

GENERAL TERMS AND CONDITIONS

The following general Terms and Conditions (the "GTC") apply to all contracts for the provision of the Software concluded between **You** (the "**Customer**") and **UX3D GmbH**, (registered number HRB 236081, Amtsgericht München [Local Court of Munich]) whose registered office is at Konrad-Zuse-Platz 8, 81829 Munich, Germany (the "**Distributor**").

By clicking the Subscription Button, you agree to all of these terms.

DEFINITIONS AND INTERPRETATION

In these GTC:

- 1.1 the following words and expressions have the following meanings unless the context otherwise requires. Words and expressions that are not defined in these GTC but which are capitalised shall have the meaning as defined in the EULA.

"EULA"	the END USER LICENCE AGREEMENT which can be accessed here: https://gestaltor.io/terms/ and which form an essential part of these GTC.
"Licence Fee"	means the agreed fees payable by Customer as set out in the ordering process on the website, invoices or price list.
"Software"	the Software Gestaltor as further specified in the Documentation and any Software Update made available to the Customer by the Distributor from time to time under these GTC. Customer acknowledges that the Software is not fault-tolerant and is not designed or intended for use in hazardous environments that require fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage.
"Subscription"	a rental agreement regarding the rental of the Software.
"Subscription Date"	the day of the confirmation of the order.
"Subscription Button"	the button in the ordering process titled either "Subscribe with obligation to pay" or "Subscribe Free" depending on the Subscription Plan and Licence Metric.

- 1.2 unless the context otherwise requires:
 - 1.2.1 references to the singular include the plural and vice versa and references to any gender include every gender;
 - 1.2.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.3 references to a release do not include or refer to a new item of software;
- 1.4 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.5 references to "in writing" or "written" include facsimile and email but no other methods of electronic messaging;
- 1.6 With the exception of the EULA, these terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.

2. **CONCLUSION OF CONTRACT**

- 2.1 By clicking the Subscription Button in the last step of the order process, the Customer submits a binding offer for a Subscription of the Software displayed in the order overview.
- 2.2 A binding contract comes into existence between the Customer and the Distributor as soon as the Subscription order is confirmed by means of a separate email. Please regularly check the spam folder of your mailbox.

3. **INFORMATION ON ADJUSTMENTS**

- 3.1 To place an order, the Customer may start by placing the desired Licence and Subscription plan in the shopping cart. Please consider the provisions of the EULA and in particular the Licence Metric to choose the right Licence for the intended purpose.
- 3.2 The Customer may modify at any time the desired quantity or delete Subscriptions completely from the cart. By clicking on the button „Next“, the Customer will be redirected to a website where the Customer may enter data and choose the payment method. The Customer can review the input on the overview page that will open up. Input errors can be corrected (e.g. with respect to the payment method, data or quantity), by clicking „Edit“ next to the respective field. The order process can be cancelled by closing the browser window. By clicking the confirmation button Subscription Button, the Customers declaration becomes binding in the meaning of **clause 2.1** of these GTC.
- 3.3 Customer will receive the contractual provisions together with information on the goods ordered and/or services booked including these GTC and the information on the right of withdrawal by email upon acceptance of the contract offer or together with the notification thereof. Distributor will not store the contractual provisions for Customer.

4. **SUBSCRIPTION**

- 4.1 The Distributor will enable the Customer to use the Software for the duration of the Subscription Term in accordance with the EULA.
- 4.2 The Distributor will send the Customer an Original Serial Key to activate the Software. The Original Serial Key will be deactivated at the end of the Subscription Term. The Customer will not be able to use the Software after the deactivation of the Original Serial

4.3 Key.

5. **SUBSCRIPTION TERM**

5.1 The Customer may choose in the ordering process between a monthly and a yearly (12-months) subscription term (the "**Subscription Term**"). The Subscription Term starts with the day of the confirmation of the order (the "**Subscription Date**"). The Subscription Term ends on the expiry of the day of the last week or of the last month which, in its designation or its number, corresponds to the Subscription Date.

5.2 Unless provided otherwise, the Subscription Term is tacitly automatically renewed at the end of the Subscription Term for an additional Subscription Term (e.g. 1 month or 12 month depending on the initial choice of the Customer).

5.3 Any changes between monthly and yearly Subscription Terms will only become effective for the next renewal period.

5.4 By way of derogation from **clause 5.1 to 5.3**, the Subscription Term for an Evaluation Licence is limited to 30 days from the day of the Subscription Date and is not renewable.

6. **LICENCE FEE**

6.1 The Licence Fee is due immediately after placing the order. The payment can be made via credit card or PayPal.

6.2 In the case of a renewal, the Licence Fee for the renewed term is due on the first date of the renewed Subscription Term.

6.3 The Customer will pay the Distributor the Licence Fee based on the Licence Metric and the Subscription Term as specified in **Annex 1**.

7. **LICENCE AND APPLICABILITY OF THE EULA**

The Customer's acceptance of these GTC alone does not grant the Customer any right to use the Software. The right to use the Software will be granted separately under the terms and conditions of the EULA, which have to be accepted by the Customer during the order process and by each end-user during the installation of the Software.

8. **SERVICES**

8.1 The Distributor will not be under any obligation to:

8.1.1 maintain the Software, unless provided by **clauses 9 and 10**;

8.1.2 support the Software or Documentation unless the Customer has ordered such support services in a separate agreement;

8.1.3 to provide Software Updates; or

8.1.4 to upgrade the Software or Documentation.

8.2 Without prejudice to **clause 8.1**, if the Distributor makes any Software Update available to the Customer, the Customer will procure that it is installed promptly and correctly.

8.3 The Distributor is under no obligation and makes no warranty relating to frequency of Software Updates.

9. **RIGHTS IN CASE OF DEFECTS**

9.1 The Software provided by the Distributor shall be substantially in accordance with the Documentation as made available by the Distributor. Documentation shall not be deemed

guaranteed unless separately agreed in writing. In respect of Updates, upgrades and the delivery of new versions, the Customer's rights in case of defects shall be limited to the new features of the update, upgrade or new version compared to the previous version release.

- 9.2 The Distributor will remedy any defects by way of improvements and/or a replacement of the Software. If the defect is not cured within a first time limit and the Customer has set the Distributor a reasonable second time limit without success or if a reasonable number of attempts to remedy are unsuccessful, then Customer may, subject to the statutory prerequisites, opt to terminate the Subscription and/or claim for damages. The remedying of the defect may also take place through the delivery or installation of a new program version or a work-around. If the defect does not or not substantially impair the functionality, then Distributor is entitled, to the exclusion of further rights in case of defects, to remedy the defect by delivering a new version or an Update as part of its version, Update and upgrade planning.
- 9.3 If the Customer is a merchant, the Customer is still obliged to pay the entire subscription fee in the case of a defect, unless the right to reduce the fee is undisputed or final and absolute under a court judgement. Any potential claims for unjust enrichment remain unaffected. Consumers may reduce subscription fees – where applicable - in accordance with the statutory provisions.
- 9.4 Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. This shall not affect the statutory obligation of the Customer to inspect and notify defects.
- 9.5 Any claims for damages are subject to the limitations set forth under **clause 11**.
- 9.6 The Distributor may refuse to remedy defects or deliver replacements, until the Customer has paid the agreed fees to the Distributor, less an amount which corresponds to the economic value of the defect.
- 9.7 If the subscription is free, the rights in case of defects are restricted to the statutory liability for defects as described in Sec. 600 of the German Civil Code.

10. **RIGHTS IN CASE OF DEFECTS IN TITLE**

- 10.1 The Software delivered or provided by the Distributor shall be free from third party rights, which prevent the use in accordance with the contract. Excepted from this are customary retentions of title.
- 10.2 To the extent that there are defects in title, the Distributor is entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the Software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the Software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the Software.
- 10.3 If a release under **clause 10.2** within a reasonable time limit set by the Customer fails, then the Customer may subject to the statutory prerequisites at its option terminate the Subscription or claim damages.
- 10.4 In all other respects **clauses 9.3, 9.4, 9.5** and **9.6** apply accordingly.

11. **LIABILITY AND DAMAGES**

- 11.1 The Distributor shall be liable under the terms of this Agreement only in accordance with the provisions set out under **clauses 11.1.1 to 11.1.5**:

- 11.1.1 The Distributor shall be unrestricted liable for Losses caused intentionally or with gross negligence by the Distributor, its legal representatives or senior executives and for Losses caused intentionally by other vicarious agents; in respect of gross negligence of other assistants in performance the Distributor's liability shall be as set forth in the provisions for simple negligence in **clause 11.1.5** below.
 - 11.1.2 The Distributor shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of the Distributor, its legal representatives or assistants in performance.
 - 11.1.3 The Distributor shall be liable for Losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for the Distributor at the time the warranty was given.
 - 11.1.4 The Distributor shall be liable in accordance with the German Product Liability Act in the event of product liability.
 - 11.1.5 The Distributor shall be liable for Losses caused by the breach of its primary obligations by the Distributor, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the Customer may rely. If the Distributor breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by the Distributor at the time the respective service was performed.
- 11.2 The Distributor shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.
- 11.3 Any more extensive liability of the Distributor is excluded on the merits. In particular, the Distributor is not liable for initial defects, except in cases of **clause 11.1**.

12. **DATA PROTECTION**

The use of personal data will be in accordance with the UX3D GmbH Privacy Notice, which can be accessed at <https://gestaltor.io/privacy-policy/>.

13. **EXPORT CONTROL**

The Customer will comply with all Export Laws and Sanctions.

14. **TERMINATION**

- 14.1 Any party may terminate the Subscription before the end of the Subscription Term. The Customer may do so by clicking "Cancel Subscription" in the User Account or via an E-Mail that contains the respective declaration and customer and contract information to **support@ux3d.io**. The Subscription Term will not be renewed in this case. The Customer will be able to use Software until the end of the Subscription Term.
- 14.2 If a party:
- 14.2.1 commits a material breach of this these GTC or the EULA which cannot be remedied; or
 - 14.2.2 commits a material breach of these GTC or the EULA which can be remedied but fails to remedy that breach within 14 days of a written notice referring to this **clause 14.1**, setting out the breach and requiring it to be remedied being given by the other party, the other party may terminate the Subscription by giving not less than 14 days' written notice to that effect to the party in breach provided that the notice to terminate is given within six months from the date of the material breach occurring or the party terminating the Subscription becoming aware of it, whichever is the later.
- 14.3 The Distributor may terminate the Subscription without notice if Licence Fees in arrears exceeds the Licence Fees for one month.

- 14.4 The Distributor may terminate the Subscription with immediate effect by giving notice to the Customer if:
- 14.4.1 any Sanction is imposed in respect of any country or territory from which the Software, Documentation or services are exported or provided or into which they are imported or in which they are received;
 - 14.4.2 a Sanction is made in respect of the Customer or any User or in respect of any country in which the Customer or any User is incorporated or operates;
 - 14.4.3 the Distributor has reasonable cause to believe that the continued licensing of the Software or performance of any of the services is or would be in violation of or a breach of any Sanction or Export Law; or
 - 14.4.4 the Distributor has reasonable cause to believe that the Customer or any User has breached or is likely to breach any Sanction or Export Law.
- 14.5 The parties acknowledge and agree that if, at any time, a party is entitled to exercise more than one right of termination under these GTC, such party may, at its sole discretion, elect which (if any) termination right or rights it wishes to exercise.

15. **CONSEQUENCES OF EXPIRY OR TERMINATION**

15.1 Following the Termination Date:

- 15.1.1 the following provisions will continue in force: **clauses 11, 12, 15, 20-22** together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of the Subscription; and
- 15.1.2 all other rights and obligations will immediately cease (including, without limitation, the licences granted in **clause 2**) without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

15.2 Within 30 days after the Termination Date:

- 15.2.1 the Customer will return to the Distributor all copies of the Software and of the Documentation in its possession or control, whether those copies are authorised or unauthorised; and
- 15.2.2 the Distributor will return to the Customer or delete all copies of Customer data in its possession or control unless the Distributor is required to keep copies for any regulatory purpose in which case the Customer has the burden of proof.

16. **SEVERANCE**

If any term of these GTC is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from these GTC and this will not affect the remainder of these GTC which will continue in full force and effect.

17. **ASSIGNMENT**

- 17.1 The Customer will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under these GTC. This does not apply for the assignment of monetary claims of the Customer if the Customer is a merchant.
- 17.2 The Distributor will be entitled in its sole discretion to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under these GTC.

18. **SUB-CONTRACTING**

18.1 The Customer will not be entitled to subcontract any of its obligations under these GTC.

18.2 The Distributor will be entitled to sub-contract any of its obligations under these GTC. The Distributor will ensure that any such sub-contractor is bound by contractual terms substantially equivalent to those which apply to the Distributor's obligations under these GTC.

19. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with these GTC will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

20. **DISPUTE RESOLUTION**

20.1 We would like to point out that, besides the legal recourse, there also exists the possibility of an extrajudicial resolution pursuant to regulation (EU) no. 524/2013. For details, please see regulation (EU) no. 524/2013 and website <http://ec.europa.eu/consumers/odr>. Our e-mail address is: **support@ux3d.io**

21. We inform you according to § 36 German VSBG that we are not under obligation to take part in an extrajudicial resolution proceeding pursuant to the VSBG.

22. **GOVERNING LAW AND JURISDICTION**

22.1 These GTC and any non-contractual obligations arising out of or in connection with it will be governed by the laws of Germany. The United Nations convention on contracts for the international sale of goods shall not apply.

22.2 The courts for the Distributor's registered office shall have exclusive jurisdiction over all disputes under and in connection with these GTC, provided that Customer is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, the Customer has no place of business or ordinary residence in the Federal Republic of Germany.

Annex 1 – Licence Fee

Community Licence	Monthly: Free
Evaluation Licence	30 days: Free
Professional Licence	Monthly: 5 Euro
	Yearly: 50 Euro