

General Licensing Conditions for Dynamic PowerTrainer®

Preamble

(1) The following General Licensing Conditions are valid between imc information multimedia communication GmbH (later abbreviated: "imc") and their licensees for the concession of licences for the Software Dynamic PowerTrainer®.

(2) Deviating, conflicting and supplementary General Licensing Conditions of the licensee are explicitly precluded unless being explicitly approved by imc.

(3) imc are solely entitled to utilization of the Software Dynamic PowerTrainer® (later abbreviated: "Software") which is as well as its updates, supplements, parts, copies and translations of the Software, especially protected under the regulations of the "Österreichisches Urheberrechtsgesetz" (UrhG) [Austrian Copyright Law]. Therefore only imc are exclusively entitled to concede any rights of the Software to third parties.

(4) The subject-matter of these Licensing Conditions determines the conditions on which a licensee obtains a licence for the Software Dynamic PowerTrainer and they also determine the extent of this licence. The licence is conceded to the licensee only to the extent and scope of the subject-matter of the Licensing Conditions.

(5) The Dynamic PowerTrainer is structured in modules, easy-to-use and yet comprehensive software for authors which enables them to draw up, to edit, to play and to administer multimedia E-learning Content. The Software enables the licensee to generate multimedia Content, especially E-learning Content and to use it internally and/or to sell it or rather make it available to his licensees without charge.

1. Installation

1.1. imc especially point out that prior to installation of any new Software on the system of the licensee, data should be backed up in order to prevent any loss of data. This safety precaution should therefore also be executed when installing the Dynamic PowerTrainer.

1.2. By signing the order form to purchase the Software or rather by accepting the Licensing Conditions ordering on-line, the licensee accepts these Licensing Conditions without limitation. In case the licensee does not accept the Licensing Conditions, he is not authorised to install the Software or to use the Software.

2. Grant of a Licence

2.1. imc grant, according to these Licensing Conditions the licensee restrictedly, not exclusively, not transferably and for an unlimited time, the right of user for all acquired imc products.

2.2. Extent of the Licence

The licensee is entitled:

- * to install and use the Software on a single computer, a single workstation, a single terminal or on one single portable PC;
- * to store or to install a copy of the Software on a storage device like e.g. a networkserver, provided that this copy is only used in an internal network on other computers of the licensee. However the licensee is obliged to obtain a licence for every computer on which the Software is used, which is especially applied for the usage on this computer;
- * on buying a multiple licence to produce, to install or to use the number of Software copies and copies for the necessary documentation which had been approved before purchase. The making of any further copies is unlawful;
- * to make a copy of the Software solely for back-up purposes in machine readable form. Any copyright details and other details indicating property which are contained in the original Software have to be reproduced and have to be on the back-up copy of the Software.

Back-up copies are neither allowed to be left to third parties against payment nor free of charge;

- * to make available or to leave courses which had been designed by means of the Software by the licensee to third parties against payment or free of charge. Courses designed by the licensee may therefore be copied by the licensee as many times as he likes, without paying

an extra licence fee (runtime-licence costs), so that learners as many as they like, can study with it.

The licensee is -beyond the above mentioned legal concessions- not entitled:

- * to share the licence for the Software, or to install or use it simultaneously on several computers;
- * to change the documentation of the Software;
- * to duplicate the Software or its documentation;
- * to lend the Software and the brochures belonging to it to third parties, to lend, to lease, to rent it, to leave it to third parties against payment or free of charge, to transfer the granted rights of user to third parties or rather to grant sub-licences for its usage;
- * to transfer the Software via a network or a data processing channel from one computer to another;
- * to use the Software as a model for designing other software;
- * to redevelop the Software, to recompile or to disassemble it, to access in other ways to the source code of the Software or to try this or to decode the Software in other forms;
- * to separate components of the Software;
- * to change the Software or to adapt it;
- * to create derivatives or to use the Software in other software;
- * to change or to cancel references indicating firmnames, logos, copyright notes and other references to rights of whatever kind, which are indicated in the Software or on data carriers on which the Software is delivered. The licensee is also not entitled to alter copyright notes, serial-numbers and any other identification marks of the Software (all copies included);
- * to break or to change any safety codes;
- * to use the Software for military, nuclear, radically political, racist, xenophobic or puposes which are as condemnable.

2.3. Divergent Conditions for Educational (Edu-) Licences Buying Edu-licences is only possible for public educational institutions (Primary- and Secondary schools, Grammar schools, universities), teachers, students and non-profit organisations. Edu-licences may only be used in educational - or university surroundings or with non-profit organisations. The usage of Edu-licenses for commercial purposes or distribution for that purpose to third parties is not allowed.

2.4. Divergent Conditions for the Demo-version the licensee is entitled to install or to use as many demo-versions as he likes. However, the licensee is obliged to inform imc on his name and his address prior to installing the demo-version. There is no time- and functional limit to the

demo-version, it is however restricted as regards the number of compiled learning objects per course.

2.5. Except the rights which are granted for user and utilization in these licensing conditions, the licensee obtains no rights for the Software delivered and the development and used technical methods for producing this Software, software, algorithms, data structures, systems etc. imc explicitly reserve any further rights except the granted right of user and utilization, especially any rights on incorporeal goods.

2.6. imc point out that disregarding the concrete Licensing Conditions can have consequences in civil as well as criminal law. Disregarding the Licensing Conditions can cause forbearance claims, elimination claims and compensation for damage.

3. Other Incorporeal Goods Rights of imc

3.1. For clarification it is noted that the right of user exclusively concerns the usage of the acquired Software. All other incorporeal goods rights, especially law of trademarks, copyright laws and patent rights remain unrestrictedly with imc.

3.2. Let alone the rights on the Software, imc especially obtains the protected goods rights listed below:

- * "Dynamic Media"
- * "Dynamic PowerTrainer®"

These registered trademarks are the property of imc. Through the subject-matter of the Licensing Conditions the licensee obtains the right of these trademarks, more extensive rights precluded, to copy these courses produced by the Software with any approved copying, provided imc is made apparent as holder of the trademark.

3.3. The licensee is not entitled to use the Software with any other name than determined by imc. The licensee is obliged to keep and to respect the endorsements on incorporeal goods rights of imc when selling courses produced with the Software.

3.4. On the label of data carriers of courses produced with the Software, as well as courses produced with the Software online, the endorsement has to be made:

"produced with Dynamic PowerTrainer® www.dynamicpowertrainer.com"

3.5. On data carriers (e.g. CD-Rom) produced with the Software the endorsement has to be made at least on the label of the data carrier or on the attached printed matter (e.g. CD-Booklet) or on the start page or rather on the imprint of the compiled course.

4. Order and Delivery of the Software

4.1. The offers and further declarations of imc are not binding and subject to confirmation.

4.2. A tender to contract (order, assignment,...) of a licensee -in whatever way- has to be confirmed in writing. Mailing of the ordered Software by imc results in a conclusion of the contract.

4.3. The Software is provided as a workable program online or on data carriers (CD-Rom).

4.4. On request imc will against payment support the licensee to establish the Software in his enterprise.

5. Support

5.1. Depending on the acquired variant of Software (see product description) imc provide the licensee E-mail and telephone support free of charge up to 12 months after delivery of the Software.

5.2. imc provide support for one author nominated by the licensee per licence acquired. However the support is limited to maximum five authors nominated by the licensee, even if he has acquired more than five licences.

5.3. imc do not guarantee to react within a certain period of time for the E-mail and telephone support.

5.4. Concluding support contracts going beyond the above mentioned between imc and the licensee is possible against payment.

5.5. imc provide the licensee, for those periods of time where support is provided free of charge, also service packs of the acquired Software free of charge, for downloading.

6. Guarantee, Liability for Defects.

6.1. Liability period for defects is 24 months. It starts on the day the licensee receives the Software provably from imc. During the liability period for defect imc guarantee after presentation of the original delivery note or rather the respective invoice that

- * the Software of the system mentioned in the offer is useable;
- * the data carriers (CD-Rom with Software) have no material -and production defects.

6.2. The licensee is aware that in keeping with the latest technological developments it is not possible also with the best possible testing to produce a completely faultless Software product. Therefore imc do not guarantee the Software to work completely faultlessly. Impaired usefulness to a minor extent of the Software is left out of consideration. An operative reduction of the Software which is caused by hardware defects, ambient conditions, incorrect operation or other reasons which can not be influenced by imc, do not represent any defects.

6.3. imc fulfill warranty claims of the licensee by replacement / exchange within an appropriate period of time. In this case the licensee is not entitled to further rights like improvement, diminution or rescission of contract. Should also the exchanged Software be faulty, imc will either at their own discretion remedy the defect within an appropriate period of time, again exchange the Software or cancel the contract with the licensee. The right of diminution is precluded.

6.4. An error analysis and elimination or rather an installation of the Software in situ of the licensee will only be granted against payment which has to be approved upon before.

6.5. Should imc decide to cancel or rehandle the contract, the licensee is obliged to return or rather put back all data carriers, therefore the original as well as all copies possibly made, like back-up copies, immediately. The licensee has to deinstall the Software on the web- and data bank server, as well as parts of programs which belong to the Software in all computers. The licensee also has to return the user manual to imc and is furthermore no longer entitled to use the courses commercially which had been designed with the help of the Software.

6.6. Warranty claims against imc are precluded, should the licensee change or work on the Software without having been authorized by imc.

6.7. No further guarantee going beyond is granted by imc.

7. Liability

7.1. imc is liable within the context and according to the law for damages provided that these were caused by intent or gross negligence, however they are not liable for damages caused by ordinary negligence. imc do not assume any liability that the Software fulfills the requirements and purposes of the licensee or that it is compatible with other programs selected by him.

7.2. imc are not obliged to recover consequential damage, property damages, savings not gained, loss of interest or damages claimed by third parties, as far as an exemption from liability in this respect is admissible by the law. imc are especially not liable for damages caused by consultation, support in establishing the Software products or product defect.

7.3. Liability for Staff Members of the Licensee

In case the licensee employees staff, the Software may be only used by them to the extent described in this contract in the establishment of the business of the licensee. The licensee guarantees imc the compliance of the concrete conditions of the contract also for staff members and other persons belonging to his domain, even if these without the knowledge or will of the licensee took possession of the Software or use it.

8. Remuneration

8.1. The licence fee for each Software left to the licensee is due immediately after delivery and has to be transferred without deduction as well as free of charges.

8.2. The licensee is not entitled to hold back or set off payment because of warranty claims or other counter claims.

8.3. In case of default of payment interest on arrears to the amount of 6% of the respective 3-months-euribor are agreed upon. Additionally imc are entitled to declare the cancellation of the contract through a registered letter if the default of payment exceeds two weeks. The licensee then is obliged to act according to point 6.5.

8.4. The prices listed by imc are without VAT and without shipping charges.

9. Data Protection

9.1. The licensee consents that personal data made known to imc in order to fulfill the contract, are electronically stored and processed as well as passed on to suppliers which are called in on handling the sale.

10. Applicable Law, Legal Venue, Saving Clause

10.1. On these Conditions of Contract as well as the validity of its agreement and its pre-effects and consequences, it is exclusively Austrian Material Law applicable, Austrian and International Conflict of Laws Rules as well as the UN-Sales Law precluded.

10.2. To decide on all cases of litigation which arise from these General Licensing Conditions as well as from any contracts based on them at active law suits it is up to imc to choose the respective court in Graz, Austria, competent for the jurisdiction over the subject, or the court at the place of residence of the licensee competent for the jurisdiction over the subject, to be competent. At passive law suits of imc it is the respective court in Graz, Austria, competent for the jurisdiction over the subject, to be exclusively competent.

10.3. Changes and Supplements of these General Licensing Conditions have to be in writing to become legally valid. There are no oral collateral agreements.

10.4. Should terms of these General Licensing Conditions be or become legally ineffective, it does not effect the validity of the rest of the terms. In this case, a term instead of the ineffective term prevails to be agreed upon which corresponds as close as possible to the economic purpose of the ineffective term and is effective. This also goes for any gaps in the contract.