

Evaluation Licence Agreement

Company: Schwarzenbacher Bernd Gregor - Owner: Dipl.-Ing. Bernd Schwarzenbacher

1. Preamble

The company Schwarzenbacher Bernd Gregor, Dammstraße 21/1/47, A-1200 Vienna, (hereinafter referred to as the "**LICENSER**"), offers software solutions with the aim of supporting architects in the modelling and planning of buildings (hereinafter referred to as the "**SOFTWARE**"). The SOFTWARE is based on the software Archicad (in versions 24 and 25) of the company GRAPHISOFT Deutschland GmbH or GRAPHISOFT SE. The LICENSER wishes to make the SOFTWARE available to business partners (hereinafter "**CLIENT**" or "**CUSTOMER**").

The purpose of the business relationship is the evaluation of the SOFTWARE for the purpose of evaluation.

This evaluation licence agreement is based on the assumption that the **CLIENT** is an entrepreneur within the meaning of section 1 (1) no. 1 KSchG (Austrian Consumer Protection Act).

The business and contractual language is English.

For the avoidance of doubt, it is stated that the licence conditions of GRAPHISOFT Deutschland GmbH or GRAPHISOFT SE apply to the use of the Archicad software.

It is clarified that this contractual relationship refers exclusively to versions 24 and 25 of the Archicad software . Services relating to a subsequent version would be the subject of a possible separate contract.

2. Scope of application

This Evaluation Licence Agreement defines and regulates the procurement, use and commercial exploitation of the SOFTWARE as well as the related business and administrative activities if the CLIENT uses the SOFTWARE **free of charge** for the purpose of evaluating the software. However, if the CLIENT concludes a legal transaction against payment, a separate licence agreement shall apply.

3. Conditions of use

The CLIENT is obliged to provide truthful, comprehensive and correct information within the framework of the business relationship and to keep the specific information up to date at all times. The CLIENT shall treat all data confidentially (this applies in particular to log-in data and passwords). If the CLIENT suspects misuse by third parties, he must inform the LICENSER of this immediately.

The CLIENT shall refrain from all actions which may endanger or impair the technical functionality of the SOFTWARE (including cyber attacks). Such behaviour will be prosecuted.

The CLIENT shall take reasonable precautions to protect the SOFTWARE from unauthorised access by third parties. The CLIENT shall inform its employees or persons similar to employees that the creation of copies beyond the scope of this evaluation licence agreement is not permitted.

The CLIENT is responsible for setting up the necessary infrastructure to ensure the intended operation of the SOFTWARE. The LICENSER is not obliged to provide any further information or advice in this respect.

It is the CLIENT's responsibility to check the compatibility (i.e. the ability to interact with the CLIENT's existing software and hardware infrastructure) and the functional scope of the SOFTWARE before using it against payment.

4. Copyright

The LICENSER shall provide the CLIENT with the SOFTWARE on a non-exclusive basis and for a limited period of time, content and territory for the purposes of the business relationship (within the meaning of section 24 (1) sentence 1 of the Austrian Copyright Act "Werknutzungsbeurteilung"). The objective purpose of the business relationship is the evaluation of the SOFTWARE for the purpose of trial. Unless expressly agreed otherwise, the SOFTWARE may also be used for commercial purposes. The exclusive right to use and exploit the SOFTWARE (within the meaning of section 24 (1) sentence 2 UrhG "Werknutzungsrecht") shall in any case remain with the LICENSER.

If in the course of the evaluation process a jointly created work (within the meaning of Section 11 UrhG) or a joint work result is created, it shall be assumed, unless expressly agreed otherwise, that the LICENSER is exclusively and completely entitled to the commercial exploitation and use of this work or work result.

The CLIENT is permitted to use the SOFTWARE exclusively for the evaluation purposes intended by the LICENSER.

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Sub-licensing or further licensing is only permitted with the express consent of the LICENSER.

The right to decompile the SOFTWARE is excluded.

Markings of the SOFTWARE, in particular copyright notices, trademarks, serial numbers or similar may not be removed, changed or made unrecognisable.

The surrender of the source code of the SOFTWARE is not owed. Neither is a user manual owed, nor the performance of training courses.

5. Audit-Clause

The LICENSER has the option to verify compliance with the use of the SOFTWARE in accordance with the licence. Irrespective of this, the LICENSER may demand proof from the CLIENT that the SOFTWARE is being used in accordance with the licence. Enquiries in connection with the license-compliant use of the SOFTWARE must be answered truthfully.

The LICENSER shall be entitled to check the CLIENT's compliance with the legally compliant use of the SOFTWARE on site at any time after giving at least 14 days' notice (licence audit). The LICENSER may use the services of an auditor or lawyer bound to secrecy for this purpose. The LICENSER shall respect the CLIENT's business and trade secrets and data protection interests to the best of its ability. The audit shall be carried out during normal business hours and without disrupting the CLIENT's operations. The costs incurred in this connection shall be borne by each party. The CLIENT shall be obliged to provide the LICENSER with the information required for these purposes and to cooperate with the LICENSER in the course of the license audit. Otherwise the LICENSER shall be entitled to withhold its performance. This shall be without prejudice to any further legal claims.

6. Restriction of the duty to make available

Since no paid version is owed, the LICENSER is in no way obliged to make the SOFTWARE available. The LICENSER reserves the right to discontinue the SOFTWARE without notice.

7. Right of amendment

The CLIENT is entitled to suggest changes to the SOFTWARE. The LICENSER is not obliged to comply with these change requests.

8. Limitation of liability and warranty

Since no paid version is owed, all warranty and liability claims against the LICENSER are excluded in their entirety. This shall not apply in the event of intentional damage.

9. Right to amend the evaluation licence

The LICENSER shall be entitled to amend this Evaluation Licence Agreement at any time. The LICENSER shall inform the CLIENT of such amendments by sending the amended Evaluation Licence Agreement to the contact details last provided by the CLIENT. The CLIENT shall have the right to object to the amendments. If the CLIENT does not object within 14 days after notification of the amendments, it shall be assumed that the CLIENT has tacitly agreed to the amended evaluation licence agreement.

10. Data protection and protection of business and trade secrets

The disclosure of data and information to the respective required business partners is permitted to the extent necessary for the fulfilment of the contractual relationship (Art 6 para 1 lit b GDPR). Otherwise, the LICENSER and the CLIENT shall be mutually obliged to maintain secrecy with regard to the circumstances and data relating to the other of which they become aware as a result of the present business relationship and, in particular, to observe data secrecy. These obligations regarding data and business secrecy shall also apply beyond the contractual relationship. The LICENSER and the CLIENT further undertake to instruct and instruct their employees and vicarious agents in this sense.

<p>The contracting parties further undertake to protect mutually disclosed business and trade secrets appropriately within the meaning of section 26b (1) no. 3 of the Austrian UWG.</p>

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A violation of the confidentiality obligations may (among other things) result in consequences under criminal law and damages law.

It is pointed out that the source code programmed by the LICENSER constitutes a trade and business secret within the meaning of section 26b UWG.

The LICENSER informs that data of the CLIENT may be processed for advertising purposes on the basis of legitimate interests (Art 6 para 1 lit f GDPR). **The CLIENT is entitled to object to the processing of his/her data for advertising purposes** (Art 21 (2) GDPR).

11.Reference-Clause

The LICENSER shall be entitled to indicate the fact of the business relationship with the CLIENT by means of a reference on its homepage or business papers. The LICENSER shall be entitled to use the CLIENT's logo in this context. This right to name references also extends beyond the contractual relationship.

12.Participation in evaluations

For the purpose of evaluating the SOFTWARE, the CLIENT undertakes to provide the LICENSER with information on the user-friendliness and performance of the SOFTWARE to a reasonable extent free of charge upon request by the LICENSER and, if necessary, to communicate any suggestions for improvement.

13.Duration of the evaluation licence agreement

The contractual agreement with the CLIENT is concluded for an indefinite period. It may be terminated at any time by either party.

14.Blocking access to the SOFTWARE

If the LICENSER has reasonable grounds to believe that the CLIENT or one of its end users is using the SOFTWARE in an unlawful manner, the LICENSER shall be entitled to block access to the SOFTWARE immediately and without prior notice. This shall not affect the possibility of further legal remedies.

15.Jurisdiction an applicable law

This contractual relationship shall be governed by and construed in accordance with Austrian law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of conflict-of-law rules is excluded.

The exclusive place of jurisdiction is the competent court in Vienna, Austria.

16.Further issues

If any part of this Evaluation Licence Agreement should be invalid, the validity of the remaining conditions shall not be affected thereby. The invalid provision shall be replaced by a valid provision which comes as close as possible to the economic intent of both contracting parties as discernible from the agreement.

Amendments to this Evaluation Licence Agreement as well as supplements thereto shall only be valid if agreed and signed in writing, without prejudice to the provision under clause 9.

The LICENSER recommends the CLIENT to save this licence agreement permanently.

Information according to section 5 ECG and section 14 UGB, section 25 MedienG:

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Business purpose: Services in automatic data processing and information technology

UID No.: ATU76892739

Member of the WKÖ

Competent authority: Magistratisches Bezirksamt 2nd/20th district.

Consumers have the possibility to submit complaints to the EU's online dispute resolution platform: <http://ec.europa.eu/odr>. You can also send any complaints to the e-mail address given above.

RIS-Gewerbeordnung: RIS - Gewerbeordnung 1994 - Bundesrecht konsolidiert, version of 12.01.2021 (bka.gv.at)

Bulletin: Information articles concerning software development with a focus on architectural software.

(July 2021)

Author: Attorney at Law Dr. Tobias Tretzmüller, LL.M., www.digital-recht.at.

A copy of this evaluation licence agreement, or even parts thereof, requires the consent of the author.

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ADDENDUM – Open-Source Components and their Licenses

<https://github.com/GRAPHISOFT/archicad-addon-cmake> was used with the following license:

MIT License

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