

Terms for the temporary software transfer for a defined period of time

§ 1 Contractual parties; scope

- (1) The Fraunhofer Gesellschaft zur Förderung der angewandten Forschung e.V., registered in the register of associations of the Local Court of Munich under the register number: VR 4461, located in Hansastraße 27c, 80686 Munich, Germany ("Fraunhofer") is operating in the field of application-related research and has developed certain software ("Software"), which is offered for download for third parties ("Licensee") who are not consumers, and is licensing this according to present terms.
- (2) These general terms and license conditions ("terms") of Fraunhofer apply exclusively and regulate the contractual relation between Fraunhofer and the Licensee regarding the use of the Software. The terms become a contract component with the download of the Software by the Licensee.
- (3) Different or conflicting terms of the Licensee do not apply, even if Fraunhofer does not expressly contradict the Licensee's terms.
- (4) Services for the Software performed by Fraunhofer such as support, maintenance or updates are not included in the scope of this contract but can be commissioned due to a separate contract with Fraunhofer.

§ 2 Contractual object; transfer

- (1) WUFI® Pro and 2D allow the calculation of the transient thermal and moisture performance of multilayer building components under realistic climatic conditions. WUFI® Pro is one-dimensional and simulates the component's standard cross section.
- (2) WUFI® 2D allows the evaluation of two-dimensional connection components, thermal bridges and materials with direction dependent properties.
- (3) WUFI® Plus is a dynamic hygrothermal building simulation. The calculation of the coupled thermal and moisture transport inside of components is combined with a multi-zone building simulation.
- (4) WUFI® Passive is used for the design of passive houses. It combines the monthly balance verification procedure for passive houses with the dynamic hygrothermal multi-zone whole building simulation of WUFI® Plus. The hygric-dynamical aspect is limited to passive houses.
- (5) For further details on the features of the different applications as well as the current system requirements, please visit <https://wufi.de/en/>. Fraunhofer delivers the Software according to the features and the price list. The agreed quality of the Software is

specified substantially in the Software's description. Fraunhofer does not owe any further quality of the Software.

Price list:

<https://wufi.de/en/webshop/prices/>

Features:

<https://wufi.de/en/software/product-overview/detailed-product-overview/>

System requirements:

<https://wufi.de/en/software/product-overview/system-requirements/>

- (6) For further information about program updates and upgrades, and possible charges for upgrades, please visit <https://wufi.de/en/software/updatesupgrades/>.
- (7) Fraunhofer transfers a complete, machine-readable, immaterial copy of the Software's object code including the relevant user documentation (together the "license material") via download to the Licensee.

§ 3 Types of licenses

The Licensee can choose between the following types of licenses upon purchase of the Software ("contractual software"). The different types of licenses define the usage of the contractual software by the Licensee.

(1) Chargeable licenses

Single licenses

The Licensee purchases a certain amount of hardware-based single-user licenses, which are to be installed only at the Licensee. In addition to the workstation, installation may be conducted on one portable computer of the Licensee respectively. The amount of people authorized to access the contractual software at the same time is limited to the amount of single-user licenses purchased. The installation on a server, on which several people have access to is permitted only if it is guaranteed that the amount of people with access to the server at the same time does not exceed the amount of single-user licenses. Otherwise, the amount of purchased licenses has to be equivalent to the amount of server users.

The offered single license bundles in the online shop on www.wufi.de and www.wufi.com are merely for discount purposes and purchase simplification.

Educational licenses

Only a non-profit educational institution (university, college, other school) can be a Licensee of an educational license. The Fraunhofer IBP reserves the right to review and refuse the entitlement to purchase such a license. The Licensee is permitted to use the contractual software only for non-commercial educational but not for research purposes. Furthermore, the use/sharing of simulation results for marketing purposes of individual companies or industrial partners is prohibited. Obtaining the educational license, the Licensee purchases an arbitrary number of single-user licenses for computers that are property of the educational institution. Sharing the license with students is not permitted (a student/seminar license can be requested for this purpose).

(2) Free licenses

Student/ seminar licenses

Student and seminar licenses are without charges. Usage is only permitted according to the concluded user agreement. Any commercial usage, including within a publicly subsidized research project, is prohibited.

Further free licenses

These free licenses are available for the client via free download. The different licenses are the following:

- (I) Test-, ORNL- and Light versions
These versions are limited in time and features and are provided for testing purposes. Commercial usage is prohibited.
- (II) Post-processors and additional programs
The post-processors and additional programs (some of the contents are provided by third parties) are intended to be used together with the WUFI®-Software. Some of them are available for free download for the Licensee.
- (III) WUFI Plus Free, WUFI Passive Free
The Licensee is provided with these time-limited versions for testing purposes. They are reduced in their features.

§ 4 Rights of use

- (1) The Licensee can choose a type of license. The type of license defines the usage granted by Fraunhofer. The rights of use are limited to the chosen software.
- (2) All software rights, especially the copyright or other IP rights, belong in relation to the Licensee exclusively to Fraunhofer. Fraunhofer grants the Licensee a non-exclusive (simple), non-transferable and revocable right to use the license material according to the contractual scope and period of time for own use in the Licensee's business after payment of the agreed remuneration and for the contractual period of time/ the time stated in the online shop. This includes, without prejudice to further agreements of the parties, the temporal, complete or partial reproduction due to loading, displaying, running, transferring or saving the contractual software for the purpose of executing it, including observing, checking or testing on a single computer of the Licensee.
- (3) The use of the Software is limited to the location of the respective Licensee, where the license was purchased initially. The above mentioned use on a portable device must bear reference to this location. If several (discounted) licenses were purchased, the right of use applies to one country.
- (4) If the Licensee purchases a time-limited license, the rights of use are granted according to § 4 of these terms only for the agreed period of use. Any exceeding use of the Software is prohibited and constitutes a breach of contract.
- (5) Any use other than the agreed constitutes contrary to contract.

- (6) Fraunhofer has the right to terminate a time-limited license, if the Licensee is using it contrary to contract or leaves it for a third party to use without authorization.
- (7) The Licensee is obligated to keep all protection notes such as copyrights and other reservation of rights in the license material unchanged and to transfer these into all complete or partial copies by the Licensee.
- (8) The Software's source code is not subject matter of the contract.

§ 5 Sharing the Software with third parties

- (1) The Licensee is not entitled to rent, lease, or share the contractual software commercially.
- (2) Reselling the Software is prohibited.

§ 6 Modifications of the contractual software, developments

- (1) Modifications of the Software made by the Licensee, which go beyond the intended modifications of the contractual software to his individual needs, which are described in the supporting documents, are subject to the following provisions:
 - (i) The modification, editing, decompiling, disassembling, reassembling and other reworking of the Software, as well as the reproduction of the results of such works by the Licensee shall only be permitted with prior written consent of Fraunhofer. The Licensee's rights according to §§ 69 lit. d) paragraph 2 and 3 and lit. e) UrhG shall remain unaffected thereof. Any form of reverse engineering of the different manufacturing stages of the Software is not permitted or only permitted with prior written consent of Fraunhofer.
 - (ii) If the Licensee wants changes, modifications, adaptations or adjustments to be made to the contractual software, Fraunhofer offers concluding independent contracts.
- (2) Fraunhofer is entitled to the rights to further developments of the contractual software, as far as they are based exclusively or mainly on developments of Fraunhofer. If the Licensee further develops the contractual software, he will grant Fraunhofer a free, permanent, worldwide, unlimited, exclusive right of use to the corresponding further developments, as far as the further developments cannot be separated from the contractual software. If such a separation of the further developments is possible, the right of use is non-exclusive. However, in this case, the Licensee shall not be entitled to disclose the contractual software to third parties within the scope of its own use of the further developments. The burden of proof regarding the separability of the further developments rests with the Licensee.

§ 7 License fees

- (1) The Licensee pays Fraunhofer for granting the aforementioned rights of use a license fee, the amount, due date and conditions of which are stipulated in the offer or in the online shop.
- (2) A premature termination of the Licensee's use will have no impact on the license fee.
- (3) The Licensee has a right of compensation only if the claims were stated legally binding or were not denied by Fraunhofer. The Licensee has the right of retention only in so far as the counterclaim is based on the same contractual relation.
- (4) Fraunhofer owns all rights to the contractual software until the contractually agreed payment is made.

§ 8 Involvement of the Licensee

- (1) The Licensee is obligated to check the delivered license material, its completeness and operability immediately. If the delivery is incomplete or defective, the Licensee shall notify Fraunhofer in written form within two weeks after delivery.
- (2) The Licensee will obtain additional hard- and software that may be necessary for using the contractual software ("application environment") at its own expense and install it in time.

§ 9 Liability for material defects

- (1) The liability for material defects for time-limited licenses is regulated according to the following tenancy law (§§ 535 et seq. German Civil Code), excluding strict liability for initial defects.
- (2) Material defects are deviations of the Software that are substantially impairing the suitability of the contractual software to be used properly according to said contract.
- (3) Claims due to material defects require the Licensee's proper duty to examine and notify. In the case of evident defects or incompleteness of the license material, the Licensee has to notify this complaint in written form and within two weeks after delivery, including details on how the material defect manifests, affects, under what circumstances it occurs and how the Licensee would classify it. The following defect classes apply:

Class 1 refers to a defect notification that describes a defect of the contractual software impairing the Licensee's business activities sustainably.

Class 2 refers to a defect notification that describes a defect of the contractual software impairing the Licensee's business activities substantially.

Class 3 refers to a defect notification that describes a defect of the contractual software not impairing the Licensee's business activities severely as well as other requests for improvements of the contractual software.

Claims of the Licensee due to evident deficiency or incompleteness are excluded if these duties are not attended.

- (4) Upon receipt of the defect notification, the Licensee receives a reference number as a confirmation of receipt. Fraunhofer will do the best of its ability to inform the Licensee immediately if, how, and, if possible, until when notified defects can be eliminated or, if and how the Licensee can evade the notified defect. If such an attempt, to solve the defect does not succeed within the stated and appropriate period of time and if it does not succeed after a second appropriate period of time by the Licensee and if Fraunhofer does not provide the Licensee with a workaround that does not seriously impair the contractual software's runtime and response time behavior, then the Licensee can reduce the remuneration (lower) or terminate the contract without prejudice to any claim.
- (5) If the material defect can only be eliminated by a disproportionate effort, Fraunhofer has the right to provide a workaround, provided that it does not seriously impair the contractual software's runtime and response time behavior.
- (6) Fraunhofer does not bear liability if the license material or the agreed application environment has been modified.
- (7) Fraunhofer does not bear liability for material defects for Software that was available free of charge.
- (8) The limitation period for claims for defects is 12 months beginning with the delivery of the Software.

§ 10 Property rights of third parties

- (1) Fraunhofer delivers the license material free from the rights of third parties, which not only insignificantly restrict or exclude the use according to the contractually agreed scope.
- (2) If the contractual use is impaired by the property rights of third parties, Fraunhofer has the right
 - (i) to either modify the license material to an extent reasonable for the Licensee, so that it does no longer fall under the scope of protection,
 - (ii) to obtain authorization, that the license material can be used unlimited and without additional costs for the Licensee according to the contract, or
 - (iii) to withdraw from the contract.
- (3) If a third party asserts such claims, Fraunhofer will indemnify the Licensee from legally imposed costs and from the amount of damages, in case he does not withdraw from the contract, provided that the Licensee
 - (i) immediately informed Fraunhofer in writing about the claim,

- (ii) gives Fraunhofer the sole control over the defense and the related actions, and
 - (iii) provides the necessary support, information and power of attorney to implement the abovementioned actions.
- (4) If a third party asserts a claim against Fraunhofer due to a non-contractual use of the license material by the Licensee, he shall indemnify Fraunhofer from legally imposed costs and from the amount of damages, provided that Fraunhofer
- (i) immediately informed the Licensee about the assertion of claims,
 - (ii) gives the sole control over the defense and the related actions to the Licensee and,
 - (iii) grants the Licensee the necessary support, information and power of attorney to implement the abovementioned actions.

§ 11 Liability

- (1) Fraunhofer has unlimited liability for damage caused by intent or gross negligence, as well as in case of fraudulent concealment of a defect. Results based on erroneous or misleading entries will not lead to the responsibility of Fraunhofer.
- (2) Fraunhofer only has liability for slight negligence, if a significant obligation whose compliance is of particular importance to attain the contract purpose was breached, (so called cardinal obligation, i.e. contractual obligations, which enable the performance in accordance with the contract and which the Licensee relies on to be fulfilled.) This liability is limited to damages caused thereof, which are typical and foreseeable due to the agreed use of the license material. This limitation of liability shall not apply for injury of life, body or health, as well as the liability according to the Product Liability Law. Fraunhofer shall not have liability for damage to property, indirect or consequential damage, such as loss of profit, omitted savings, loss of production, lost usage, loss of interest.
- (3) Fraunhofer shall only have liability for the recovery of data, if the Licensee made backup copies regularly and appropriately to the risk level and ensured that it is possible to reconstruct the data from the backup copies at reasonable expense. Further liability for loss of data shall be excluded.
- (4) The Licensee shall indemnify Fraunhofer from any claims of third parties, including lawyer's and legal expenses, asserted due to the use of the license material, in particular in accordance with the provisions of strict liability.
- (5) The above provisions shall also apply for the employees and assistants of Fraunhofer.
- (6) Fraunhofer shall not be liable for damages caused by Software provided free of charge.

§ 12 Confidentiality

- (1) Both parties agree that the license material contains secret knowledge of Fraunhofer. The Licensee undertakes to carefully protect the license material against the unauthorized notice by third parties.
- (2) The obligation of confidentiality shall not apply for confidential information,
 - (i) which was already obvious at the time of disclosure, or become publicly known afterwards, without the non-observance of the foregoing provisions being one of the causes thereof
 - (ii) which is explicitly disclosed by Fraunhofer on a non-confidential basis,
 - (iii) which was already in the lawful possession of the Licensee before the disclosure, or
 - (iv) is afterwards disclosed to him by a third party without breaching the obligation of secrecy.

The Licensee shall bear the burden of proof for the presence of one of the foregoing exemptions.

- (3) Any data the Software contains (e.g. material data, climate data, etc.) shall only be used by the Licensee. The transfer of data sets to third parties shall not be admissible.

§ 13 Term of contract and termination

- (1) The agreed term of contract of time-limited licenses starts with the delivery of the license key and ends with expiration of the agreed period, without requiring a termination declaration. In case of fee-based upgrades, the relevant term of the license begins again at the date of acquisition of the upgrade.
- (2) Each party may terminate the contract at any time in writing, if the other party breaches an essential term of contract and the breach or non-performance is not cured within 30 days after a written warning.
- (3) In addition to the cases provided for by law, an important reason for an extraordinary termination by Fraunhofer shall also exist if
 - a) The Licensee has come into default with his payment obligations according to these terms of license in connection with the purchase order,
 - b) The Licensee uses the Software in breach of the rights of use granted to him in these terms of license;
 - c) Claims against Fraunhofer are garnished by a creditor and the garnishment is not canceled within two weeks.

- d) Insolvency proceedings are opened by the contracting party about the own assets of the party (personal application) or by a third party, but not the other contracting party, or such an application – irrespective of the applicant – is rejected for lack of assets or the other party is in liquidation.
- (4) Upon termination of the contract, the Licensee ceases to use the license material.
- (5) The sections 12, 15, 16 remain valid even after the termination of the contract.

§ 14 Type and scope of the support

The acquisition of single licenses for WUFI® Pro, 2D or Plus does not entitle to the use of support.

Technical and software-related questions (operability, installation problems, errors) can be sent to support@wufi.com they will be reviewed and answered free of charge, if possible. For free student, light or test licenses there shall be no claim to support.

Project-specific support can be provided as part of the chargeable support packages. Software related questions can also be answered by local cooperation partners. Therefore, WUFI® contact addresses may be transferred to these partners. The documentation of the Software is retrievable in digital form, either as integrated help text in the program (WUFI® Pro and 2D) or as manual (WUFI® Plus/Passive). Installation instructions are included in the software installation in digital form.

§ 15 Reports, books and inspection rights

- (1) During the period of this contract and up to one year after its termination, the Licensee shall give any requested information about the type and scope of the use of the license material to Fraunhofer in writing within 15 days after receiving a corresponding request, which is necessary to inspect whether the provisions of the contract are or were met.
- (2) During the period of this contract and up to one year after its termination, Fraunhofer is entitled to have a tax or business advisor or another independent expert, who is sworn to a professional duty of confidentiality, inspect at its own charge, whether the provisions of this contract were met. The advisor shall be permitted to inspect all documents and files, which are relevant for calculating the extent of use of the license material. If such verification reveals any inaccuracies, the Licensee shall bear the audit costs; otherwise they shall be borne by Fraunhofer.

§ 16 Data protection

- (1) The parties comply with the respective applicable data protection regulations.
- (2) The Licensee's data (existing license, name, company and e-mail address) may particularly be shared with sales partners and country-specific WUFI partners of the Fraunhofer-IBP for the earmarked use (sale, support, information offers, training) and may be stored and used for the purpose of the execution of the contract for the period of the license contract and according to the legal retention period.

- (3) In addition, reference is made to the data protection declaration of Fraunhofer, which the Licensee can read and download at https://www.ibp.fraunhofer.de/en/data_protection.html.

§ 17 Final provisions

- (1) This contract is subject to substantive law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- (2) Modifications of and amendments to this contract shall require written form. This also applies to any change to this written form requirement.
- (3) This contract with all references and annexes (if any) contains all agreements in relation to the subject of the contract and replaces all former agreements between the parties in relation to the subject of the contract. Additional agreements to this contract do not exist.
- (4) Should any provision of this contract be or become invalid, ineffective or unenforceable in whole or in part, the remaining provisions shall remain in effect. The parties agree to replace the invalid, ineffective or unenforceable provision with a valid, effective and enforceable provision that corresponds most likely with the parties' economic interests. This applies to a contractual gap as well.
- (5) Place of performance are the headquarters of Fraunhofer in Munich, Germany. The risk transfers to the Licensee, as soon as Fraunhofer handed over the Software.
- (6) The German version of this contract is binding.