herein or of the License Agreement or any other grounds, it shall at no time be bound to pay compensation greater than the fee paid by Licensee pursuant to article 9.

13. Seizure

Licensee shall inform the EuroSim Consortium forthwith of any (impending) action for distress, execution or seizure by one of Licensee's creditors and shall take all necessary steps to cause the EuroSim Consortium's right of title to be acknowledged. All costs, charges and expenses incurred in this shall be for Licensee's account.

14. Term - Termination

The ESTC and the License Agreement are effective as of the date that the License Agreement is signed by Licensee. The License Agreement is entered into for an unlimited period of time.

The EuroSim Consortium may terminate the License Agreement effective immediately without being required to serve notice of default upon Licensee:

- if Licensee shall fail to observe and perform the terms and conditions of the ESTC and/or the License Agreement to such an extent that the EuroSim Consortium cannot in reason be required to continue the License Agreement;
- if Licensee shall stop using the licensed CPU(s) listed in the Appendix(ices);
- and/or if a moratorium shall be applied for, or a petition in bankruptcy shall be filed against Licensee.

15. Consequences of termination

Should the License Agreement be terminated for any reason whatsoever, Licensee shall within eight days:

- stop using the EuroSim Software, shall erase or destroy this software and any copies thereof, as well as the parts thereof that are merged into Licensee's programs, and shall send the EuroSim Consortium confirmation thereof;
- return the documentation relating to the EuroSim Software to the EuroSim Consortium;
- return to the EuroSim Consortium any distribution media, insofar as they are the property of The EuroSim Consortium,

subject to a fine for delay in performance of these stipulations of 10 times the list price(s) of the EuroSim Software, mentioned in the License Agreement, and without prejudice to the EuroSim Consortium's right to compensation.

16. Law and differences

The ESTC and the License Agreement and the performance thereof shall be governed by the law of The Netherlands.

Parties shall submit any unforeseen disputes that may arise with regard to the ESTC or the License Agreement or further agreements that may result therefrom, exclusively in the first

instance to the competent judicial authority in The Hague, The Netherlands.

17. Severability

If any part, term or provision of the ESTC or the License Agreement shall be held illegal, unenforceable or in conflict with any law of a government having jurisdiction over the ESTC and/or the License Agreement, the validity of the remaining portions shall not be affected thereby.

18. Whole Agreement

Exceptions or additional provisions to this ESTC will be listed in the License Agreement and will only apply to the EuroSim Software product described in that License Agreement.

The License Agreement (including the ESTC) signed by Licensee contains all the rights and obligations that each party can assert against the other in this matter. No modification, alternation or exclusion of any stipulation of the ESTC and/or the License Agreement shall be binding unless agreed in writing by both parties.

19. Authority

Licensee warrants that all persons who work with, or will otherwise have access to the EuroSim Software will be notified of, and will be bound to the ESTC and the terms and conditions of the License Agreement.

Each of the signatories of the License Agreement warrants that he or she has the legal authority to bind to the ESTC and the License Agreement the party that he or she represents.