

General Terms and Conditions i-ROM Cloud

Version 01.01.2025

1 Material scope and subject matter of the contract

The following terms and conditions (the "General Terms and Conditions") apply to the use and operational support of the software programs produced by i-ROM GmbH, hereinafter referred to as i-ROM, and provided as Software-as-a-Service (SaaS) via the Internet.

The object of the contract is in particular the provision of the MODELBUILDER Toolbox offered at www.i-rom.de under i-ROM Cloud.

The storage of the customer's data on i-ROM servers is not the subject of this contract.

2 Type and scope of services

The nature and scope of the mutual services shall be governed by the contractual agreements. The scope of services defined in the contract shall be deemed to be the agreed quality. Decisive for this are

- the defined scope of services of the software listed in the contract,
- suitability for the use stipulated in the contract,
- the conditions set out in the contract,
- the following conditions,
- generally applied technical guidelines and technical standards, in particular the international standards and proposals of the Internet Engineering Task Force (IETF), as documented in the Request for Comments (RFC), and the W3C (World Wide Web Consortium).

In the event of discrepancies, the contractual agreements shall apply in the above order.

Further terms and conditions, in particular general terms and conditions of the contractual partner, shall not apply, even if i-ROM does not expressly object to them. The General Terms and Conditions of i-ROM GmbH shall apply exclusively.

3 Terms of use

3.1 Rights of the customer to the software

For the duration of the contract, i-ROM grants the Customer a non-exclusive, non-transferable and non-sublicensable right to use the software specified in the contract and the associated user documentation. The software is provided via the Internet. The transfer point for the SaaS services is the router output of the server provided by i-ROM

The customer undertakes to use the software exclusively in accordance with the contract and neither to pass it on to third parties nor to make it accessible to third parties in any other way. The customer is not entitled to reverse engineer, decompile, disassemble or reproduce the software at or to use any part of the software to create a separate application.

The Customer acknowledges i-ROM as the sole licensor of the Software and the associated copyrights. i-ROM's rights as sole licensor also apply to extensions of the Software provided by i-ROM to the Customer, unless otherwise agreed in writing.

The customer recognizes the trademark, name and patent rights in relation to the software and the associated documentation. The customer may not remove, alter or otherwise modify copyright information or other similar proprietary notices in the programs and related documentation.

3.2 Rights and obligations of the customer to the data

The data collected, processed and generated by the software shall only be stored on i-ROM's servers for the purpose of processing in the current use. It is the Customer's responsibility to ensure suitable backup of its data on its systems beyond the current use. The Customer shall have no claim to the restoration of previous work statuses. The customer shall in any case remain the sole owner of his data and shall not be entitled to receive the software suitable for use of the data. The customer shall be responsible for the permissibility of the collection, processing and use of the data and for safeguarding the rights of the data subjects (information, use, correction, blocking, deletion).

3.3 Violation of the terms of use

In the event of breaches of the aforementioned terms of use, i-ROM shall be entitled to terminate the contract in whole or in part without notice. In this case, i-ROM also reserves the right to assert claims for damages against the Customer arising from the breach of contract.

3.4 Contract duration and termination

The minimum term for the provision of the i-ROM Cloud is 1 month. The contract term is automatically extended by a further month if it is not terminated. The amounts are collected from the last direct debit or credit card details provided.

i-ROM is entitled to terminate the contract for good cause, in particular in the event of failed direct debits or credit card collections.

4 Maintenance conditions and service level

4.1 Further developments/performance changes

i-ROM reserves the right to make further developments and service changes (e.g. by using newer or other technologies, systems, processes or standards) in the course of technical progress and service optimization after conclusion of the contract. In the event of significant changes to the service, i-ROM shall notify the Customer accordingly in good time. If the Customer suffers significant disadvantages as a result of the service changes, it shall have the right to terminate the contract for cause at on the date of the change. The termination must be made by the Customer within two weeks of receipt of the notification of the service change.

When providing new versions of the Software, i-ROM shall grant the Customer the rights listed in Section 3 accordingly for the respective new version.

4.2 System operation

i-ROM shall ensure that the software provided is operated in an environment and configuration suitable for the Customer's requirements and on hardware suitable for the Customer's intended use. This includes the number and type of servers, scalability, power supply, air conditioning, firewalling, virus checking and broadband Internet connection on the part of i-ROM.

4.3 System availability

The availability of the server at the router output on the Internet is 98% on an annual average. The client-side connection to the Internet is the responsibility of the customer. This is not part of the SaaS scope of services. The downtime is determined in full minutes and is calculated from the sum of the fault clearance times per year. Excluded from this are those periods which i-ROM identifies as so-called maintenance windows for optimization and performance enhancement as well as time lost during fault rectification for reasons for which i-ROM is not responsible and outages due to force majeure.

4.4 Disruptions to system availability

Disruptions to system availability must be reported by the customer as soon as they become known. Before reporting a fault, the customer must check his area of responsibility. In the event of fault reports, fault rectification shall begin on the following working day at the latest. Delays in fault clearance for which the customer is responsible (e.g. due to the unavailability of a contact person on the customer side) shall not be counted towards the fault clearance time.

5 Warranty, third-party property rights

If the Software has material defects, i-ROM shall be obliged, at its discretion, to remedy the relevant defect in the Software or to provide Software that is free of defects within a reasonable period of time from notification of the defect by the Customer.

If the rectification fails, the Customer shall be entitled to a pro rata refund of the remuneration paid in advance. i-ROM shall have the same right if the rectification of material defects is not possible with reasonable effort.

If it becomes apparent in the course of error processing that the problems are due to operating errors or improper use by the customer, i-ROM may demand reasonable compensation for the expenses incurred.

If i-ROM provides an alternative solution to the faulty function which allows the customer to use the goods in accordance with the contract, this shall be deemed equivalent to the rectification of a material defect.

Insofar as i-ROM is not itself in possession of the source code, it can only rectify defects insofar as it has been supplied with a corresponding error rectification update by the manufacturer. Insofar as the Licensee suffers damage as a result of defects in the Software, the limitations of liability pursuant to Section 6 of this Agreement shall apply.

Claims for material defects are excluded if a software environment other than that specified in the contract (operating system, MATLAB, ANSYS) is used.

No guarantee is given for the correctness and/or usability of the results obtained with the software. The software descriptions in the user documentation are provided without guarantee.

If a third party is entitled to claims against the Customer due to infringement of property rights on the basis of the software provided by i-ROM and if the contractual use of the software by the Customer is impaired or impossible as a result, i-ROM shall, at its discretion and at its expense, either supply the Customer with software that has been modified or replaced in such a way that it does not infringe the property rights of a third party without any functional restrictions being associated with this, or indemnify the Customer against license fees for the use of the software vis-à-vis third parties. The Customer must inform i-ROM immediately in writing of any alleged infringement of third-party property rights. Furthermore, the Customer may not acknowledge the alleged infringement and may only conduct any dispute with the third party about the infringement of property rights in agreement with i-ROM. Claims of the Customer arising from an infringement of property rights shall be excluded if the infringement is based on the fact that the software is modified by the Licensee or used together with the software of another manufacturer. The same shall apply if the infringement is based on improper use, in particular if the use is not in accordance with the contractual user configuration. Further claims by the customer due to an infringement of third-party property rights are excluded, unless liability is provided for in these General Terms and Conditions (Section 6 of the General Terms and Conditions).

Extraordinary termination for failure to grant use (Section 543 (2) No. 1 BGB) due to a software defect is excluded as long as the attempt to rectify the defect by i-ROM is not deemed to have failed.

6 Limitation of liability

i-ROM shall only be liable for damages for whatever legal reason if these are caused by intent or gross negligence or by intentional or negligent breach of material contractual obligations. Essential in the above sense are those contractual obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer may regularly rely.

In the event of simple negligence, i-ROM's liability shall be limited to the foreseeable damage typical of the contract.

i-ROM shall only be liable for consequential damages in the event of intent or gross negligence; the statutory claims of the customer for compensation for the damage caused by the delay in remedying the defect shall remain unaffected.

The aforementioned limitations and exclusions of liability shall not apply to damages resulting from injury to life, limb or health for which i-ROM is responsible or to liability under the Product Liability Act.

The contracting parties agree that computer-aided engineering (CAE) calculations must always be checked using appropriate methods, as the results obtained may be incorrect due to incorrect or inaccurate inputs or hidden software defects.

Proper use of the software requires special introductory training or existing knowledge on the part of the user.

Liability for damage of any kind is excluded during the test period and for academic use.

7 Remuneration

A monthly fee agreed in the contract is charged for the SaaS services. The fees incurred are invoiced in advance over a period of time.

The licensee shall bear taxes, customs duties and all other charges incurred in connection with the provision of the software. Cash discounts are excluded.

8 Terms of payment

Payments are made by direct debit or credit card clearing. If the payment deadline is exceeded, services may be restricted in the event of default.

The Customer shall not be entitled to set off claims against i-ROM unless the claims are legally established claims or claims recognized in writing by i-ROM.

9 Other provisions

German law shall apply exclusively. The place of jurisdiction is the court responsible for the registered office of i-ROM GmbH.

Additions or amendments to the General Terms and Conditions of Business and the contractual agreements concluded on this basis must be made in writing. This also applies to any waiver of the written form requirement.

Should any provision of these General Terms and Conditions be or become invalid, this shall not affect the legal validity of the remaining provisions. In place of the invalid provision, a valid provision shall be deemed to have been agreed which comes closest to the intention of the parties.

In the event of differences in interpretation between the German and English versions of this contract, the German version shall prevail.

10 Data protection, confidentiality

ROM shall treat all information and data provided by the Customer with the same care as its own confidential documents.

This does not apply to information that is publicly accessible or becomes publicly accessible without the unauthorized intervention or omission of the contracting parties or must be made accessible by court order or by law.

In the event of support assistance at the Customer's request, it may be necessary to access the Customer's data records. Access may take place via a web meeting with the Customer or the Customer shall make the required data available to i-ROM in another manner chosen by it. Data access is limited to the period of the respective support measure and all data exchanged in connection with the support assistance is subject to confidentiality.

Insofar as personal data must be processed within the scope of the subject matter of the contract, i-ROM and the Customer shall comply with the statutory data protection provisions.

i-ROM informs the customer in accordance with the Federal Data Protection Act (BDSG) that customer data is stored.