

## binary AG's General Terms of License (hereinafter – Licensors)

### I. Preliminary note

#### 1. Preface

The licensor himself shall develop and distribute a Quality Management and Engineering software called "binaryOptimizer" which is runnable on different operating systems. The licensee shall acquire the rights of use exclusively for his own in-house use of the product hereunder – however not for other purposes or for resale.

#### 2. Definitions

In view of inconsistent use of language, the subsequent fundamental terms shall be defined as follows for this Agreement and for the ongoing business relationship:

##### License

"License" is defined as a software covering one or more workstations for one or more operating system platforms within a clearly defined operational area (company, division, department or the like). The license file provided identifies the authorised workstation, i.e. the authorised role(s), mandate(s), the amount, the scope of services and the licensed software's (demo/test version) expiry date.

##### Version

"Version" is defined as software of a certain generation. With new versions, the technical as well as the functional level shall be upgraded. As a rule, the modified functionality leads to changes in the documentation.

##### Release

"Release" is defined as a technically upgraded version without a grave functionality upgrade that, above all serves as a means of rectifying faults. As a rule, the modifications do not lead to changes in the documentation.

##### Upgrade

"Upgrade" is defined as the delivery of a newer/current version.

##### Update

"Update" is defined as the delivery of a newer/current release.

##### Generation

"Generation" is defined as the generating of media with feasible software for a particular operating system platform. The software's complete number comprises four blocks of numbers separated by dots as follows:

WW(MajorVersion).XX(MinorVersion).YYY(ControlNumber).ZZZ(Release)  
thus e.g. 2.4.809.101

##### License file

"License file" is defined as a domain linked to a file that activates the Features or Role(s) ordered.

#### 3. Copy Protection

This product is copy protected. For proper function, a valid license file is needed. Copy protection could be made with other methods as well.

### II. Licensing Agreement

#### 1. The Licensee's Rights

##### a) Rights of use

Upon the conclusion of this Agreement and the payment of the stipulated fee the Licensee shall receive the nonexclusive, temporally unlimited or (e.g. when referring to rent, tests or the like) temporally limited rights of use for the Software hereunder.

##### b) Miscellaneous

The rights of use include the authorization to create backup copies as needed. Furthermore, the Licensee shall acquire the transmitted documentation, media and copy protection mechanisms as his property.

#### 2. Caveat

The parties shall agree that the software hereunder is subject to copyright protection. The Licensee shall acknowledge the Licensor's copyrights and other industrial property rights.

##### a) Copyrights, Processing, Reproduction and Patent Rights

The Copyrights and all Processing, Reproduction and Patent Rights as well as other rights to the software hereunder shall remain with the Licensor.

##### b) Sources

The Licensee shall under no circumstances acquire any rights to the sources. Accordingly he shall not be authorised to conduct any Reverse-Engineering, decompiling, editing or any other changes on the software hereunder.

##### c) Data sharing or resale of data

Without the Licensor's approval, the Licensee shall, neither temporarily nor permanently, be authorised to share the software hereunder with third parties, whether for a fee or free of charge. The Licensor is, in particular, also not obliged to offer the conclusion of service contracts to potential third parties or to grant them Support and Upgrade possibilities.

#### 3. Scope of delivery Programm

The Licensee shall receive the current version of the software hereunder in machine-readable form – once on media or made available in the form of a download and irrespective of the number of licenses acquired.

##### a) Documentation

The documentation shall be made available completely in electronic form on the medium or on the portal, therefore being absolutely available to each user.

##### b) License file

Upon the coming into force of the Agreement, the Licensee shall receive (after the completion of test period, if need be) one or several license files with which the Software can put into operation for the stipulated period of usage.

#### 4. Additional services

The scope of the additional stipulated services shall likewise result from the offer. Additional services – particularly function upgrades, adjustment measures on special hardware not compatible with the current version, installation, support, service and training – are as a matter of principle not obligatory if not explicitly arranged for.

The amount of payment claims for possible additional services and the due date thereof shall result from the offer.

#### 5. Deadlines

Possibly mentioned delivery or installation deadlines are not binding as long as nothing else has been explicitly stipulated.

### III. The Licensee's obligations

#### 1. Protection of the Licensor's rights

The Licensee shall commit himself to respect the Licensor's rights, particularly

- the amount of the licenses, i.e. roles and mandates installed as well their scope resulting from the license file;
- no sharing of software copies with third parties and not enabling third parties to produce copies;
- no conducting of illegal manipulations whatsoever on the software hereunder.

#### 2. Penalty clause

##### a) Amount

For each installation of the programme the Licensee or third parties carry out and thereby violating the obligations pursuant to Nr. III. 1. a) to c), the Licensee shall pay a contractual penalty corresponding to double the amount of the complete license fee according to the Licensor's respective current price list for the software concerned.

##### b) Third-party liability

In this connection, the Licensee shall also be liable for all persons employed in his hazard areas (assistants, employees, free-lancers) as well as for lack of organisation. It is the Licensee's responsibility to provide the onus of proof that he has taken the best possible necessary organisational steps in his hazard areas to prevent the creation of programme copies by third parties as well as the sharing of data copy and license files by third parties.

##### c) Duty of Disclosure

On demand the Licensee is to provide the Licensor with information on the number of times he, his assistants and his subcontractors have installed the software, which sites the software has been installed as well as to assure that the accuracy of this information is legal and binding.

##### d) Additional damages

Right to claim any damage in excess thereof remains unaffected.

##### e) Termination of License Agreement

Should the obligations pursuant to Nr. III. 1. be violated, the Licensor shall be authorised to terminate the License Agreement without notice and without replacement. In this case the Licensee is obliged to immediately release the original media he received to the Licensor, to irretrievably delete or destroy all possibly created copies of the software left to him and to submit a legally binding explanation.

#### 3. Exclusion of Liability and Warranty

Should the Licensee or third parties, while installing the software, violate the obligations pursuant to Nr. III 1. a) till c) or if manipulations are conducted on the software, the Licensor shall assume neither liability nor warranty whatsoever for the software.

## IV. Liability / warranty

### 1. Title Defects

The licensor shall guarantee that the software hereunder including accessories is free of any of third party rights. As long as third parties' products are objects of agreement, the Licensor shall be authorised to concede rights of use. Third parties will however not be bound in any way whatsoever by this contract.

### 2. Liability for Material Defects

There shall be no warranty covering the software's capability for a certain purpose. There shall also be no warranty covering special features. Furthermore, the Licensee is aware that given the state of the art it is not possible to write software completely free of defects.

#### a) Policy

For existing defects at hand-over on the software including accessories, or deviations from the programme specification, liability shall be assumed within the warranty period of 12 months after delivery as laid down in law. The right to any changes as may be technically or legally required is reserved at all times. A right to delivery of new software versions does not exist.

#### b) Examination and Notice of Non-Conformity

The Licensee shall be obliged to report defects within a period of 10 workdays after identifying them. Any breach of the Notice of Non-Conformity will result in the defects concerned being considered as approved of.

#### c) Limited Warranties

As a rule, occurring defects and their symptoms are to be described in the best possible manner so as to be able to reproduce and eliminate them. Any defects shall be rectified by the Licensor delivering updates/upgrades or providing the Licensee the possibility of a workaround after the user has submitted the information needed to this end. An annulment (revocation) of the contract or a fee reduction can however only be requested if a rectification of the fault or a workaround is not possible within an appropriate period of time.

### 3. Hardware Prerequisites / Improper Use

#### a) Conditions of Usage

The warranty shall not cover defects caused by failing to observe the required conditions of usage (hardware errors, incompatibility of hardware or software being used concurrently) or caused by improper use.

#### b) Adjustments

Furthermore, the product shall be delivered with the respective current scope of services. The Licensee has been informed of this. The possibility of a test installation is pointed out. Neither the right to implement additional functionalities nor performance features nor to carry out adjustments (e.g. removal of anomalies in design on graphic cards that are not supported, or the like) exists.

### 4. Duty of Notification/Obligation to Cooperate

The Licensee is to give the Licensor all necessary and relevant information immediately and free of charge. If necessary, he is to grant access to the devices and data in question and to make all necessary data and machine times available free of charge.

### 5. Right to Upgrade

In case Upgrades may be required, there only exists a right to delivery of the respective current version of the software hereunder. However, no right exists covering the further development of the concrete software versions or covering the support of the respective programming language – be it in the source version or in new version of the programming language. Furthermore, a right to switch between versions of different operating systems does not exist.

### 6. Liability

#### a) Limited Liability

The Licensor shall assume liability only in case of any damages caused willfully or through gross negligence by him or his assistants. Liability for warranted features, for contractual liabilities whose abidance thereof is of significant importance to achieving the purpose of the contract as well as claims resulting from delays for which the Licensor is responsible, for initial impossibility, for claims based on the Product Liability Law shall remain unaffected.

#### b) Consequential losses

Liability for loss of profits, lost savings, losses arising from the rights of third parties, miscellaneous indirect and direct consequential losses as well as for loss of data shall only be assumed in case this was caused by the Licensor's intent or gross negligence.

### 7. Reference

The Licensee is aware that daily data backups in long-term cycles, precautionary measures against computer viruses and regular anti-virus tests as well as a thorough safeguarding of data created with the aid of the software hereunder are necessary. If necessary, consultation on appropriate measures by the Licensor shall be possible.

## V. General Terms

### 1. The Observance of Legal Provisions

The Licensee shall oblige to observe the legal provisions when using and/or when he is in possession of the software hereunder.

### 2. Subsidiary Agreement

To be legally applicable, any abrogation, amendment, termination or addendum of this Agreement must be in written form. Agreements by word of mouth, also referring to the abrogation of the requirement for written form - are invalid. The contact person on the Licensor's side responsible for submitting or receiving statements to that effect shall exclusively be the management board.

### 3. No Set-Off, Ban of Assignment, Exclusion of Rights of Retention

Without the Licensor's express approval, the right to set-off all receivables against amounts payable to the Licensee shall be excluded. Furthermore, the No Set-Off or the entitlement to Rights of Retention shall only be allowed by means of legally binding or uncontested claims.

### 4. Severability Clause

Should any individual or several provisions of this Licensing Agreement be or become invalid or impracticable, the validity of the rest of the agreement shall remain unaffected.

The invalid or impracticable provisions shall be replaced by a corresponding surrogate provision, or at least a surrogate provision closely corresponding to the purpose of the Agreement the partners would have agreed on to achieve the same economic results, had they been aware of the provisions' invalidity or impracticability. The same applies to any loopholes in this Licensing Agreement.

### 5. Applicable Law

The General Terms of this License are subject to Swiss Law.

The parties agree on Liestal (Basel-Land) as Place of Jurisdiction for all disputes arising from this Licensing Agreement and the business relationship.

The Licensor shall be authorized to bring action against the customer at his domicile or at the place of the Licensor's registered office.

Aesch, 01.01.2025