

EASE Focus 3 – Terms and Conditions

These Terms and Conditions govern the legal relationship between AFMG Technologies GmbH, Borkumstr. 2, 13189 Berlin, Germany, represented by its Executive Directors Wolfgang Ahnert and Stefan Feistel, („AFMG”) and the manufacturer or provider of loudspeaker cabinets ordering Author Files from AFMG subject to the terms set forth herein (“MANUFACTURER”). By ordering Author Files from AFMG, MANUFACTURER unconditionally accepts these Terms and Conditions (also referred to as this “Agreement”) as the contractual basis between the parties.

Preamble

AFMG is a worldwide leader in the development of software for the pro-audio industry. AFMG has developed, amongst other programs, the Software EASE Focus Version 3 (hereinafter referred to as the “Software”). The Software is acoustic modeling software for line array systems, digitally steered columns and conventional loudspeakers. It supports three-dimensional SPL mapping, multiple systems, time and frequency response plots as well as many other features.

The Software is free for the end user. However, loudspeaker companies, such as the MANUFACTURER, need to license their loudspeakers in order to unlock them for use with the Software. MANUFACTURER desires to integrate authorization files by AFMG into its data files for its loudspeaker systems so that they can be used in combination with the Software, and to distribute such data files to end customers. End customers can download the Software for free from AFMG’s or from MANUFACTURER’s website according to the terms of a separate license agreement between AFMG and the end customer.

1. Subject of the Agreement

- 1.1. Upon request of MANUFACTURER, AFMG provides MANUFACTURER with certain authorization files that are necessary to unlock MANUFACTURER’s data files for its loudspeaker systems for the Software (such authorization files hereinafter referred to as “Author Files”). The conditions for the purchase of Author Files from AFMG and the respective license fees are set forth in Sections 4 and 5.
- 1.2. Subject to the terms of this Agreement, MANUFACTURER has the right to integrate the Author Files into data files for certain loudspeaker systems (hard- and software) as agreed between the Parties pursuant to Section 4 (such data files containing the Author Files hereinafter referred to as “System Definitions”) and market and distribute the System Definitions in its own name and on its own account. MANUFACTURER is not entitled to act in the name and on behalf of AFMG or to represent AFMG.

2. Non-exclusive license and End User License Agreement

- 2.1. In order to enable MANUFACTURER to distribute the System Definitions usable with the Software, AFMG grants to MANUFACTURER the non-exclusive, non-transferable right to integrate the Author Files into the System Definitions and to distribute to end customers the System Definitions subject to the provisions of these Terms and Conditions.
- 2.2. MANUFACTURER is not entitled to compile the Author Files for other products and brands than the “Licensed Models” as agreed between the parties pursuant to Section 4.
- 2.3. In order to use the System Definitions with the Software, the end customer needs to download the Software from AFMG’s website or from the MANUFACTURER’s website, in either case subject to the terms and conditions of AFMG’s End User License Agreement to be concluded between AFMG and the end customer.

- 2.4. If the MANUFACTURER intends to offer the Software for download from its website, AFMG will provide, subject to AFMG's sole discretion, the Software and the respective End User License Agreement to MANUFACTURER. For this purpose, AFMG grants to MANUFACTURER a non-exclusive, non-transferable right to make the Software publically available to commercial end customers from its website subject to the conditions of the End User License Agreement. When offering the Software for download to commercial end customers, MANUFACTURER shall provide the end customer with the End User License Agreement and shall expressly state that, by downloading the Software, the user unconditionally accepts the terms and conditions of the End User License Agreement. When offering the Software for download to end customers, MANUFACTURER shall also expressly state that the offer is only directed at commercial end customers, not at private end consumers.

3. Obligations of MANUFACTURER

- 3.1. MANUFACTURER shall not alter or modify any copyright notices contained in the Author Files. MANUFACTURER acknowledges that AFMG's trademarks are owned solely and exclusively by AFMG and agrees to use such trademarks only in selling, advertising and promotional material relating to the distribution of the System Definitions.
- 3.2. MANUFACTURER is aware that the data files and the System Definitions contain specific performance data used for simulations. MANUFACTURER will use its utmost care and diligence when creating the data files and the System Definitions before integrating the Author Files. AFMG will not be liable for any claims resulting from a careless or negligent use of the System Definitions by MANUFACTURER.
- 3.3. When mentioning the functionality of the Software publically (e.g., through advertising, on the internet etc.), MANUFACTURER shall make proper reference to AFMG and the Software.
- 3.4. MANUFACTURER will provide its end customers with all information and documents required for the use of the System Definitions with the Software. The MANUFACTURER shall inform the end customers on all enhancements and developments of the Software from the time AFMG has released and marketed such enhancements and developments.
- 3.5. MANUFACTURER should offer its end customers assistance with respect to an initial instruction to the Software and offer training courses if needed. Such instructions and training courses shall be carried out according to the guidelines provided by AFMG.
- 3.6. In the event of any material breach of the provisions of this Agreement, AFMG is entitled to exclude MANUFACTURER's System Definitions from the Software. All other rights, including the right to terminate the Agreement for good cause, remain unaffected.

4. Purchase of Author Files

- 4.1. MANUFACTURER can purchase Author Files from AFMG in sets of five (5) Author Files for one brand as defined by the MANUFACTURER as specified in AFMG's then current Price List. Each set includes support for a maximum of five (5) different types of loudspeaker cabinets of the MANUFACTURER.
- 4.2. From the moment of delivery of the Author Files to MANUFACTURER, AFMG shall support the respective System Definitions with respect to the version of the Software that is compatible and supported by AFMG at this point in time, or any free upgrades of the Software, for at least three further years.
- 4.3. MANUFACTURER will provide AFMG with the display and internal names of the types of loudspeaker cabinets which MANUFACTURER intends to license as well as any technical information as required for the licensing process by AFMG. AFMG shall confirm if the types of loudspeaker cabinets can be used with the Software (these types of loudspeaker systems shall hereinafter be referred to as "Licensed Models").

- 4.4. Upon payment of the License Fee(s) set forth in Section 5, and upon request by MANUFACTURER in writing (email is sufficient), AFMG shall provide MANUFACTURER with Author Files for the Licensed Models. AFMG shall provide the Author Files by email or by download link, normally within five business days.
- 4.5. AFMG keeps track of all purchased and of all delivered Author Files, and provides MANUFACTURER with the corresponding information upon request.
- 4.6. The parties expressly agree that the purchase of Author Files from AFMG is only valid for use of the Software in its current version, i.e., EASE Focus Version 3. In the event that AFMG publishes upgrades, and MANUFACTURER wishes to purchase an upgrade, MANUFACTURER has to pay an upgrade fee to AFMG subject to AFMG's then current Price List.

5. Prices and Payments

- 5.1. MANUFACTURER shall pay to AFMG the license fees for the purchase of Author Files according to AFMG's then current Price List. In the event that AFMG shall employ affiliate companies or distribution partners, MANUFACTURER shall, only upon express request by AFMG, pay the license fees to such affiliate companies or distribution partners as requested by AFMG.
- 5.2. AFMG shall send an invoice to MANUFACTURER for all fees payable by MANUFACTURER under this Agreement. All payments under this Agreement are payable according to the payment conditions of the respective invoice from AFMG. If not otherwise indicated in the respective invoice, any payments should be made to:

Bank: Deutsche Bank Berlin
BIC (SWIFT): DEUT DE DBBER
IBAN: DE54 1007 0024 0730 6988 00
BLZ: 100 700 24
Account-Nr.: 7306988

- 5.3. Unless otherwise agreed by the parties, all prices do not include any sales, use, withholding, value added or similar taxes, government fees or levies or other assessments which shall be the sole responsibility of MANUFACTURER.
- 5.4. In the event MANUFACTURER desires to sell the System Definitions, MANUFACTURER is free to set its own prices to end customers.
- 5.5. For the avoidance of doubt, the parties agree that MANUFACTURER is not entitled to any reimbursement of fees paid to AFMG under this Agreement in the event that the life cycle of the Licensed Models terminates.

6. Limitation of liability

- 6.1. AFMG shall not be liable for any claims for damages or any claims for reimbursement of wasted expenses, regardless of the type of violation involved and regardless of the legal grounds, except, (i) in cases involving wilful misconduct, where liability shall be governed by applicable law, regardless of the type of damages involved; (ii) in cases involving personal injuries or damages recoverable under the German Product Liability Act (Produkthaftungsgesetz), where liability shall be governed by applicable law, regardless of default; or (iii) in cases involving property damages, where liability shall be limited to gross negligence.
- 6.2. Except as provided in Section 6.1. above, AFMG shall not be liable for any damages, including, without limitation, financial losses of any kind.

- 6.3. The limitation of liability as defined in Section 6.1. above applies to the same extent to any kind of damages caused by gross negligence of employees or otherwise authorised persons of AFMG.

7. Jurisdiction, Governing law, final provisions

- 7.1. Any disputes arising from or in connection with this agreement shall be determined by a court of competent jurisdiction in Berlin, Germany.
- 7.2. This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 7.3. If any provision of this agreement shall be held invalid, the validity of the remaining provisions shall remain unaffected thereby. Any invalid provision shall, to the extent permitted by law, be replaced by such valid provision as most closely reflects the commercial intent and purpose of the original provision. The forgoing shall apply analogously if any provision shall have been inadvertently omitted from this agreement.
- 7.4. Any modifications or amendments to this agreement, including any waiver of this provision, shall be invalid unless executed in writing and duly signed by both Parties. This agreement reflects the entire agreement between the parties. The parties have entered into no oral or written collateral Agreements with respect to the subject matter hereof. Any other terms and conditions of the MANUFACTURER are hereby excluded and shall not be part of this agreement.

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Berlin, December 01, 2021

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