

End-User License Agreement (EULA) for standard software “ema”

(Non-binding English translation, valid as of 01.03.2023)

§ 1 General

(1) The company imk Industrial Intelligence GmbH, Amselgrund 30, 09128 Chemnitz ("IMK") agrees to the use of *ema* by the *Licensee* and the *Users* as a *Purchase License* or *Lease License* only under the following conditions. These license terms apply to *Purchase Licenses* and to *Lease Licenses* including free versions of the software.

(2) *ema* is protected by law. IMK is exclusively entitled to the copyright, patent rights, trademark rights and all other property rights in *ema* in relation to the *Licensee* or the respective *User*.

§ 2 Definitions

For the purposes of these license terms, the following definitions apply

1. *ema* is the standard software *ema* to the extent agreed in the *Main Contract* and the version agreed therein, including all delivered components and enhancements as well as any documentation delivered;
2. *Concurrent Users* are software *Users* accessing *ema* at the same time;
3. *End Device* is a piece of hardware (such as workstations, notebooks, tablets, smartphones) that is used by the *user* to use the functions of *ema*;
4. *Free License* is a royalty-free license to use, redistribute, and modify copyrighted works under certain conditions specified in the associated license terms (e.g., for open source software under the BSD license or LGPL license, or for images under the Creative Commons License);
5. *Main Contract* is the contract between IMK or an authorized distributor and the *Licensee*, based on which the *Licensee* uses *ema*;
6. *Purchase License* or *Purchase Licenses* are permanent rights to use *ema*, which are purchased directly from IMK, a distribution partner authorized by IMK or in the context of a subsequent resale from a *Licensee*;
7. *Lease License* or *Lease Licenses* are purely contractual rights of use for a limited period of time to *ema*, which are granted to the *Licensee* on the basis of a software leasing agreement;
8. *License Area* is the territory of the European Economic Area (EEA), unless the *Main Contract* specifies otherwise;
9. *Licensee* is any natural person, legal entity or partnership to whom, as a party to the *Main Contract*, rights of use will be granted a *Purchase License* or a *Lease License* to *ema*;
10. *User* means any natural or legal person or partnership using *ema*, in particular the employees, bodies of the *Licensee*;
11. *Server* is a hardware or virtual environment that provides functionalities for other programs or hardware, in particular for *End Devices*;
12. *Trial Version* is a free usable version of *ema* for testing purposes.
13. *Volume* are parameters related to the scope of use of *ema*, which are defined in more detail in the *Main Contract* (e.g. a specific budget of user hours within a defined time interval)

§ 3 Scope of the rights of use

(1) IMK grants the *Licensee* a non-exclusive, non-cancellable right to use *ema* for the *License Area*, which is revocable only within the limits of § 10 and which is transferable only to a limited extent. Any use outside the *License Area* is prohibited.

(2) Unless otherwise agreed in the *Main Contract*, *ema* may only be used by the *Licensee*

- a) in the company or institution (e.g. educational institution) of the *Licensee* and
- b) provided that a
 - aa) Node-locked license is agreed upon, on the *Licensee's End Device* specified in the *Main Contract* (the computer-bound license does not include private *End Devices* of the *Licensee's* employees), or
 - bb) Floating License is agreed upon, on the *Licensee's Server* specified in the *Main Contract* and for the number of *Concurrent Users* agreed in the *Main Contract*.
 - cc) On-demand license is agreed upon, on the *Licensee's End Device* or *Server* specified in the *Main Contract* and within the *Volume* limits agreed in the *Main Contract* (only available as *Lease License*)

All types of licenses may be transferred to new hardware; this requires the *Licensee's* written assurance that *ema* has been completely deleted from the old hardware or will be deleted immediately.

(3) Insofar as the license is granted to an educational institution, the use of *ema* is, subject to a deviating agreement in the *Main Contract*, only permitted for teaching and educational purposes, but not for research financed with non-public funds or other commercial purposes.

(4) The right of use is limited to the contractually intended use of *ema*. Unless otherwise agreed in the *Main Contract*, *ema* may not be used in a way that may cause significant damage to the *Licensee*, third parties or the environment. In particular, but not exclusively, the use of *ema* is therefore prohibited, subject to a deviating agreement in the *Main Contract*, to be used for following domains

- a) in connection with the performance of animal experiments or experiments on humans,
- b) in the field of the military, armaments, the manufacture of weapons or nuclear power,
- c) in connection with other high-risk activities or areas of operation

ema is neither designed nor suitable for the activities and areas mentioned above.

(5) All other acts of use, in particular the rental, loan and other use of *ema* by and for third parties (e.g. through outsourcing, data center activities, application service providing, cloud services) are not permitted without the prior written consent of IMK.

(6) *ema*, related documents, proposals, test programs and other items of IMK in connection with *ema*, which are made available to the *Licensee* or a *User* before or after conclusion of the *Main Contract*, shall be considered intellectual property and business secrets of IMK. Unless otherwise stated above, they may not be used in any manner whatsoever without the written consent of IMK and must be kept secret in accordance with § 15 ("Confidentiality").

(7) If *ema* is provided free of charge, IMK shall only grant a limited right of use to *ema* under the law of obligations, which may be freely revoked by IMK at any time and which may not be transferred, for the *Licensed Area*. The right of use shall end, without the need for revocation or termination, upon expiration of the period of time specified for the free use. *Trial Versions* may only be used to test whether *ema* is suitable for use by the *Licensee* or the respective *User* as intended; any productive use is prohibited.

§ 4 Copies of *ema*

The *Licensee* may make copies of *ema* solely for the purpose of exercising its right of use and for backup purposes. The backup copies must be stored securely in encrypted form in accordance with state-of-the-art technologies and protected from access by unauthorized persons and, as far as technically possible, marked with the reference to the authorship of IMK. Copies that are no longer required are to be deleted or destroyed. The user manual and other documents provided by IMK may only be copied for internal purposes. Transfer to third parties is prohibited subject to § 6 ("Transfer to Third Parties"). Insofar as *ema* is provided free of charge, the making of copies of the software for backup purposes shall be excluded.

§ 5 Copyright

IMK shall provide the code of *ema* and the user interface as well as the documentation, if such is supplied, with references to the authorship of IMK. The *Licensee* and the respective *User* shall not modify or falsify these notices without IMK's consent.

§ 6 Disclosure to third parties

(1) If IMK has granted a transferable or limited transferable right of use and has placed *ema* on the market in the territory of the European Union or another contracting state of the agreement on the European Economic Area, the *Licensee* shall only be entitled to transfer *ema* or parts thereof to a third party in accordance with the following rules and after performing the following procedures:

- a) The *Licensee* shall hand over the program to the third party. If IMK has delivered *ema* on data carriers, the *Licensee* shall hand over the data carriers to the third party. The *Licensee* shall also hand over to the third party the user manuals and other *ema* documents originating from IMK.
- b) The *Licensee* shall delete all other copies of *ema* (in whatever state), in particular on *End Devices*, *Servers*, data carriers and other storage media, with the exception of copies which have been combined with other data in the context of data backup or archiving in such a way that separation and separate deletion is not possible or is possible only with unreasonable effort, shall permanently discontinue use and shall confirm to IMK in writing that it has fulfilled these obligations.
- c) The transfer to the third party is made on a permanent basis, i.e. without any right of return or repurchase option.
- d) The *Licensee* declares in writing to IMK that the *Licensee* has made known to the third party the rules of these License Terms, in particular § 3 ("Scope of the rights of use") and § 15 ("Confidentiality").

(2) If *ema* has not been placed on the market by IMK in the territory of the European Union or another contracting state of the agreement on the European Economic Area, *ema* may not be passed on to third parties without the written consent of IMK.

(3) If as *ema* is provided free of charge, the transfer of *ema* to third parties is prohibited.

§ 7 Troubleshooting by the licensee

The *Licensee* may correct an *ema* error itself with the consent of IMK. In this case, too, the elimination of the error may not change or expand the contractually intended use; this does not result in an obligation on the part of IMK to surrender the source code. Insofar as *ema* is provided free of charge, error correction by the *Licensee* shall be excluded.

§ 8 Investigation and testing of *ema* and reverse engineering

(1) The *Licensee* and the respective *User* may only observe, examine or test the functioning of *ema* without IMK's consent in order to determine the ideas and principles underlying a program element if this is done by actions to which the *Licensee* or the respective *User* is entitled, in particular if these are covered by the intended purpose of the use of *ema*.

(2) The performance of examinations and tests of *ema* or the use of the results of such examinations and tests to produce identical or similar software or identical or similar functionality is prohibited. This shall also apply if the examinations and tests or the use of the results obtained therefrom are carried out without decompiling *ema*.

§ 9 Decompilation

The *Licensee* may only decompile *ema* interface information within the limits of § 69e of the German Copyright Act (UrhG) and only after it has informed IMK in writing of its intention and requested the provision of the necessary information with a notice period of at least one month. Section 15 ("Confidentiality") shall apply to all knowledge and information which the *Licensee* obtains in the course of decompiling. Prior to any involvement of third parties, *Licensee* shall provide IMK with a written declaration by the third party that the third party undertakes directly to IMK to comply with the contractual provisions on confidentiality and the rights of use. Insofar as *ema* is provided free of charge, decompilation by the *Licensee* shall be excluded.

§ 10 Revocation of the right of use

(1) IMK may revoke the *Licensee's* rights of use for good cause. An important reason exists particularly, if the *Licensee* does not pay the remuneration or violates his obligations from these license conditions in a considerable way despite a written warning.

(2) The revocation must always be threatened by stating the reason and setting a reasonable deadline for rectification (usually at least two weeks) and can only be declared within two weeks after expiry of the deadline. In cases under § 323 (2) of the German Civil Code (BGB), the deadline may be waived.

(3) All declarations in this context must be made in text form (e.g. e-mail) to be effective.

(4) Further claims and rights of IMK from the *Main Contract* remain unaffected.

(5) Insofar as *ema* is provided free of charge, IMK may freely revoke the right of use at any time and discontinue all services in connection with the provision.

§ 11 Duties in the absence or lapse of the right of use

If the right of use does not arise or ends, IMK may demand from the *Licensee* the return of *ema* and all items provided in connection therewith and the destruction of all copies or *Licensee's* written assurance that *ema* and the items provided, including all copies, have been completely and finally destroyed.

§ 12 Third party programs and free licenses

(1) Insofar as *ema* contains or uses a third-party program or a program that is subject to a *Free License*, the associated license terms to such programs shall apply.

(2) *ema* contains or uses, in particular, program libraries that are provided by third parties or under a *Free License*.

(3) The third-party programs concerned and the associated license terms can be viewed in the "Licenses" folder below the *ema* installation directory. The license conditions must be observed.

§ 13 Special risks of use

IMK draws particular attention to the following risks of using *ema*, although there is no claim to completeness:

- a) Creation of incorrect planning data due to improper use of *ema*, especially by users lacking professional qualifications;
- b) Risk of so-called cybersickness and, as a consequence, increased risk of accidents for *ema Users* when using virtual reality technologies.

§ 14 Special obligations of the licensee and the users

(1) The *Licensee* and the *Users* undertake to

- a) check *ema* for functionality and convince themselves of correct functioning and application before *ema* is used productively,
- b) take appropriate safety precautions before starting the *ema* program to prevent all known risks and dangers which could arise from the use of *ema* and which are identifiable in the course of due diligence,

(2) The *Licensee* further undertakes to

- a) inform the *Users* about the present license conditions and to assure that the *Users* agree with the license conditions,
- b) inform the *Users* of all possible risks and dangers associated with the use of *ema*.

(3) Unless otherwise agreed in the *Main Contract*, the *Licensee* or the respective *User* shall provide the hardware and software infrastructure required in its sphere of operation and shall take the necessary precautions against unauthorized access to its systems from outside, data loss and infection with and distribution of malware (e.g. by means of anti-virus programs, firewalls, penetration tests, data backup and, in particular, appropriate back-up routines in accordance with the respective state-of-the-art technologies for both data and programs, fault diagnosis, regular testing of the results, emergency planning).

(4) Insofar as *ema* is provided free of charge and IMK therefore reserves the right to discontinue the service at any time and without prior notice, the *Licensee* or the respective *User* shall always store separately all data required by it in order to be able to continue to use such data even after discontinuation of the service.

(5) In addition, the *Licensee* and the *Users* shall be subject to duties of conduct for the purpose of ensuring proper use of *ema*, non-compliance with which may result in disadvantages, in particular the blocking of access of the *Licensee* or the relevant *Users*, termination of the *Main Contract* and claims for damages.

(6) In particular, the *Licensee* and the *Users* are obliged not to use *ema* in an unlawful or immoral manner and to respect the law and the rights of third parties. This includes the following obligations:

1. As far as possible and reasonable, personal data shall be rendered unrecognizable, anonymized or pseudonymized before processing with *ema*.
2. Excessive stress on *ema* due to improper use must be refrained from.

(7) The *Licensee* and the *Users* have

1. to provide complete and truthful information for required registrations and other queries necessary to fulfil the contract,
2. to the extent required at the time of registration, to choose a user name that does not infringe the rights of third parties or other rights to a name or trademark or morality,
3. to keep the password secret and not to disclose it to third parties under any circumstances and to inform IMK immediately if there are indications that his access is being or has been misused by third parties,
4. to notify IMK immediately of any subsequent changes to the data requested.

(8) The *Licensee* shall compensate IMK for any damage resulting from a breach of duty, unless the *Licensee* is not responsible for such damage. The *Licensee* shall indemnify IMK against all disadvantages incurred by IMK as a result of claims by third parties due to damaging actions of the *Licensee* for which the *Licensee* is responsible. IMK is entitled to demand payment of a reasonable advance on any legal defense and/or legal counsel costs.

(9) The provision of paragraph 8 shall apply to the *User's* liability insofar as a *User* has breached an obligation under this License Agreement, unless the *User* is not responsible for such breach. If the breach of duty was committed by several *Users*, they shall be liable as joint and several debtors. Similarly, joint and several liability exists if the *Licensee* is liable in addition to one or more *Users*.

(10) Further obligations of the *Licensee* and the *Users* arising from the *Main Contract* or according to the law shall remain unaffected.

§ 15 Confidentiality

(1) The *Licensee* and the *Users* undertake to treat as confidential all information obtained from IMK in connection with the use of the software (e.g. information on details of the operation of *ema*, from user documentation and other documents), even beyond the end of the contract, unless it has become public knowledge without breach of a confidentiality obligation. The *Licensee* and the *Users* shall store and secure this confidential information in such a way that access by third parties is excluded.

(2) The *Licensee* and the *Users* shall make the information to be kept secret pursuant to paragraph 1 accessible only to employees and other third parties who require access to this information in order to perform the official duties granted to them. They shall instruct these persons about the need to keep the confidential information secret.

(3) Further obligations of the *Licensee* or the *Users* arising from the *Main Contract* or a separately concluded confidentiality agreement as well as from the law shall remain unaffected.

§ 16 Limitations of warranty and liability in case of free provision

(1) If the right to use *ema* is provided free of charge, the provisions of this § 16 ("Limitations of warranty and liability in the case of free provision") shall apply, unless the *Main Contract* is specifying any deviating provision.

(2) IMK is only obliged to compensate the *Licensee* for damages due to a material defect or defect of title if IMK has acted intentionally, in particular has fraudulently concealed the defect or fraudulently pretended the absence of a defect. Any further warranty due to material defects and defects of title is excluded.

(3) The liability of IMK for damages is limited for claims outside the law of liability for material defects and defects of title (e.g. from impossibility, delay, breach of contractual collateral duties and tort) in accordance with this paragraph 3. The liability of IMK without fault as well as for simple negligence is excluded. Furthermore, IMK's liability for gross negligence is excluded if the *Licensee* or the respective *User* is an entrepreneur, a legal entity under public law or a special fund under public law and there is no injury to life, body or health.

(4) The exclusions and limitations of liability in this § 16 shall apply to claims for reimbursement of futile expenses.

(5) The exclusions and limitations of liability of this § 16 apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of IMK.

(6) The exclusions and limitations of liability of this § 16 do not apply to the liability of IMK due to intentional conduct, in cases of fraudulent intent, in case of assumption of a guarantee or in case of claims according to the Product Liability Act.

§ 17 Software maintenance

(1) Software maintenance includes the services of software maintenance and software support according to the General Terms and Conditions (GTC), subject to deviating agreements in the *Main Contract*.

(2) If the *Licensee* obtains a *Purchase License*, the following applies:

- a) The purchase of software maintenance is mandatory in the first year of use.
- b) After expiry of the first year of use, software maintenance shall be regulated annually on the basis of an individual contract and in accordance with the current price list. A continuing obligation shall only come into existence if the term of the software maintenance exceeds one year in the individual contract and a follow-up provision is agreed.
- c) If the *Licensee* does not renew the software maintenance after expiry of the first year of use or at a later point in time, his right of use shall be limited to the last software version provided before expiry of his last maintenance interval. His right to receive software updates and support is thereby forfeited.
- d) If the *Licensee* decides to resume software maintenance after a temporary interruption, the total costs for software maintenance according to the current price list shall be due retroactively for the interruption period, subject to deviating provisions in the individual agreement.

(3) If the *Licensee* obtains a *Lease License*, the following applies:

- a) Software maintenance is included in the price for the entire leasing period.

§ 18 New versions

Unless and until IMK announces new license terms with the delivery of an update, upgrade, patch or other new version of *ema*, these license terms shall also apply to new versions of *ema*.

§ 19 Final provisions

(1) These license terms are exclusively subject to the law of the Federal Republic of Germany.

(2) This document is available in both a German original version and an English translation. The English language translation is non-binding and serves solely as a guide to the content of the regulation. The German-language original alone is therefore decisive for the content. The German version is also authoritative in the event of contradictions and ambiguities regarding the interpretation.

(3) If the *Licensee* or the *User* is a merchant, a legal entity under public law or a special fund under public law, or if the *Licensee* or the *User* is not a consumer and has no general place of jurisdiction in the Federal Republic of Germany, then the exclusive place of jurisdiction is for all disputes in connection with these license terms the place of business of IMK. For lawsuits brought by IMK against the *Licensee* or the *User*, any other legal place of jurisdiction shall also apply. Mandatory legal provisions on exclusive places of jurisdiction remain unaffected by this regulation.

(4) The place of jurisdiction agreements according to paragraph 3 are determined exclusively according to the law of the Federal Republic of Germany.