

## Femtet Terms of Use

The software (the “**Software**” as defined in Article 1) that Murata Software Co., Ltd. (the “**Company**”) provides to User (the “**User**” as defined in Article 1) is subject to the following Terms of Use (these “**Terms**”). By using Software, User agrees to be bound by these Terms. If a User does not agree with these Terms, please do not use the Software.

### Chapter I

#### General

#### Article 1. Definitions

- (i) “**Agreement**” means an agreement for the use of the Software formed pursuant to the provisions of Article 4.
- (ii) “**Educational Institutions**” means graduate schools, universities, high schools or colleges of National Institute of Technology.
- (iii) “**License Fee**” means the price Users pay to the Company for using the Software.
- (iv) “**License Key**” means an electronic file or other device provided to Users by the Company, which is necessary for using the Software and prevents unauthorized copying or use thereof. If the Company provides a License Key in more than one format, the User can choose the format.
- (v) “**License Period**” means the period during which Users may use the Software.
- (vi) “**Licensors**” means third parties that provide the Company or Murata Manufacturing with the technologies contained in the Software. The Licensors include, without limitation, TECH SOFT 3D, INC. which provides technology related to Femtet CAD Translators and Siemens K.K. which provides technology related to Parasolid.
- (vii) “**Organizations**” means corporations and other organizations.
- (viii) “**Software**” means a set of programs and accompanying documentation for the simulation software “Femtet” developed by Murata Manufacturing Co., Ltd. (“**Murata Manufacturing**”), the parent company of the Company, and for which the Company holds the right to grant a license to Users. The content and functions of the Software that Users can use shall vary depending on the packages the Users apply for.
- (ix) “**Support**” means the service by which the Company provides information or advice to Users who make inquiries about the functions and usage of the Software via a prescribed form; provided, however, that the Support shall not include the resolution of specific problems arising in relation to the Software.
- (x) “**Users**” means any legal entities, educational institutions or individuals who use the

Software in accordance with the Agreement.

**Article 2. Scope of these Terms**

2.1. These Terms apply to the Company's provision of the Software and Users' use of the Software. These Terms constitute the content of the Agreement, and if a User receives or uses the Software, the User shall comply with the provisions of these Terms.

2.2. A User who is an Organization or Educational Institution shall be responsible for use of Software by any individuals who use the Software in accordance with an Agreement entered into between the Company and the User, such as officers, employees, teachers or students and for ensuring that these individuals agree to and comply with the provisions of these Terms.

**Article 3. Change to these Terms**

3.1. The Company may change these Terms if the change is in the Users' general interest or if the change is not contrary to the purpose of the Agreement and is reasonable in light of the circumstances surrounding the change, by setting the effective date of the change and posting the content so changed and such effective date on a website operated by the Company prior to such effective date. In this case, the terms and conditions of the Agreement after the effective date shall be based on these Terms so changed.

3.2. The Company may change these Terms at any time with the consent of the Users. If a User continues to use the Software after the change of these Terms, the User shall be deemed to have consented to such change.

**Chapter II**

**Execution of Agreement and Payment of License Fee**

**Article 4. Formation of Agreement**

4.1. Upon the acceptance of these Terms, a User shall apply for the use of the Software in the application form ("**Application**") specified by the Company. If a person submitting an Application as a User is an Organization or Educational Institution, such person shall be deemed to have made representations and warranties to Company that he/she has the authority to enter into the Agreement on behalf of such Organization or Educational Institution.

4.2. With the consent of the Company, a trading company or agent (collectively, the "**Agent** ") may apply to the Company for the use of the Software on behalf of a specific User. In this case, the Agent itself shall comply with the content of these Terms and shall

be responsible for use of Software by such User and for ensuring that the User agrees to comply with the provisions of these Terms.

4.3. When submitting an Application, a User shall specify which one of the following packages to choose:

(i) **Basic Package**

A standard package of the Software that provides simulation system on the finite element method and eight analytical functions (electromagnetic wave, magnetic field, electric field, stress, thermal, fluid, piezoelectricity and sound/sonic wave).

(ii) **Academic Package**

A package of the Software that can be applied for only by the Users who are Educational Institutions.

(iii) **Trial Version**

A free package of the Software that can be applied for to verify the functionality of the Software.

(iv) **Optional Features Package**

A package that provides optional features including but not limited to the Femtet CAD Translators (collectively, the "**Optional Features**") provided by the Company as the features accompanying the main functionality of the Software. Only those Users who use the Basic Package, Academic Package, or Trial Version can apply for the Optional Features Package.

(v) **Individual Version**

A free package of the Software that only individual Users can apply for; provided, however, that Organizations and Educational Institutions may use the Individual Version only for the purpose of viewing the model and analysis results.

4.4. If the Company accepts the Application and is to grant a license to use the Software, the Company shall issue an Invoice (the "**Invoice**") specifying the License Fee or notify the installation method of the Software including but not limited to in electronic format via email to the User or the Agent.

4.5. The Agreement shall come into effect at the time when the Company issue an Invoice or notice set forth in the preceding paragraph to the User or the Agent. If no Invoice or no notice is issued, the Agreement shall not be in effect.

## **Article 5. Payment**

5.1. For the granting of licenses in which Company will receive payment, the User shall pay the applicable License Fee to the Company within sixty (60) days from the date of receipt thereof in accordance with a method stated in the Invoice; provided, however, that, if

there is another payment date or payment method separately agreed upon between the parties, such payment date or payment method shall be observed.

5.2. If an Agent applies for the use of the Software on behalf of a User, the Agent shall be responsible for the payment set forth in the preceding paragraph on behalf of the User.

5.3. In no event shall the Company refund any of the License Fee received from Users or the Agent.

### **Chapter III**

#### **Conditions for Use of Software**

#### **Article 6. License**

6.1. The Company shall grant Users a license to use the Software on their own in accordance with the provisions of these Terms for the License Period. If a User is an Organization or Educational Institution, the User shall make available the Software only to its employees, teachers, students in accordance with these Terms to the extent necessary for the User's business or educational activities.

6.2. The license granted by the Company pursuant to the preceding paragraph is a non-exclusive, non-transferable, and non-sublicensable right; provided, however, that with the Company's prior consent, the User may allow third parties to use the Software to the extent necessary for the User's business. In such case, the User shall be responsible for use of Software by such third party and for ensuring that the third party agrees to comply with the provisions of these Terms. In this case, the User shall be directly and fully liable to the Company for the actions of such third party.

6.3. The User shall acknowledge that these Terms are not intended to assign, license or grant any rights not specified herein to the Users and that any rights in the Software not specified in these Terms are reserved to the Company, Murata Manufacturing or the Licensor.

6.4. . If a User receives the Software through an Agent only such User has the rights set forth in Articles 6.1 and 6.2, and the Agent shall not have the right to use the Software.

#### **Article 7. Sending of License Key**

7.1. If a License Key is in software format, the Company shall send such License Key to the email address registered with the Application by a date to be separately determined through mutual consultation with the User or the Agent.

7.2. If the License Key is in hardware format, the Company send such License Key to the delivery location registered with the Application by a date to be separately determined

through mutual consultation with the User or the Agent.

**Article 8. License Period**

- 8.1. The License Period shall commence on the date on which the Company sends the License Key pursuant to Article 7; and the License Period shall continue for 6 months or 12 months, depending on the package provided by the Company (or such other period as shall be separately agreed upon by both parties); provided, however, that if the Agreement is terminated, the License Period shall also end regardless of the reason therefor.
- 8.2. If a User or the Agent wishes to renew the License Period (or the renewed License Period, if it has been renewed pursuant to this paragraph), the User or the Agent shall apply in accordance with the Company's instructions.
- 8.3. If the Company accepts the renewal of a License Period, the Company shall issue an Invoice to the User or the Agent for the renewed License Period. The User or the Agent shall pay such License Fee to the Company in accordance with Article 5.
- 8.4. The Company shall send the User a new License Key if the License Period is renewed pursuant to the preceding paragraph. The provisions of Article 7 shall apply mutatis mutandis to the method of sending such License Key. The renewed License Period shall begin on the day following the end date of the previous License Period or the date on which the Company sends the new License Key, whichever is later.

**Article 9. Measures after End of License Period**

- 9.1. In no event may a User use the Software beyond the License Period.
- 9.2. A User must erase the Software and any copies thereof immediately after the end of the License Period.
- 9.3. If a User has received a License Key in a hardware format, the User shall return the same to the Company after the end of the License Period as instructed by the Company.

**Article 10. Use of Software**

- 10.1. The User shall, at its own responsibility and expense, secure and maintain the operating environment, such as hardware including but not limited to computers that meet the specifications necessary to operate the Software, the computer in which the Software is installed, peripheral devices, and operating system.
- 10.2. The User shall, at its own responsibility and expense, take any security measures necessary to protect or secure the User's data or information recorded in the Software.

**Article 11. Modification of Software**

11.1. The Company may, at its sole discretion, make any changes, modifications, upgrades (hereinafter in this Article, the “**Modification**”) of the Software including but not limited to any portions or features. For Modification that, in the Company's reasonable discretion, is detrimental or may result in a material diminishment of value to the User, the Company will make reasonable commercial efforts to notify the User of the Modification in advance.

11.2. The User shall endeavor to install and use the latest version of the Software in the event of any Modification of the Software. In no event shall the Company be liable for any damages or costs incurred by the User or any third party, or for any dispute with a third party, due to the User not updating to the latest version.

**Article 12. Support**

12.1. The Company shall provide the Support on the use of the Software to the User of the Basic Package, Academic Package with Support, and the Trial Version during the License Period.

12.2. The Company has no obligation to provide maintenance, modification or support for the Software except for the Support referred to in the preceding paragraph.

12.3. No provision of reply, information or advice by the Company with regard to the Software shall create a new warranty or in any other way limit the scope of the non-warranty as set forth in Article 16. In no event shall the Company be liable for any damages or costs incurred by the User or any third party, or for any dispute with a third party, as a result of any such provision of reply, information or advice.

**Article 13. Prohibited Matters**

13.1. The User may not, without the prior written consent of the Company, engage in any of the following acts with respect to the Software (including the Software re-produced in accordance with the Agreement) in any form or for any purpose:

- (i) Delete or alter any copyright notice affixed to the Software by the Company, Murata Manufacturing, or the Licensor;
- (ii) Re-produce, install or use the Software except as expressly permitted by these Terms;
- (iii) Assign, establish a security interest in, or otherwise dispose of the right to use the Software or any other rights related to the Software to any third party;
- (iv) Allow any third party to use the Software except as expressly permitted by these Terms;
- (v) Distribute or transmit (including but not limited to automatic public communication or

making available for such communication) the Software;

(vi) Divert or misappropriate the Software in the User's products;

(vii) Modify, adapt, reverse engineer, disassemble or decompile the Software;

(viii) Use the Optional Features of the Software in a manner other than as an adjunct to the primary functions of the Software, or use the Optional Features of the Software separately from the Software;

(ix) Use the Software beyond the scope of processing data necessary for the User's normal business or other appropriate use; or

(x) In addition to the foregoing items, engage in any act that may cause damage to the Company, Murata Manufacturing or any other third party.

13.2. Notwithstanding Article 13.1 (ii), the User may make only one (1) copy of the Software for backup purposes.

#### **Article 14. Audit**

14.1. Subject to prior written notice to the User, the Company or a third party entrusted by the Company may conduct an audit on the User's status on the Software use to the extent deemed reasonably necessary, and the User shall cooperate with such audit.

14.2. If the audit report indicates any breach of the Agreement by User, User agrees to pay for the cost of the audit.

#### **Article 15. Intellectual Property Rights**

15.1. All intellectual property rights (including but not limited to patent rights and copyrights) and other rights relating to the Software shall belong to Murata Manufacturing, the Company or the Licensor. The Software is protected by copyright laws and other applicable intellectual property laws and regulations.

15.2. The Company does not warrant to the User that the Software does not infringe the intellectual property rights or other rights of any third party.

15.3. The User and the Agent shall immediately notify the Company of any inquiry, warning or claim of infringement of intellectual property rights or other rights by any third party or any related disputes (the "**Disputes**") arising out of or in connection with use of the Software. The User and the Agent shall resolve the Disputes at their own liability and expense, and the Company shall assume no liability whatsoever.

#### **Article 16. Disclaimer and Non-Warranty**

**16.1. The Company provides the Software to the User on an "as-is" basis.**

**16.2. The Company and Murata Manufacturing make no warranties, either express or**

implied, as to the normal operation, fitness for a particular purpose, accuracy of content, non-infringement of third party rights or any other matters relating to the Software including but not limited to that the Software operates in combination with any hardware or application software, that the Software is error-free, that the defects will be corrected, or that the Software will operate uninterrupted.

16.3. The Company makes no warranty that any data processed by the User through the Software will not be lost or altered as a result of the use of the Software. The Users are to manage all data at their own liability and to use the Software upon appropriate measures such as making backups.

#### **Article 17.           Limitation of Liability**

17.1. In no event shall the Company and Murata Manufacturing be liable to the User or any third party for any damages (including but not limited to damages resulting from loss of the License Key, loss of data, the server being down, business interruption, communication problems, or other accidents and/or incidents) or expenses incurred by the User or any third party, or any dispute with any third party arising out of or in connection with the User's use of the Software.

17.2. The Company's total liability in any matter arising out of or related to the Agreement shall not exceed the aggregate amount of the License Fee paid by the User to the Company for the one (1) year period prior to the occurrence of the matter giving rise to such liability, except for damages caused by the willful or grossly negligent acts of the Company. In no event shall the Licensors be liable for any matter arising out of or in connection with the Agreement.

### **Chapter IV General Provisions**

#### **Article 18.           Confidentiality**

The User and the Agent shall keep confidential any technical information related to the Software and any other technical and business information of the Company obtained in connection with the Agreement and the use of the Software (the "**Confidential Information**") with the same level of care that it uses to protect the confidentiality of the User's and the Agent's own confidential information of like kind (but not less than the due care of a prudent manager), and shall not disclose the Confidential Information to any third party without the prior written consent of the Company; provided, however, that Confidential

Information shall not include any information that:

- (i) was known to the User or the Agent prior to obtaining it from the Company;
- (ii) was publicly known or in the public domain at the time of obtaining it from the Company;
- (iii) becomes publicly known through no fault of the User or the Agent after obtaining it from the Company;
- (iv) is obtained by the User or the Agent from a third party with authority without an obligation of confidentiality; or
- (v) is developed by the User or the Agent independently of any Confidential Information.

#### **Article 19. Compliance with Export Laws and Regulations**

19.1. The User agrees to comply with the relevant laws and regulations of Japan and other relevant countries in the export or domestic transfer of the Software, and to obtain any necessary consents, approvals or permits from the government agencies for the export or re-export, or domestic transfer, or to take any necessary procedures such as applying for an export license as required.

19.2. The User shall not, directly or indirectly, export, re-export, transship or provide the Software or any derivatives thereof to:

- (i) any countries, districts, their nationals or residents subject to sanctions or other trade controls of the United States ("US");
- (ii) any organization or person on the list of prohibition or restriction of trade issued by the US Departments of Commerce, State and the Treasury; and
- (iii) any country or region as separately designated by the Company or any national or resident thereof.

19.3. The User pledges not to use the Software or to provide the Software to any third party for weapons of mass destruction or other military purposes.

19.4. The User recognizes and agrees that the optional functionality of the Software, the "Femtet CAD Translator," is a "commercial item" as that term is defined at 48 C. F. R 2.101, and more specifically "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C. F. R 12.212, are subject to restriction as set forth in the Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

#### **Article 20. Termination of Agreement**

20.1. The Company may, at the Company's sole discretion, immediately terminate the Agreement in case that:

- (i) the User or the Agent does not pay the License Fee by the due date or violates any of the provisions of the Agreement;
- (ii) the User or the Agent passes a resolution to dissolve or is dissolved;
- (iii) a credit crisis or a material change occurs in the business of the User or the Agent;
- (iv) the business of the User or the Agent is suspended or its license or registration is revoked by the supervisory authority;
- (v) the User or the Agent is subject to filing of a petition for provisional seizure, provisional disposition, compulsory execution, or an auction to exercise any security interest;
- (vi) a petition is filed for the commencement of bankruptcy proceedings, civil rehabilitation proceedings, corporate reorganization proceedings, special liquidation proceedings, or similar proceedings, or if the User or the Agent is in the process of liquidation;
- (vii) there is a suspension of payment, insolvency of the User or the Agent;
- (viii) there are reasonable grounds to believe that the financial condition of the User or the Agent has deteriorated significantly or is likely to deteriorate significantly;
- (ix) the User or the Agent infringes the intellectual property rights or other rights of the Company, Murata Manufacturing, or the Licensor with respect to the Software, or disputes the ownership of such rights by the Company, Murata Manufacturing, or the Licensor; or
- (x) a license agreement between the Company and the Licensor is terminated.

20.2. The Company will not refund the License Fee or compensate the User or the Agent for any damages incurred in the event that the Agreement is terminated pursuant to the preceding paragraph or Article 21.3. In addition, the Company may claim compensation for such damages from the User and/or the Agent in the event that the Company suffers damages due to such termination.

20.3. In the event that the User or the Agent falls under any of the items of Article 20.1 or violates Article 21.1 or 21.2, all obligations of the User and/or the Agent under the Agreement shall be accelerated and become immediately due and payable to the Company.

## **Article 21. Exclusion of Anti-Social Forces**

21.1. The User and the Agent represent and warrant that they and the Organizations or the Educational Institutions they represent are not, and will not be: (i) an organized crime group, a member of an organized crime group, a person for whom five (5) years have not passed since he/she/it ceased to be a member of an organized crime group, a quasi-

member of an organized crime group, a company related to an organized crime group, a corporate extortionist (*sokaiya*), a social movement extortionist, a special intelligence criminal organization, or any other person similar to the foregoing (the “**Anti-Social Forces**”); (ii) under the control or influence of the Anti-Social Forces; (iii) utilizing the Anti-Social Forces; (iv) defaming the reputation or credibility of the other party/parties, obstructing business, or making unreasonable demands in the name of the Anti-Social Forces; and (v) that their principal investors, officers, employees or the members thereof are not members of the Anti-Social Forces.

21.2. The User and the Agent assure that they and the Organizations or the Educational Institutions they represent will not engage themselves or any third party in any of the following acts:

- (i) Violent acts of demand;
- (ii) Unreasonable acts of demand beyond legal liability;
- (iii) Use of threatening words or actions or use of force in connection with any transactions;
- (iv) Spreading false rumors, using deception or force to damage the other party’s/parties’ credibility or to obstruct the Company’s business; or
- (v) Any other act similar to the foregoing.

21.3. The Company may, at the Company’s sole discretion, immediately terminate the Agreement in the event of a breach of either of the preceding two paragraphs by the User or the Agent.

## **Article 22. Non-Assignment**

The User and the Agent must not allow any third party to succeed to their position under the Agreement, or assign, assume, or provide as security any rights or obligations arising from the Agreement, in whole or in part, without the prior written consent of the Company.

## **Article 23. Compensation for Damages**

23.1. The User or the Agent shall be liable to compensate the Company or Murata Manufacturing for any damages or expenses (including but not limited to reasonable attorneys’ fees) incurred in the event that the User or the Agent violates any provision of the Agreement and causes the Company or Murata Manufacturing to incur damages or expenses.

23.2. In the event of a dispute arising between the User and the Agent, the User and the Agent shall resolve the dispute at their own liability and expense, and the Company shall not be liable for any loss or damage arising from such dispute. In the event of any

damage or expense (including but not limited to reasonable attorneys' fees) incurred by the Company as a result of such disputes, the User and the Agent shall be obliged to compensate the Company for such damage or expense.

**Article 24. Severability**

If any part of the Agreement is held invalid by laws and regulations or court decisions the remaining parts of the Agreement shall remain in full force and effect.

**Article 25. Governing Law**

The validity and interpretation of the Agreement shall be governed by the laws of Japan.

**Article 26. Agreed Jurisdiction**

The Kyoto District Court shall be the court of exclusive agreed jurisdiction in the first instance for any disputes arising in connection with the Software or the Agreement.

End