
END USER LICENSE AGREEMENT

1. SCOPE OF THIS AGREEMENT

This End User License Agreement (shortly “EULA”) pertains to the software “**mFusion 1.0**” (shortly “Software”) and is entered into between (i) **Molecular Matters e.U.**, owned by Stefan Reinalter, born on 24 March 1982, registered with the Commercial Court Vienna under Company Register No. FN 383788w and having its registered place of business at Schaumburggasse 8/5, 1040 Vienna, Austria (shortly “**Licensor**”), on the one hand, and (ii) **you** as Licensor’s **commercial customer acting for its own business interests in the commercial trade** (shortly “**you**” or “**Customer**”) on the other hand.

1.1 This EULA is only applicable to the purchase of a license in the Software by entrepreneurs/businesses (*Unternehmer* in terms of the Austrian Consumer Protection Act, *Konsumentenschutzgesetz*, shortly KSchG) pursuant to section 1 para 1 fig 1 KSchG. You represent, warrant and guarantee that you actually are an entrepreneur/business in terms of the KSchG and that you do not purchase the license in order to create the necessary conditions for commencing your business operations (*Gründungsgeschäft*) as set out in section 1 para 3 KSchG.

1.2 Therefore, the Software is not licensed to consumers as defined in section 1 para 1 fig 2 KschG. If you are a consumer, you may not purchase a license in the Software. In this case, please abort the purchase process.

1.3 This EULA is the sole contract between you and the Licensor. Your General Terms and Conditions and/or any other contractual terms used by you (jointly “**Your Terms**”) are hereby fully excluded to the extent they deviate from this EULA. This equally applies in case (i) you inform(ed) Licensor of Your Terms and/or (ii) provid(ed) Licensor with Your Terms and/or (iii) Licensor performs any services and/or any of Licensor’s obligations under this EULA in knowledge of Your Terms.

1.4 In any case, the EULA that is then current in the point in time when you purchase the license exclusively governs your contractual relationship to Licensor pertaining to the Software.

2. LICENSED SOFTWARE

2.1 The Software licensed to you is “**mFusion 1.0**” as described in the mFusion User Manual (available at <http://molecular-matters.com/docs/mFusionUserManual.pdf>).

2.2 Expect for the license, Licensor is not obliged to provide and/or deliver any further services and/or products. In particular, Licensor is not obliged to provide any documentation, installation and/or training that exceeds the Software’s manual and/or the

Installer (as defined in item 3.1, below) and Licensor is not obliged to provide you with any data-security-measures, development services, updates, bug-fixes and/or bug-reports.

3. LICENSE

3.1 Upon purchase and full settlement of the single-payment-license fee, you will be provided with a download possibility or will otherwise receive the Software in object code in the form of an executable installer (shortly “Installer”). The Software’s source code and any rights thereto fully remain with Licensor and no licenses or other rights are granted to you in the source code whatsoever. The Software’s manual will be provided to you in electronic form only and it will be saved to your device (such as your personal computer) together with the Software by execution of the installer.

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Under License A, Licensor grants to you a perpetual, irrevocable, non-exclusive, non-transferable, non-assignable, non-sublicensable, world-wide license to install and use the Software on one single device (e.g. on one single personal computer).

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3.3 **License B** is only available to Professional Individuals, such as freelance artists and other individual freelancers. If you purchase License B, you represent, warrant and guarantee that you actually are a Professional Individual. If you purchased License B as a Professional Individual but subsequently become a Professional Entity, you may continue to use the Software without having to purchase another license, but your then former License B will then automatically convert to License A.

Under License B, Licensor grants to you a strictly personal, perpetual, irrevocable, non-exclusive, non-transferable, non-assignable, non-sublicensable, world-wide license to install and use the Software on as many devices that you own or have control over. E.g., you may install and personally use the Software simultaneously on your desktop PC, your notebook, your netbook and your tablet PC (provided, of course, that these devices are compatible with the Software).

4. WARRANTY

4.1 Licensor warrants that the Software complies with its technical specifications and functionalities laid down in the mFusion User Manual (available at <http://molecular-matters.com/docs/mFusionUserManual.pdf>). Licensor further warrants that the Software was developed and created by Licensor alone and that the Software is free from third party copyrights. Licensor explicitly excludes all other warranties including any warranties that the Software is free from any other third party rights other than copyrights.

4.2 In case of a defect covered by this warranty, Licensor is obliged either to re-deliver the Software or to correct the defect within a reasonable period of time that in any case is not shorter than two weeks calculated upon Licensor's receipt of Customer's written notice of defect including a detailed description of the defect. In case (i) the re-delivery of the Software cannot correct the defect and (ii) two of Licensor's attempts to correct the defect fail or Licensor fails twice to timely attempt to correct the defect, Licensee is entitled to a reasonable price-reduction or, in case of a material defect, to rescind in writing from this EULA.

Without prejudice to Licensee's inspection obligations laid down in below item 4.3 of this EULA, the warranty period expires 12 months after Licensee's receipt of the Software.

4.3 Customer shall inspect the Software and its documentation for completeness and functional capability immediately after receipt and in any case within 5 working days after receipt. In case Customer detects any defects in course of this inspection, Customer is obliged to provide Licensor with a written notice of defect including a detailed description of the defect without undue delay and in any case within 5 working days after the inspection. Section 377 paras 1, 2, 3 and 5 (*Mängelrüge*) UGB apply.

4.4 Licensor excludes all liabilities for any damages arising out of the Software and/or its use and/or its installation. This exclusion of liability does not apply in case any damage is caused by Licensor's extremely gross negligence (*krass-grobe Fahrlässigkeit*) or wilful intent (*Vorsatz*).

5. MISCELLANEOUS

5.1 Choice of Law

This EULA is exclusively governed by and shall exclusively be construed in accordance with the laws of the Republic of Austria, excluding the United Nations Convention on Contracts for the International Sale of Goods and the Austrian conflict of laws rules.

5.2 Choice of Venue

Any dispute arising out of or in connection with this EULA, including any disputes regarding the existence, the validity, the termination or nullity of this EULA, are subject to the exclusive jurisdiction of the competent courts having jurisdiction over the first district (*Innere Stadt*) of Vienna.

5.3 Entire Agreement and Written Form Requirement

This EULA contains the entire understanding of the parties with respect to the matters contained herein, and supersedes all other written and oral agreements between the parties with respect to such matters. No oral side-agreements exist. It is acknowledged that other contracts may be executed between the parties. Such other contracts are not intended to change or amend this EULA unless expressly stated in writing. Any changes or amendments to this EULA, including changes and amendments to this clause, must be made in writing.

5.4 Severability

If any provision of this EULA shall be held to be or become invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby in any way. Instead of an invalid, illegal or unenforceable provision, a valid, legal and enforceable provision that reflects the parties' economic intentions as close as possible shall be deemed to have been agreed upon between the parties. The same applies to a contractual loophole.

5.5 No Waiver

A failure of any party to enforce a provision of this EULA shall in no event be considered a waiver of any part of such provision. No waiver by a party of any breach or default by the other party shall operate as a waiver of any succeeding breach or other default or breach by such other party. No waiver shall have any effect unless it is specific, irrevocable and in writing.

[This EULA was accepted and entered into by electronic means]

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