

APPENDIX E
EULA for Standard Software

Conditions of Use and Licensing Agreement

1. Object of contract

1.1 The Licensor, ColorGATE Digital Output Solutions GmbH, Große Düwelstrasse 1, 30171 Hanover (hereinafter referred to as "Licensor"), hereby grants the Licensee the simple, non-exclusive and time-unlimited right to use the enclosed data medium-saved software program "ColorGATE Output Solutions software2 (hereinafter referred to as "Software") in a machine-readable form (object code), as well as to use the security box and the accompanying material. The accompanying material is, here, the program description and the operating instructions.

1.2 The granting of this usufructuary right does not involve an acquisition of rights to the Software, beyond this. The Licensor reserves all rights to distribution, exhibition, presentation, demonstration and publication of the Software. The same shall apply for the rights for processing and duplication, insofar as nothing else is expressly agreed below.

1.3 Not included are additional services such as installation, integration, parameterization and adaptation of the Software to the requirements of the Licensee.

1.4 ICC profiles which are supplied with the Software are not included in the scope of performance. No warranty and no liability shall be assumed for the ICC profiles.

2. Scope of Use

2.1 The granting of the license entitles the Licensee to install and operate the Software at a screen workplace (single place application) at one location. The Software may not be used per remote communication.

2.2 The usufructuary right stated in no. 1.1 is limited to the object code of the Software program. The Licensor is not obliged to make the source code available to the Licensee. The Licensee is not permitted to reengineer, reassemble or in any way whatsoever to process or change the object code of the software. The Licensee is only entitled to decompile the object code insofar as this is essential for enabling the inter-operability with other programs, the information required for this has not yet been made accessible to him and the de-compilation work is limited to the parts of the original program.

2.3 Any duplication of the Software saved on the data medium, in particular the copying on electromagnetic, opto-electronic or other data medium, as well as the accompanying material is not permitted. The exception from this is the one-time installation of the Software from the data medium onto the hard disk and the downloading or printing out of data from the current application for the exclusively personal use. Excepted from the ban on duplication is, furthermore, the creation of a backup copy, insofar as this is necessary for the backup of future uses of the Software for the exclusive personal use, as laid down in the contract.

3. Warranty

3.1 Claims due to faults in the Software must be asserted against the dealer.

3.2 The obligations of the Licensee for commercial examinations and complaints shall remain unaffected by this.

4. Transmission

4.1 The Licensee is not permitted to lease the Software and the accompanying material for the purpose of acquisition.

4.2 Incidentally, the Licensee is only entitled to pass on the Software and the accompanying material, insofar as he

- a) has deleted the installed Software and any possible data stocks stored on the hard disk or backup copies,
- b) the recipient has declared in writing that he agrees with the contents and the validity of these changes to the licensing agreement,
- c) this written declaration of agreement is sent to the Licensor and
- d) the Licensee has handed over the Software and the accompanying material to the recipient without retaining any copies.

5. Term of the Contract

5.1 The contract shall be valid for an unlimited period of time.

5.2 The right of the Licensee to use the Software and the accompanying material, shall expire, insofar as the Licensee shall violate the conditions of use laid down in this contract. A violation in this sense exists both in the breach of the rights of use granted to the Licensee, according to no. 2, as well as against the regulations for transmission under no. 4.

5.3 In the case of no. 5.2 the Licensee undertakes, to return the original disks and all copies of the data medium as well as to remove the Software and all files created with its help, on the computer unit, to such an extent that such cannot be retrieved any more.

5.4 The proper use of the Software and the accompanying material is a condition for the usufructuary rights granted according to this licensing agreement. In the event that the Licensee violates these rights his rights of beneficial use shall end without the necessity for the contract to be terminated.

6. Patent rights of third parties

6.1 At the time of the conclusion of the contract the Licensor has checked that the license product is free from rights of third parties, which limit or exclude a use corresponding with the scope as laid down in the contract.

6.2 The Licensee shall not remove existing markings, citations of patent rights or references to ownership of the Licensor in the Software and in the hardware, but if applicable take them over into created copies.

6.3 The Licensor shall release the Licensee from all claims of third parties against the Licensee, ensuing from the violation of the patent rights of programs developed and handed over by the Licensor, as well as the hardware in their version as per contract. The existence of this liability is conditional on the fact that the Licensee makes neither a written nor an oral declaration towards the third party on the violation of patent rights in particular recognizes no rights or facts and assumes no liability. In addition to this, the Licensee must not have connected the Software with software from third parties without the prior written consent of the Licensor, and in no way have used the Software contrary to the provisions.

6.4 The Licensor is entitled, at his own costs to carry out necessary changes at the Licensee to the software- or hardware due to the claims for patent rights of third parties. The Licensee cannot derive any contractual rights from this. The Licensee shall inform the Licensor immediately, and in writing, in case he is informed of the violation of commercial patent and copyrights through a product delivered by the Licensor.

6.5 The Licensee may only use the software for his own purposes, if nothing else has been expressly agreed. The use at the same time of a program on several computers requires a special contractual agreement.

6.6 The Licensee may only create copies of the program handed over to him or of parts of this program for the purposes of backup. Copying of documents which have been handed over such as documentation, operating instructions, etc. is only permitted with the prior written consent of the Licensor.

6.7 The Licensee is only liable to the Licensor for all damages, which ensue from the violation of the above-mentioned obligations of the Licensee.

7. Liability

7.1 Claims for damages and expenses of the Licensee (hereinafter referred to as claims for damages), no matter for what legal reason, in particular due to a violation of obligations from the contractual obligations and due to a non-permitted act are excluded.

7.2 This shall not apply insofar as there is an obligation for liability, e.g. according to the product liability act, in cases of willful intent, gross negligence, due to injury to life, body or damage to health, due to the violation of essential contractual obligations. The claim for damages for the violation of essential contractual obligations is, however, limited to the contractual-typical, foreseeable damage, insofar as there is no intention or gross negligence exists or no liability due to injury to life, body or damage to health. A change to the burden of proof to the disadvantage of the Licensee is not connected with the existing regulations.

7.3 Insofar as the Licensee is entitled to claim for damages in accordance with this number 7, these shall become statute-barred with expiry of the statutory period of limitation valid for claims from defect of quality.

8. Assignment of rights

8.1 The Licensee may only assign rights from the contract to third parties with the prior consent of the Licensor.

8.2 The Licensor is entitled to assign all obligations for which he is responsible and all rights to which he is entitled from the contracts to third parties. He shall ensure that there are no disadvantages ensuing from this for the Licensee.

8.3 *The Licensor is further entitled to commission third parties and have obligation fulfilled by these.* In this case, the Licensor will continue to guarantee as a contractual partner the proper fulfillment of his contractual obligation towards the Licensee, and the Licensee shall accept the service rendered as a service of the Licensor.

8.4 A change in the contractual partner on the part of the Licensor is permitted. For the case of the assumption of all obligations by a third party the Licensee has an extraordinary right to termination. The right to termination must be exercised within four weeks after the transfer of the contractual partner has been announced. After this the contractual relationship shall be continued with the third party.

9. Confidentiality, duty to exercise care, duty to provide information

9.1 Both contractual partners undertake mutually to keep secret any know-how and operational secrets, which they may learn about each other in the execution of this contract and all know-how, which is not generally known, from third parties and to commit their employees correspondingly.

9.2 The Licensee shall store the delivered original data medium in a place secure from unauthorized access by third parties and expressly inform his employees concerning the observation of existing contractual provisions as well as the provisions of the copyright.

9.3 The Licensee undertakes in the case of the further sale of the Software to inform the Licensor in writing of the name and the full address of the Buyer.

9.4 The Licensee undertakes to inform the Licensor in writing of the removal of a copy protection or a similar protection routine from the program code. The Licensee has to give an exact as possible account of the disturbance in the use of the program required for such a permissible change in program. The obligation to describe covers a detailed presentation of the symptoms of the disturbance, which have occurred, of the presumed cause of the disturbance, as well as in particular a detailed description of the change in program which was carried out.

10. Place of performance, venue

- 10.1 Place of performance for all contractual services is the registered seat in Hanover.
10.2 The venue of Hanover shall be deemed agreed towards commercial Licensees (according to the HGB (German Commercial Code)).

11. Applicable law

- 11.1 The export of Software of the Licensor in non-EU-countries requires the written consent of the Licensor.
11.2 German material law shall apply for the legal relationships in connection with this contract under exclusion of the agreement of the United Nations on contracts relating to the international sale of goods (CISG).

12. General contractual provisions

- 12.1 Oral collateral agreements have not been reached by the contractual parties. Subsequent supplements or changes to the closed agreements must be made in writing. An oral renunciation to the written form is excluded.
12.2 The remaining provisions of the contract shall also remain binding in the case of individual provisions being legally invalid. This shall not apply in the case that still observing the contract would mean an unreasonable hardship for one party.

13. Use of Adobe Components

For the use of Adobe components such as "Adobe Print Engine" and "Adobe Library" apply under this agreement the following conditions:

- (a) The Licensee shall not modify the software or any accompanying material. The Licensee is not permitted to reengineer, decompile, disassemble, or otherwise attempt to derive the object code of the software.
(b) Adobe and its suppliers are the sole and exclusive owners of all Adobe rights, title and interests, including all Adobe trademarks, copyrights, patents trade names, trade secrets, and other intellectual property rights in and to the Adobe components licensed hereunder. All rights not expressly granted in this Agreement are reserved.
(c) United States Government Rights

14. U.S. Government Restricted Rights

- (a) All ColorGATE products and publications are commercial in nature. The Software and all accompanying material are "commercial items" as that term is defined at 48 C.F.R. §2.101, and more specifically shall be identified as "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4 and other relevant sections of the code of Federal Regulations, as applicable, are herein distributed and licensed to United States Government end users with only those rights as are granted to all other end users, according to the terms and conditions herein.

15. Use of Open Source Libraries

ColorGATE software parts may include portions or all of open source libraries that shall be herewith named, and copyrights notices honored in accordance to license agreements.

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- Copyright (c) 1991-1997 Silicon Graphics, Inc.

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(b) IJG Code by LibJPEG (Independent JPEG Group)

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