

TERMS AND CONDITIONS

of ENGEL AUSTRIA GmbH ("ENGEL") for sim link (as of September 1st 2022)

A. Scope

These Terms and Conditions of ENGEL (the "Conditions") shall apply to the provision of ENGEL sim link on a on a Software as a Service basis and the corresponding grant of rights by ENGEL. General Terms and Conditions or forms of Buyer shall by no means be accepted or become part of the Agreement, regardless whether ENGEL knew them or not, whether ENGEL has contradicted their validity or not and irrespective of whether they are in opposition to these Conditions or not.

B. Definitions

For the purpose of these Conditions the following definitions shall apply:

1. Agreement – the respective individual service contract signed by Customer and ENGEL or order confirmation issued by ENGEL.
2. Injection Moulding machine – an injection moulding machine manufactured by ENGEL that is equipped with a supported controlling software according to Annex 1 hereto.
3. Simulation Software – supported simulation software as specified in Annex 2 hereto.
4. sim link – all programs, routines and sub-routines including all respective documentation, provided by ENGEL or any third-party within the scope specified herein on a software as a service basis;
5. Customer Portal - the web site via which sim link can be accessed by Customer.
6. Failure – all malfunctions of sim link that cause a restriction of the use of sim link;
7. Hardware – all devices necessary for the use of sim link ;
8. Release – new development stage of sim link;
9. Hotfix (Patch) – cause-related rectification of a defect and/or failure of sim link which significantly impairs the use of sim link ;
10. Term – the period of time as defined in Section G.;
11. Authorized Users – those users who are authorized by Customer to access sim link.
12. Open Source Software – the term "Open Source Software" (OSS) has the meaning defined and published by the Open Source Initiative ("OSI") at <http://www.opensource.org>.

C. Contract Formation & Contract Documents

1. The contract documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract documents, the following order of precedence shall apply:
 - The Agreement entered into by and between ENGEL and Customer ;
 - These Conditions;
2. Quotations issued by ENGEL shall constitute an invitation for an offer by Customer, always subject to change. Customer's orders are not binding until accepted by means of a written order confirmation by ENGEL.

D. Scope of Service

1. As an interface software – provided on a software as a service basis – sim link enables Customer to directly transfer simulation data to the respective operative injection moulding machine, and vice versa to transfer production data to the Simulation Software.
2. sim link accordingly facilitates:
 - a. The transfer of production data of the respective Injection Moulding Machine to the Simulation Software for the comparison of production and simulation data;
 - b. The transfer of simulation data to the operative Injection Moulding Machine, particularly for the purpose of implementation of initial data sets on the Injection Moulding Machine;
 - c. The modification of process profiles and production limits for the purpose of assessing implementability for the respective Injection Moulding Machine.
3. The following settings from the simulation are not transferred to the injection molding machine and must therefore be entered there manually:
 - a. Melt temperature;

- b. All speed and pressure switchover points. (A safe pressure switchover point is transferred, but must be manually adjusted during initial sampling.);
- c. Possible settings for cascade control.

E. Access and Use

1. Subject to Customer's compliance with the terms of these Conditions, ENGEL grants Customer and the Authorized Users access and use of the sim link. Customer's access to sim link will be limited to the of Authorized Users designated and registered by Customer. ENGEL will provide implementation set up and basic training to allow Customer to access and use of sim link.
2. Access and use of sim link require:
 - a. an account for the ENGEL customer portal <https://portal.engelglobal.com>;
 - b. a prepaid balance/credit for the use of sim link according to Section F. herein;
 - c. the use of a Simulation Software as specified in these Conditions;
 - d. connection to an Injection Moulding Machine with a supported controlling software as further defined in these Conditions;
 - e. installation of an interface application on the respective simulation client, provided free of charge by ENGEL.
3. The use of sim link is limited with the respective prepaid balance according to Section F of these Conditions. Notwithstanding the consummation of the prepaid balance, shall not limit Customer's access to sim link and the data archive related thereto.
4. ENGEL will take all commercially reasonable steps to keep sim link operating smoothly and efficiently. However, since sim link operates using computer equipment, computer software programs, and the Internet, ENGEL shall not be responsible for delays or service interruptions attributable to causes beyond its reasonable control, including, without limitation, limitations on the availability of telephone transmission lines and facilities, failures of other communications equipment, Internet access delays or failures, failures or deficiencies of Customer's equipment, or Customer's failure to meet its responsibilities under this Agreement. ENGEL will use commercially reasonable measures to maintain the security of the Customer Portal and protect Customer's data stored on or through the Customer Portal. In addition, ENGEL will maintain adequate back-up arrangements and equipment in order to maintain Customer's data stored on or through the Customer Portal in the event of the failure of any of ENGEL equipment.
5. Service interruptions for maintenance and system upgrades will be scheduled, to the extent reasonably practicable, to minimize interference with Customer's business activities and/or use of sim link. For unscheduled service interruptions attributable to causes within ENGEL's reasonable control, as ENGEL's sole obligation and Customer's exclusive remedy, ENGEL shall make reasonable efforts to restore sim link and/or – as the case may be - the access to sim link.

F. Prepaid balances

1. The use of sim link requires the purchase of a prepaid credit. Such a credit must be purchased in advance and includes a predefined number of calculation transactions that can be executed via sim link. ENGEL offers the following credit packages:
 - a. sim link Demo Package
 - b. sim link Package 10
 - c. sim link Package 50
 - d. sim link Package 100

The price for the respective package is based on the applicable package prices.

2. The respective credit balance must be consumed within three years or otherwise forfeits ("Forfeiture Period"). If Customer purchases another credit balance before forfeiture of an existing, unconsumed credit balance, the Forfeiture Period of the former shall apply to the existing, unconsumed Credit balance.

G. Grant of Rights

1. Subject to these Conditions and Customer's credit balance, ENGEL grants Customer a non-exclusive, and non-transferable right to access and use sim link for all calculation transactions covered by Customer's credit balance. The right of access remains irrespective of any credit balance of the customer during the whole Term of the Agreement.
2. Customer acknowledges that sim link, and associated report formats, screen displays, and menu features, and all derivative works, constitute copyrighted works protected by applicable copyright laws and are owned by ENGEL or its licensors. sim link and all copies, versions, and derivative works of sim link shall remain the sole property of ENGEL and/or its licensors. Customer shall not make and shall not permit anyone else to make any copies of the Software, except as necessary in connection with its authorized use of the SaaS Services. All such copies must include all proprietary rights notices contained in the Software. Except as otherwise permitted in this Agreement, Customer shall not allow any third party to access or use the Software. Customer shall not modify or create any derivatives of the Software. Customer shall not decompile or otherwise reverse engineer or decode the Software. Customer shall not take or refrain from taking, directly or indirectly, any action that may in any way lead to the unauthorized dissemination, reproduction, access, or use of the Software.

3. To the extent sim link entails Open Source Software ("OSS"), the conditions of use underlying the OSS (the "OSS-Conditions") shall apply. ENGEL shall notify Customer of the fact that OSS and OSS-Conditions exist and make such OSS-Conditions accessible to Customer or, if required according to the OSS-Conditions, provide Customer with such OSS-Conditions.
4. Customer's obligations under this Section G. shall survive termination of the respective contract concluded under these Conditions. Customer acknowledges that a breach of its obligations under this Section G. will cause irreparable harm to ENGEL and/or its licensors for which monetary damages would be inadequate. ENGEL and/or its licensors will be entitled to injunctive relief for any such breaches, threatened or actual.

H. Term & Termination

1. Unless otherwise agreed to the contrary, the Agreement is entered into for indefinite period of time. The right to use sim link (Section ##), however, is always limited with Customer's credit balance.
2. The Agreement shall commence on the earlier of
 - a. the date of conclusion of the Agreement under these Conditions;
 - b. the date of first use of sim link on behalf of Customer.
3. Either Party is entitled to terminate the Agreement in writing by giving 3 months' notice.
4. Upon termination of the Agreement, Customer shall have access to sim link and the data archive for another further three months; in particular to transfer the data stored there.

I. Customer's Responsibilities

1. Customer shall be responsible for identifying Authorized Users for sim link. Authorized Users shall be limited to those who need to use sim link in connection with facilitating Customer's business activities. Customer shall require each Authorized User to safeguard his or her username and password for accessing sim link and otherwise comply with the provisions of these Conditions. An Authorized User may not disclose his or her username and password to any other person, including another Authorized User. If Customer determines that another person has gained access to an Authorized User's username and password, or that anyone has wrongfully accessed sim link, Customer shall promptly notify ENGEL. Customer is responsible for any misuse of sim link by Authorized Users and by unauthorized users who gain access due to Customer's or any Authorized User's failure to maintain security.
2. Unless otherwise agreed, Customer is responsible for the operational aspects of accessing and using sim link, including, but not limited to,
 - a. acquiring, installing, and maintaining all Hardware and software at its clients compatible with and as necessary to use sim link;
 - b. the provision and commissioning of all Hardware required for the use of sim link.
 - c. obtaining access to the Internet;
 - d. downloading from the Customer Portal and installing any necessary plug-ins or interface software;
 - e. determining the accuracy of all data it transfers via sim link; and
 - f. adopting reasonable policies, procedures, and quality assurance measures to limit Customer's exposure with respect to potential losses and damages arising from use, non-use, errors and omissions of the SaaS Services and/or Software or the results thereof, and system downtime, including, but not limited to, examining and confirming data prior to use, identifying and correcting errors and omissions, preparing and storing backup data, replacing lost or damaged data or media, reconstructing data, and providing network security.

J. Insurance

ENGEL will at its own expense obtain and maintain during the whole term of any contractual relationship from a qualified and licensed insurance carrier professional indemnity insurance and general and product liability insurance with worldwide coverage. ENGEL will provide insurance details on request.

K. Warranty and Liability

1. ENGEL warrants that sim link conforms to the functionalities and the scope specified herein (Section D.), provided that sim link is used in accordance with these Conditions.
2. ENGEL warrants that sim link is free from third-party property rights which may restrict or exclude the agreed use of sim link.
3. Failures of sim link shall be exclusively remedied by Hotfixes and Releases within the scope of supply. Any further warranty claims as well as all other claims arising from or in connection with Failures of sim link are expressly excluded.
4. ENGEL shall neither warrant nor be liable for the accuracy, completeness, usability or other reliability of any data or information transferred or processed with or via sim link. Any use or processing of such data shall be the sole responsibility of the Customer.

5. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ENGEL MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER. ENGEL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF TITLE, ACCURACY OF DATA, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR FROM USAGE OF TRADE.
6. ENGEL's aggregate liability towards Customer shall be limited to the total sum paid on behalf or to ENGEL by its insurers in settlement or satisfaction of Customer's claims under the terms and conditions of ENGEL's insurance policies applicable thereto, but shall in no event exceed the payments, if any, received from Customer for the services furnished or to be furnished, which is the subject of claim or dispute. This aggregate liability limit shall not apply in case of product liability, bodily injuries, fraud and intentional acts and omissions. The limitation of liability provided herein shall apply in any and all events, regardless of the legal theory upon which a claim is based.

L. Confidentiality

Notwithstanding any (more specific) non-disclosure-agreement the parties might have already entered into the parties shall keep in strict confidence all information obtained from the other Party that was identified as confidential or by its nature or the circumstances in which it was disclosed, ought reasonably to be considered confidential, and not generally known to the public or that has not yet been revealed. Such information may only be used by the receiving party to the extent necessary to perform its obligations under the respective contract.

M. Force Majeure

1. If ENGEL is unable to provide the services under sim link within the scope specified herein, or Customer is unable to access or use sim link, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, than any delay or failure to perform under these Conditions and any Agreement entered thereunder that results from such event will be excused for so long as such event continues; provided, however, that the affected party gives written notice of each such delay (including the anticipated duration) to the other party as soon as possible, but in no event later than one week its occurrence or commencement.
2. Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), equipment breakdowns and power failures.
3. If any such delay lasts more than sixty (60) days, the non-affected party may terminate the respective Agreement without any liability to the affected party

N. Applicable Law

These Conditions shall be governed by and construed in accordance with the laws of the state where ENGEL has its registered office to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

O. Dispute Resolution

1. Subject to the paragraph below, all disputes, disagreements or any claim arising out of or in connection with an Agreement formed hereunder including any issue regarding its existence or validity shall be referred to the competent court where ENGEL has its registered office; independent thereof, ENGEL may also take proceedings against Customer in the courts of any country in which Customer has assets or in any other court of competent jurisdiction.
2. If, however, Customer's principal place of business is outside the European Union (EU) or the European Free Trade Association (EFTA), all disputes arising out of or in connection with a sales contract formed hereunder or related to its violation, termination or nullity shall be – to the exclusion of recourse to ordinary courts of law – finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Vienna.

P. Severability

The contract concluded subject to these Conditions shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Annex 1 – Technical requirements on an ENGEL injection moulding machine for sim link

- Machine with max. one injection unit
- Control unit generation from CC200-A02
- Thermoplastic application
- No injection with accu

Annex 2 – Supported Simulation Software

1. Autodesk Moldflow by Autodesk Inc. in the following versions:
 - Autodesk Moldflow Insight Standard
 - Autodesk Moldflow Insight Premium
 - Autodesk Moldflow Insight Ultimate