

License Agreement

Last updated December 21, 2020. Replaces the prior version in its entirety.

This is a legal agreement. By downloading, installing, copying, saving on Customer's computer, or otherwise using testomat.io software, support or products Customer becomes a party to this Agreement and Customer consents to be bound by all the terms and conditions set forth below.

1. Parties

1. "**testomat.io**", "**Licensor**" or "**We**" means **Optimum Solutions sp. z o.o.**, having its principal place of business at ul. Koszykarska 27B / 26, 30-717, Kraków, Poland, registry code: 6793103694.
2. "**Customer**", "**Licensee**" or "**You**" means the sole proprietor or legal entity specified in the Subscription Confirmation. For legal entities, "Customer" includes any entity which controls, is controlled by, or is under common control with Customer. For the purposes of this definition, "control" means one of the following:
 1. The power, directly or indirectly, to direct or manage such entity, whether by contract or otherwise.
 2. Ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

2. Definitions

1. "**Agreement**" means this License Agreement.
2. "**Product**" means any generally available Licensor's software product identified by Licensor as a software developer tool. For the avoidance of doubt, the Product is not produced to the specifications of Customer nor customized through modification or personalization, is intended for mass distribution, and no software code will be provided to Customer.
3. "**User**" means any employee, independent contractor or other personnel obtaining access to the Product(s) from Customer.
4. "**Number of Users**" means maximum number of Users.
5. "**License Key**" means a unique key-code that enables a Licensee to use the Product by unlocking the fixed Number of Users. Only Licensor and/or its representatives are permitted to produce License Keys for the Product.
6. "**Subscription**" means an arrangement for making use of the Product of periodic nature on a prepayment plan. For the purpose of clarity, Subscription includes the subscription term, Products provided to Customer, subscription fees, payment schedules and fixed number of License Keys.
7. "**Product Evaluation**" means using the Product without a valid License Key.
8. "**Subscription Confirmation**" means an email confirming Customer's rights to access and use Products, including total Number of Users.
9. "**Product Installation**" means a Product copy running on Customer's computer device, hardware server or virtual machine.
10. "**Product Version**" means a release, update, or upgrade of a particular Product that is not identified by Licensor as being made for the purpose of fixing software bugs.
11. "**Bug Fix Update**" for a particular Product Version means a software update or release that is specifically identified by Licensor as a bug fix for that Product Version.
12. "**Fallback Date**" means the date that was 12 months prior to the date of expiration of the Subscription.
13. "**Fallback Version**" means the most recent Product Version that Licensor made available for public purchase prior to the Fallback Date, along with any Bug Fix Updates for that Product Version. For the purpose of clarity, Fallback Version does not include any Product updates or upgrades other than Bug Fix Updates that Customer may have used in the period between the Fallback Date and the date of expiration of the Subscription.
14. "**E-mail Support**" means a form of customer support provided by the Licensor. At the time of writing, the corresponding e-mail address is testomat@sdclabs.com; should the address be changed, the new address will be referred to on the Licensor's web site.
15. "**Affiliate**" means any entity belonging to the same group as the Licensor.

3. How this Agreement Works

1. **Entire Agreement.** This Agreement, including the Third-Party Software license terms, constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior agreements between Customer and Licensor regarding Customer's use of any Products. No purchase order, other ordering document or any handwritten or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both Customer and Licensor.
2. **Reservation of Rights.** Optimum Solutions sp. z o.o. reserves the right at any time to cease the support of the Product and to alter prices, features, specifications, capabilities, functions, terms of use, release dates, general availability or other characteristics of the Product.
3. **Changes to this Agreement.** We may update or modify this Agreement from time to time, including any referenced policies and other documents. If a revision meaningfully reduces Customer's rights, we will use reasonable efforts to notify Customer. If we modify this Agreement, the modified version of the Agreement will be effective from the start of the next Subscription term. In this case, if Customer objects to the updated Agreement terms, as Customer's exclusive remedy, Customer may cancel the Subscription. Customer may be required to click through the updated Agreement to show its acceptance. For the avoidance of doubt, each Subscription Confirmation is subject to the version of the Agreement in effect on the Subscription Confirmation date.
4. **Opportunity to Review.** Customer hereby declares that Customer has had sufficient opportunity to review this Agreement, understand the content of all of its clauses, negotiate its terms, and seek independent professional legal advice in that respect before entering into it. Consequently, any statutory "form contract" ("adhesion contract") regulations shall not be applicable to this Agreement.
5. **Severability.** If a particular term of this Agreement is not enforceable, the unenforceability of that term will not affect any other terms of this Agreement.
6. **Headings.** Headings and titles are for convenience only and do not affect the interpretation of this Agreement.
7. **No Waiver.** Our failure to enforce or exercise any part of this Agreement is not a waiver of that section.
8. **Notice.** Optimum Solutions sp. z o.o. may deliver any notice to Customer via electronic mail to an email address provided by Customer, registered mail, personal delivery or renowned express courier (such as DHL, FedEx or UPS). Any such notice will be deemed to be effective:
 1. On the day the notice is sent to Customer via email.
 2. Upon personal delivery.
 3. One (1) day after deposit with an express courier or five (5) days after deposit in the mail, whichever occurs first.

9. **Governing Law.** This Agreement will be governed by the laws of the Poland, without reference to conflict of laws principles. Customer agrees that any litigation relating to this Agreement may only be brought in, and will be subject to the jurisdiction of, any competent court of the Poland. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
 10. **Exceptions or Modifications.** For exceptions or modifications to this Agreement, please contact Optimum Solutions sp. z o.o. at: testomat@sdclabs.com In case the terms of this Agreement are in conflict with the terms of any agreement individually negotiated and agreed between Optimum Solutions sp. z o.o. and Customer, the terms of the latter shall prevail.
 11. **Force Majeure.** Except with respect to Customer's payment obligations, neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party ("**Force Majeure Event**"), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. In the event of a Force Majeure Event that prevents one part from substantially performing its obligations hereunder for a period of ten (10) days or more, either party may terminate this Agreement on five (5) days written notice.
4. **Grant of Rights**
1. The Product include code and libraries licensed to Licensor by third parties, including open source software.
 2. The Product is provided basing on the Number of Users. If Customer complies with the terms of this Agreement, Customer has the rights stipulated hereunder for each Subscription that Customer acquires. Customer's rights acquired in relation to the Product are limited to those necessary to enable Customer and its Users to effectively operate the Product(s). All other rights remain reserved to Licensor.
 3. Unless the Subscription has expired or this Agreement is terminated in accordance with respective section, and subject to the terms and conditions specified herein, Licensor grants Customer a non-exclusive and non-transferable right to use each Product covered by the Subscription as stipulated below.
 4. Customer **may**:
 1. For each License Key included to Subscription have one Product Installation of any version covered by the Subscription on any operating system supported by the Product.
 2. Make one backup copy of the Product solely for archival/security backup purposes.
 5. Customer **may not**:
 1. Allow the same Product Installation to be used concurrently by more than the Number of Users specified for used License Key in Subscription Confirmation.
 2. Rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, or transfer the Product.
 3. Provide access to the Product or the right to use the Product to a third party.
 4. Reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Product.
 5. Remove or obscure any proprietary or other notices contained in the Product.
 6. Following the expiration of this Agreement, the rights stipulated in "Grant of Rights" section shall continue on a perpetual, royalty-free, non-exclusive, and non-transferable basis for the continued use of a Fallback Version of each Product covered by the Subscription. The limitations set forth in this section apply to the usage of the Fallback Version. The rights granted in this section are expressly contingent upon Customer not being in breach of this Agreement, including having paid in full the applicable Subscription fees for the preceding 12 months or longer without interruption.
 7. Customer acknowledges that no ownership right is conveyed to Customer under this Agreement, irrespective of the use of terms such as "purchase" or "sale". Licensor has and retains all rights, title and interest, including all intellectual property rights, in and to the Products and any and all related or underlying technology, and any modifications or derivative works thereof, including without limitation as they may incorporate Feedback (as defined below).
 8. This Agreement applies whether Customer purchases a Subscription directly from Licensor or through resellers. If Customer purchases through a reseller, the Subscription details shall be as stated in the Subscription Confirmation issued by the reseller to Customer, and the reseller is responsible for the accuracy of any such Subscription Confirmation. Resellers are not authorized to make any promises or commitments on Licensor behalf, and Customer understands and agrees that Licensor is not bound by any obligations to Customer other than as specified in this Agreement.
5. **Access to Products**
1. All deliveries under this Agreement will be electronic. Customer and its Users must have an Internet connection in order to receive any deliveries. For the avoidance of doubt, Customer is responsible for downloading and installing the Products. Download instructions are made available on Licensor website at <https://testomat.io>.
 2. Customer enables full access to Product Installation by specifying a License Key from Subscription Confirmation.
 3. Subject to the terms of this Agreement, Customer is granted a right to install and use the Product for evaluation purposes without charge for unlimited amount of time. The Product contains a feature that will automatically limit allowed Number of Users. Licensor reserves the right at any time to change that limit in new Product versions.
6. **Fees**
1. Customer shall pay its Subscription fees in accordance with Licensor Terms of Purchase or the reseller's terms of purchase, whichever are applicable.
 2. The Subscription fees shall be paid in full, and any levies, duties and/or taxes imposed by Customer's jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax), shall be borne solely by Customer.
 3. Customer may not deduct any amounts from fees payable to Licensor or the reseller, unless otherwise specified in the applicable terms of purchase.
7. **Feedback**
1. Customer has no obligation to provide Licensor with ideas, suggestions, or proposals ("Feedback").
 2. If Customer or Users submit Feedback to Licensor, then Customer grants Licensor a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.
8. **LIMITED WARRANTY**
 ALL PRODUCTS ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES. USE OF THE PRODUCTS IS AT YOUR OWN RISK. Optimum Solutions sp. z o.o. MAKES NO WARRANTY AS TO THEIR USE OR

PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Optimum Solutions sp. z o.o., AND ITS SUPPLIERS (WHICH SHALL INCLUDE THE PROVIDERS OF THE THIRD PARTY SOFTWARE) AND RESELLERS, DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE PRODUCTS, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. Optimum Solutions sp. z o.o. (AND ITS AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) DOES NOT WARRANT:

1. THAT THE PRODUCTS ARE ACCURATE, RELIABLE OR CORRECT
2. THAT THE PRODUCTS WILL MEET YOUR REQUIREMENTS
3. THAT THE PRODUCTS WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE
4. THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED
5. THAT THE PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS

ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCTS ARE DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD. NO WARRANTY OR LIABILITY AT ALL IS GIVEN TO PRODUCTS UNDER EVALUATION.

9. **DISCLAIMER OF DAMAGES**

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL Optimum Solutions sp. z o.o. (OR ITS AFFILIATES, AGENTS, DIRECTORS, OR EMPLOYEES), OR Optimum Solutions sp. z o.o. LICENSORS, SUPPLIERS OR RESELLERS BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR:
 1. ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE
 2. ANY LOSS OR DAMAGES IN CONNECTION WITH TERMINATION OR SUSPENSION OF CUSTOMER'S ACCESS TO OUR PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT
 3. ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE:
 1. RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE
 2. BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORTIOUS ACTION
 3. ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S USE OF OR ACCESS TO THE PRODUCTS OR SUPPORT.
2. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.
3. OUR TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO ONE HUNDRED (100) US DOLLARS OR THE AGGREGATE AMOUNT PAID OR PAYABLE BY THE CUSTOMER FOR PRODUCTS DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS GREATER. THIS LIMITATION WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AMOUNT AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **Term and Termination**

1. The term of this Agreement will commence upon acceptance of this Agreement by Customer as set forth in the preamble above, and will continue for each Product through the end of the applicable subscription period specified in the respective Subscription Confirmation. This Agreement will automatically renew with respect to each Product for a successive subscription term, unless terminated as set forth herein.
2. Customer may terminate this Agreement at any time by cancelling its Product subscription. If such termination occurs during a then-current subscription period, this Agreement will continue to be effective until the end of that subscription period. Such termination does not relieve Customer of the obligation to pay any outstanding subscription fees owed to Licensor, and no credits or refunds will be issued to Customer for prepaid subscription fees (except as specified in the Licensor Terms of Purchase, if applicable).
3. Licensor **may terminate** this agreement if:
 1. Customer has materially breached this Agreement and fails to cure such breach within thirty (30) days of written notice thereof.
 2. Customer fails to make the timely payment of subscription fees in accordance with "Fees" Section of this Agreement.
 3. Licensor is required to do so by law (for example, where the provision of the Product to Customer is, or becomes, unlawful).
 4. Licensor elects to discontinue providing the Product, in whole or in part.
4. Licensor will make reasonable efforts to **notify Customer** via email as follows:
 1. Thirty (30) days prior to termination of the Agreement when required to terminate by law or because of discontinued Product. In such events Customer will be entitled to a refund of the unused portion of prepaid subscription fees, if applicable.
 2. Three (3) days prior to termination of the Agreement in other cases. In such events Customer will not be entitled to any refund of the unused portion of prepaid subscription fees.
5. **Survival.** Upon the expiration or termination of this Agreement by Customer and if Customer elects to use the Fallback Version of the Product this Agreement statements will also survive with respect to said Fallback Version.

11. **Temporary Suspension for Non-payment**

1. Licensor reserves the right to suspend or limit Customer's access to Optimum Solutions sp. z o.o. Products if Customer fails to pay subscription fees on time.

2. If Licensor suspends or limits Customer's access to Optimum Solutions sp. z o.o. Products for non-payment according, Customer must pay all past due amounts in order to restore full access to Optimum Solutions sp. z o.o. Products.
3. Customer hereby agrees that Licensor is entitled to charge Customer for the time period during which Customer has access to testomat.io Products until Customer or Licensor terminates or suspends Customer's subscription in accordance with this Agreement.

12. **Export Regulations**

Customer shall comply with all applicable laws and regulations with regards to economic sanctions, export controls, import regulations, and trade embargoes (all herein referred to as "Sanctions"), including those of the European Union and United States (specifically the Export Administration Regulations (EAR)). Customer declares that it is not a person targeted by Sanctions nor is it otherwise owned or controlled by or acting on behalf of any person targeted by Sanctions. Further, Customer warrants that it will not download or otherwise export or re-export the Product or any related technical data directly or indirectly to any person targeted by Sanctions or download or otherwise use the Product for any end-use prohibited or restricted by Sanctions.

13. **Customer Support**

1. Licensor provides Email Support as well as Instant Messaging Support. The response time will be reasonable, but no specific response time guarantees are given.
2. Customer may request additional paid support from Licensor which is subject of a supplementary individually negotiated Agreement between Customer and Licensor.
3. Any guarantees of support availability only apply to the latest version of Licensed Software available in Customer Subscription.

14. **Customer Data**

1. **Use of Name and Logo.** Customer agrees that Licensor may identify it as a customer of Optimum Solutions sp. z o.o. and may refer to it by name, trade name and trademark, if applicable. Licensor may also briefly describe Customer's business in Licensor marketing materials, on the Optimum Solutions sp. z o.o. website and/or in public or legal documents. Customer hereby grants Licensor a worldwide, non-exclusive and royalty-free license to use Customer's name and any of Customer's trade names and trademarks solely pursuant to this marketing section.
2. **Gathering of Usage Statistics.** Customer acknowledges and agrees that the Product may contain a feature that reports the usage statistics, diagnostics information and usage meta-information of the Product back to the Licensor. Customer may opt out of the gathering of usage statistics by turning off this feature in the Product settings.

Contact Us

By email: testomat.io@sdclabs.com
By visiting this page: <https://testomat.io>

<https://testomat.io> operated by

Optimum Solutions Sp. z o.o.

ul. Koszykarska 27B / 26, 30-717, Kraków, Poland
NIP : 6793103694
KRS : 0000523396
REGON : 123206054
VAT : PL6793103694