

**ANSYS AUSTRIA SERVICE TERMS**  
**Evaluation Services**  
**(Web Version November 2020)**

ANSYS shall provide the Evaluation Services described in a statement of work made to the Prospect ("SOW") on these service terms ("**Evaluation Service Terms**") which are incorporated into the contract between ANSYS and the Prospect ("**Agreement**").

**1 Definitions:**

In this Agreement, the following terms shall have the meanings given below:

"Acceptance Protocol" means a document provided by ANSYS to the Prospect for accepting the consulting services.

"Affiliate" means for a Party, any person or entity directly or indirectly Controlling, Controlled by, or under common Control with that Party.

"ANSYS" means the ANSYS entity who issued the SOW.

"ANSYS Group" means ANSYS and its Affiliates from time to time.

"ANSYS Background IPR" means all intellectual property rights of the ANSYS Group developed before the date of this Agreement or otherwise than in the course of performing the ANSYS Evaluation Services.

"Evaluation Services" mean services free of charge to be performed by ANSYS for the Prospect under the Agreement as more particularly described in the SOW.

"Confidential Information" means information disclosed by the Disclosing Party and relating to this Agreement or the ANSYS Evaluation Services. In addition, trade secrets, business and technical information and data, and any information disclosed orally or visually. In all cases, Confidential Information shall include any source code, development-level documentation, and similar technical information pertaining to ANSYS Group's software, which will at all times be protected through the highest commercially reasonable standard of care.

"Prospect" means the entity for which ANSYS agrees to perform the Evaluation Services as identified in the SOW.

"Prospect Background IPR" means all intellectual property rights of the Prospect developed before the date of this Agreement or otherwise than in the course of performing this Agreement.

"Deliverables" mean the deliverables listed in the SOW.

"Party" means individually ANSYS or the Prospect, and "Parties" refer to them collectively.

"Purchase Order" means any purchase Order referring to the SOW issued by the Prospect, if any.

"Software" means any software provided by ANSYS in accordance with the SOW.

"Third Party Software" means any Software that is not owned by a member of the ANSYS Group.

**2 Contractual Documents**

2.1 The Agreement consists of these Evaluation Service Terms and the SOW these documents apply to the Agreement to the exclusion of any other terms that the Prospect seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing (to the extent permitted by law) including without limitation any terms in any purchase order.

2.2 In the event of any conflict between the Evaluation Service Terms and the SOW, the following order of precedence shall apply:

2.2.1 these Evaluation Service Terms

2.2.2 the SOW

**3 Intellectual Property**

3.1 The ANSYS Group shall own the ANSYS Background IPR and the Prospect shall own the Prospect Background IPR.

3.2 ANSYS shall licence (or procure the licence of) the ANSYS Background IPR to the Prospect solely as necessary for the Prospect to receive the benefit of this Agreement.

3.3 The Prospect shall licence the Prospect Background IPR to each member of the ANSYS Group and their subcontractors solely as necessary for the provision of the ANSYS Evaluation Services and performance of this Agreement.

3.4 Notwithstanding any provision of this Section 3, the Agreement shall not afford the Prospect any existing or future rights in

software or know-how, owned, developed or licensed by ANSYS and/or its Affiliates including, but not limited to, any software or know-how developed or used in connection with the ANSYS Evaluation Services, and shall not modify any licensing or other agreement between the Prospect and ANSYS and/or its Affiliates.

3.5 Prospect acknowledges that ANSYS provides evaluation services, consulting and mentoring services to other Prospects and/or customers and agrees that nothing in this Agreement shall be deemed or construed to prevent ANSYS from carrying on such business or developing for itself or others materials that are competitive with those produced as a result of the ANSYS Evaluation Services provided hereunder, irrespective of their similarity to the Deliverables provided hereunder, as long as ANSYS is in compliance with any confidentiality obligations under this Agreement or any existing written non-disclosure agreement between the Parties.

3.6 ANSYS hereby grants Prospect, a non-exclusive, perpetual license to use the Deliverables for an unlimited term and geographical scope solely in connection with the ANSYS Evaluation Services.

3.7 The Prospect shall obtain any licences required for using any Third Party Software. ANSYS shall not be responsible for obtaining any licence of the Third Party Software for the Prospect or the performance of the Third Party Software.

**4 Export Restrictions**

4.1 The technologies that relate to the ANSYS Evaluation Services provided by ANSYS including the Deliverables may be subject to legal, regulatory, and contractual provisions restricting the export, including such rules applied by the USA or EU ("**Export Rules**").

4.2 Where Export Rules are applicable, ANSYS shall make use reasonable efforts to obtain the administrative authorization required according to the Export Rules, to allow the Prospect to use the rights provided under this Agreement in the country of the Prospect's incorporation in the European Union.

4.3 Notwithstanding Section 4.2, the Prospect remains solely responsible and ANSYS is not bound to obtain the administrative authorizations necessary for export and/or use of any item provided by ANSYS outside the European Union and will be completely exempt of any responsibility in case of infringement by the Prospect or a third party of the Export Rules due to the use and/or export outside the European Union.

**5 Confidentiality**

5.1 Confidential Information disclosed by ANSYS are intended only for the use of the Prospect and may not be disclosed to any third party without ANSYS's prior written permission. This information may not be used for any purpose other than to assist the Prospect in making a purchasing decision regarding ANSYS software and/or services, or as otherwise indicated in the applicable licensing agreement. In any case, this provision shall not be construed as contradicting, replacing or superseding any confidential agreement(s) which might exist and be applicable between the Parties.

**6 Liability**

6.1 ANSYS shall be liable without limitation for any damage, regardless of the legal basis: (a) in the event of injury to life, body or health; (b) from gross negligent or willful intent; (c) due to the explicit assumption of a guarantee; and (d) by violation of the Product Liability Act. ("Produkthaftungsgesetz")

6.2 The liability of ANSYS caused by negligent breach of duty, regardless of the legal basis, is expressly excluded, unless material contractual obligations are violated. Material contractual obligations are defined as obligations the fulfillment of which is an essential prerequisite for the proper performance of the agreement and on the observance of which Prospect may rely.

6.3 In addition, provided ANSYS under the above provision 6.2 is liable and insofar as there is no individually negotiated agreement for such purpose in place, the liability of ANSYS shall be restricted to the damage typically foreseeable for such type of service agreement.

- 6.4 If a fault of the Prospect has contributed to the occurrence of a damage, this shall reduce any claim for damage against ANSYS in accordance with the statutory provisions.
- 6.5 All liability provisions shall apply to the same extent for claims against employees and vicarious agents of ANSYS.
- 7 Miscellaneous
- 7.1 This Agreement does not give any exclusive rights to either Party.
- 7.2 Neither Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement (other than the obligation to pay any invoiced amount) to the extent such delay or non-performance arises from any cause beyond its reasonable control including act of God, natural disasters such as earthquakes, tidal waves and floods, governmental act, war, fire, explosion, civil commotion or industrial dispute, armed hostilities, act of terrorism, revolution, blockade, embargo, strike, lock-out, sit-in, industrial or trade dispute.
- 7.3 Exclusive place of jurisdiction for all disputes arising from or in connection with the Agreement is Munich, District Court Munich I, Germany. ANSYS reserves the right to file lawsuits or bring other court proceedings at the registered office of Prospect.
- 7.4 If a court holds any provision of the Agreement to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 7.5 This contract is subject to the substantive law of the Federal Republic of Germany and is interpreted accordingly. The application of the UN Sales Convention is hereby expressly excluded.

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