AFMG Reflex – End User License Agreement

AFMG is a worldwide leader in the development of software for the pro-audio industry. AFMG has developed, amongst other programs, and is the sole owner of the Software AFMG Reflex (hereinafter the "Software"). The AFMG Reflex software is a two-dimensional acoustics simulation software for acoustic consultants and engineering offices that allows modeling the reflection, diffusion, and scattering of a sound wave incident upon a defined geometrical structure. Based on the calculation results, pictures and reports can be produced for documentation purposes. The Software is provided by AFMG or authorized distribution partners (AFMG's "Partners").

EASE and AFMG are registered trademarks of AFMG Technologies GmbH. Their use is governed by AFMG's official trademark guidelines and all applicable trademark laws.

This end user license agreement ("Agreement") governs the legal relationship between AFMG Technologies GmbH, Borkumstr. 2, 13189 Berlin, Germany ("AFMG"), and the commercial end user of the Software ("User"). As AFMG does not sell the Software to private end users, this Agreement does not apply to those. By downloading the Software from AFMG's or its authorized Partners' websites, the User unconditionally accepts the terms and conditions of this Agreement.

1. Subject of the Agreement

1.1. AFMG provides the Software for download from its web portal available at http://downloads.afmg.eu. AFMG provides the User with the number of user keys purchased by the User. Each user key purchased by the User ("User Key") allows for the User to use the Software on one (1) computer at a time while the installation on several computers is allowed.

1.2. The establishment and maintenance of a functional hardware and software environment is the sole responsibility of the User. The minimum system requirement for the installation of the Software is Windows 10.

1.3. AFMG does not provide and has no obligation to provide the User with the source code of the Software.

1.4. The User shall observe all instructions provided by AFMG for the installation and operation of the Software.

2. Granting of Rights

2.1. AFMG grants the User a perpetual, non-exclusive, non-sublicensable and non-transferable right for the term of this Agreement to use the Software on a number of computers only. This number corresponds to the number of User Keys purchased from AFMG or AFMG's Partners.

2.2. Reproduction of the Software is only permitted insofar as it is necessary for use of the Software in compliance with this Agreement. The User may produce backup copies of the Software as is necessary and in keeping with good practice. Backup copies on removable data storage media must be labeled as such and must bear all copyright and proprietary notices.

2.3. The User is not authorized to change, adapt, arrange or otherwise modify the Software unless expressly allowed under the applicable copyright law or upon prior written consent by AFMG.

2.4. The User must not transfer or sublicense the Software to third parties without prior written consent by AFMG.

2.5. AFMG remains the sole owner of all rights in and to the Software and reserves all rights not granted to the User under this Agreement.

3. Technical Support and Maintenance Updates

3.1.   AFMG shall provide the following technical support services ("Technical Support") to the User:

- E-mail support within AFMG's regular business hours;
- Telephone support within AFMG's regular business hours;

Technical Support shall be provided for a period of six (6) months after the date of purchase of the Software.

3.2.   Furthermore, AFMG shall provide the following maintenance support services ("Maintenance Updates") to the User:

- Bugfixes for the Software;
- Adaptations of the Software in the event of changes to the current operating systems;

The scope and provision of Maintenance Updates lies in the sole discretion of AFMG. Maintenance Updates should be provided unless terminated by AFMG. AFMG will notify the User at least one (1) year prior to the termination of Maintenance Updates.

3.3.   Technical Support and Maintenance Updates shall be provided by AFMG free of charge.

3.4.   AFMG is entitled to terminate the provision of support services for good cause. In this event, AFMG shall notify the User about the termination. With the termination of the support services, all rights to use the Software and/or the Upgrade (see Section 4) shall immediately cease and the User is no longer entitled to use the Software and/or the Upgrade.

4. Prices

4.1.   The fees to be paid by the User to AFMG and details regarding the available packages are specified in the price list in the version applicable at the date of the conclusion of this Agreement. The price list is available on AFMG's website at https://www.afmg.eu/en/purchase#price.

4.2.   AFMG shall provide the Software after prepayment by the User. AFMG shall provide the respective download link by e-mail generally within two (2) business days.

5. Limitations of Liability

5.1.   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:

a)   In cases of damage from injury to life, body or health due to negligent breach of duty by AFMG or intentional or negligent breach of duty by a legal representative or a person used to perform an obligation of AFMG;

b)   In cases of other damage arising from a grossly negligent breach of duty by AFMG or from an intentional or grossly negligent breach of duty by a legal representative or a person used to perform an obligation of AFMG;

c) 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.

5.2. Except as provided in Section 5.1. above, AFMG shall not be liable for any damages, including, without limitation, financial losses of any kind.

6. Indemnification

6.1. The User shall fully indemnify AFMG from all third-party claims, which arise from any illegal, culpable use of the Software by the User. This includes in particular patent claims, copyright claims or other commercial intellectual property right claims as well as claims arising from a violation of personal rights or from the unauthorized collection, storage and application of personal data. The User will indemnify and hold harmless AFMG from all legal fees reasonably incurred by AFMG that are attributable to any such claim.

6.2. In the event the User learns or must learn that the infringement of such right is imminent, the User shall immediately inform AFMG.

7. Trademarks

Unless otherwise agreed between the parties in writing, the User shall only use AFMG's trademarks in accordance with AFMG's Trademark Guidelines which can be accessed on AFMG's website at https://www.afmg.eu/en/trademarks.

8. Jurisdiction, Governing Law, Final Provisions

8.1. Any disputes arising from or in connection with this Agreement shall be determined by a court of competent jurisdiction in Berlin, Germany.

8.2. This Agreement shall be governed by and construed in accordance with the laws of Germany. For the avoidance of doubt, the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

8.3. 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 terms and conditions of the User do not apply. For the avoidance of doubt, it is expressly agreed between the parties that this Agreement shall prevail over any terms and conditions used or referred to by the User.

8.4. 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 respectively if any provision shall have been inadvertently omitted from this Agreement.

Version: 1.1
Berlin, May 24, 2024

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