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**exocad GmbH**

# Terms and Conditions for Download of Libraries

General terms and conditions for the download of libraries from  
exocad owned websites

These Terms and Conditions apply to and exclusively govern the use of Libraries offered for download by exocad to authorized Licensees of exocad Software.

## 1. DEFINITIONS

- 1.1** In connection with these Terms and Conditions the following capitalized terms shall have the meaning ascribed to them in this Section 1:
- a) **“exocad”** means exocad GmbH, Julius-Reiber-Str. 37, D-64293 Darmstadt, Germany, the developer of exocad Software and operator of the Website who is your contract partner with regards to the download of the Libraries;
  - b) **“exocad Software”** means the exocad DentalCAD software as well as all other software products developed by exocad;
  - c) **“Libraries”** means digital libraries containing data which can be used in connection with the exocad Software e.g. for designing implant based restorations;
  - d) **“Licensee”** or **“you”** means the existing end users being the owner of a valid license of exocad Software who is granted access to the Libraries via the Website;
  - e) **“Party”** means either you or exocad, **“Parties”** means both you and exocad;
  - f) **“Terms and Conditions”** means the contractual terms of these Terms and Conditions for Download of Libraries including any schedules, appendices or addenda;
  - g) **“Third Party Manufacturers”** means manufacturers of e.g. implant materials which have developed the respective Libraries in their own responsibility and licensed the Libraries to exocad for the purpose of sub-licensing the Libraries to its Licensees;
  - h) **“Website”** means the website [www.exocad.com](http://www.exocad.com) or other websites which are operated by exocad and via which you are granted access to the Libraries.

## 2. SCOPE OF THE TERMS AND CONDITIONS

- 2.1** These Terms and Conditions exclusively apply to the download and use of Libraries by you. exocad may, from time to time and in its sole discretion grant you access to different Libraries via the closed user portal of the Website. For accessing the Libraries via the Website it is generally required to have the exocad Software under an active and valid license acquired by one of exocad’s distributors or resellers, an active update contract in case of a perpetual license as well as the license specific serial number available.
- 2.2** By downloading a Library from the Website you acknowledge and agree to these Terms and Conditions. exocad does not agree to any other general terms and conditions, even if it has not expressly objected such terms and conditions. In case you act as employee or representative for an authorized end user of exocad you warrant that you are duly authorized by the respective end user to act on his behalf and bindingly enter into these Terms and Conditions in the name of and on behalf of the respective end user who will be bound by these Terms and Conditions as Licensee.
- 2.3** The Libraries have not been developed by exocad but by various Third Party Manufacturers. These Third Party Manufacturers have agreed towards exocad that exocad may grant its end users access to their Libraries for the purpose of using it during the regular workflow within the exocad Software. Hence, exocad is merely providing access to the Libraries but is not itself the producer or developer of the Libraries and as such not responsible for the correctness or completeness of the data contained in the Libraries.

### 3. ACCESS TO DOWNLOAD AREA

- 3.1** Access to the download area will be disabled when the Licensee no longer has an active and valid exocad Software license or in case of a perpetual license the Licensee doesn't has an active and valid update contract.

### 4. LICENSE TERMS

- 4.1** All Libraries accessible via the Website are and remain the sole property of the respective Third Party Manufacturer. All right, title and interest in and to the Libraries remain with the Third Party Manufacturer except where exocad grants you an expressive sub-license in these Terms and Conditions.
- 4.2** Upon clicking the download button on the Website and accepting these Terms and Conditions exocad grants you a non-exclusive, royalty-free, non-transferrable, non-sublicensable, worldwide sub-license to maintain an electronic copy of the respective Library and use this copy of the Library solely in connection with your authorized use of the exocad Software acquired from exocad or one of its authorized distributors or resellers. In addition, the license terms of your exocad EULA apply mutatis mutandis also to the Libraries unless these Terms and Conditions vary from the EULA.
- 4.3** The sub-license granted to you under this Section 4 expires upon termination pursuant to Section 8 or on expiration or termination of your exocad Software license (whichever is earlier).
- 4.4** You are solely entitled to use the Libraries for own business purposes within the exocad Software. In no event are you entitled to share the Libraries with third parties, whether against remuneration or not or use the Libraries for any other purpose than within the boundaries of

the features of the exocad Software. You may only use the Libraries on the device the exocad Software is installed on in compliance with the respective EULA. For the avoidance of doubt, it is prohibited to utilize the Libraries or any data derived from the Libraries for the purpose of using, testing, developing or any other application/third party tools.

- 4.5** You are only entitled to use the Libraries, if the Libraries as well as the individual parts (e.g. Implant parts) included in the Library are approved (e.g. from a regulatory perspective) by the Third Party Manufacturer for the respective country/territory for usage in conjunction with exocad Software.
- 4.6** You are not entitled to modify, amend, decompile or extract any data contained in the Libraries.

### 5. UPDATES

- 5.1** Third Party Manufacturers may update their Libraries and related data from time to time. exocad may grant you access to updated Libraries via the closed user portal of the Website in its sole discretion.

### 6. USAGE DATA

- 6.1** exocad is entitled to extract and collect your usage data of the Libraries in connection with the exocad Software in anonymized form, i.e. it is not possible for exocad to match any of the extracted usage data to you or one of your patients. exocad will solely use this data for evaluating the use of and improving and enhancing the exocad Software.

## 7. WARRANTY AND LIABILITY

**7.1** exocad is not the developer or manufacturer of the Libraries but has only licensed these in from Third Party Manufacturers and has not tested the Libraries. Hence, exocad cannot give any warranty with regards to the correctness, completeness, usability or fitness for a specific purpose of the Libraries. Before application for real patient use of the Libraries you must duly test and evaluate the Libraries. Libraries are not necessary or required to operate the exocad Software. If you voluntarily decide to use any Libraries in connection with the exocad Software, you do so at your own risk. For exocad's warranties and liability with regards to the exocad Software the respective EULA applies.

**7.2** Should you become aware of any malfunctions, incorrect data or similar occurrences which affect or may affect the usability of the Libraries you must notify the respective Third Party Manufacturer immediately and provide all respective information and documentation. If you notify exocad, exocad will forward the notice directly to the respective Third Party Manufacturer and request remediation. If exocad comes to the conclusion that a Library incurs a risk for patient safety exocad will until the respective defect is remedied by the Third Party Provider inform you accordingly and instruct you to refrain from using the affected Library. This will not affect the general usability of the exocad Software according to its product specifications. If you continue using an Library despite a respective warning notice of exocad, you are solely responsible for such use.

**7.3** exocad is only liable for any damages incurred by you in case they (a) result from willful misconduct of exocad, (b) result from gross negligence of exocad, (c) are damages to life, body or health, (d) result from exocad's breach of its material contractual obligations under these Terms and Conditions or (e) were covered by a guarantee of exocad or result from a

fraudulently concealed defect. The liability under applicable mandatory product liability provisions remains unaffected. In all other cases the liability of exocad shall be excluded.

**7.4** In the case of Section 7.3(d) the liability is limited to a sum that equals the damage typically foreseeable by exocad at the time of contract conclusion.

**7.5** exocad is not liable for any damage incurred due to the use of the Libraries outside the permitted use as set forth in these Terms and Conditions.

**7.6** All claims against exocad to compensation for damages or reimbursement for expenditure are time-barred two (2) years after they arise.

## 8. TERM AND TERMINATION

**8.1** exocad may at any time in its sole discretion cease operating the Website and offering you any Libraries in the future. In this case exocad will inform you in due time.

**8.2** Each single sub-license for a Library enters into effect at the moment you click the respective download button after having acknowledged and accepted these Terms and Conditions. Each sublicense remains in effect as long as your license for the exocad Software is in effect.

**8.3** exocad may terminate any sub-license granted to you under these Terms and Conditions and/or block your access to the Library and/or the download section of the Website (a) without giving any reasons after a period of two weeks following a respective notice or (b) with immediate effect if you are in material breach of your contractual obligations under these Terms and Conditions, in particular of the license terms in Section 4, or (c) if Third Party Manufacturer does not approve the use of the Library or its parts in the respective country/territory.

- 8.4** After termination or expiration of a sub-license or all sub-licenses you must immediately cease using the respective Libraries and permanently delete all copies of the Libraries.

## **9. MISCELLANEOUS**

- 9.1** The Agreement shall be solely governed by substantive laws of the Federal Republic of Germany with the exception of its provisions on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.2** Place of performance is exocad's registered office.
- 9.3** The exclusive place of jurisdiction for all disputes arising from and in connection with this Agreement is exocad's registered office. If exocad raises an action, then it is also entitled to select the place of jurisdiction at Distributor's domicile. The right of both Parties to request temporary relief before the competent courts according to the statutory provisions shall remain unaffected.
- 9.4** Should any provision of these Terms and Conditions be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. The invalid provisions shall in this case be replaced by a legally effective provision which corresponds as far as possible to the original intention in legal and commercial terms.

exocad GmbH  
as at: 1. November 2018