

Software Terms and Conditions of Use for the Tünkers Tool c³ - Clever Clamp Calculator

1 General

1.1 Tünkers Maschinenbau GmbH (hereinafter referred to as "Tünkers") hereby grants the Customer a non-exclusive, non-transferable right to use the Tünkers tool c³ - Clever Clamp Calculator (hereinafter referred to as Tool), stated in the "Software Terms and Conditions of Use", globally subject to the following terms and conditions. The Tool includes a brief instruction that will be provided to the Customer as a PDF file.

1.2 The data inventories (files, database material), belonging to the Tool and delivered with it, are included in these "Software Terms and Conditions of Use".

1.3 Authorised users of the Tool c³ - Clever Clamp Calculator are referred to hereinafter as "Customers".

1.4 The Customer shall install the Tool independently and commission it itself.

1.5 Use of the Tool is voluntary and free of charge.

2. Item of use

2.1 The Tool assists the Customer in selecting a suitable clamping technology.

2.2 Responsibility for the correctness and functionality of the clamping technology selected lies exclusively with the Customer.

3 Protection of the Tool / Copyright / Use by third parties

3.1 The Tool is the property of Tünkers. Notwithstanding the rights of use granted under Section 1 and Section 2, Tünkers shall retain all rights to the Tool.

3.2 The Customer undertakes to retain the proprietary notices contained in the Tool, such as copyright mentions and other reservations of rights, in unaltered form.

3.3 The Customer undertakes not to alter, translate, reverse develop, de-assemble the Tool, and not to create works derived from the Tool or to detach parts of it.

3.4 The Customer undertakes not to make the Tool accessible to third parties, either directly or indirectly, without the express, written consent of Tünkers. This shall also apply in the event of complete or partial sale or winding-up of the Customer's company. Employees of the Customer or other persons shall not apply as third parties - as long as they are on the Customer's premises for the purpose of contractually conform use of the license material for the Customer.

3.5 The Tool can only be used and applied in conjunction with third-party software programs. These third-party software programs will not be provided by Tünkers. The Customer bears sole responsibility for lawful use of the third-party software.

4 Warranty

4.1 The contract parties agree that it is not possible to develop the software such that it works error-free in all application cases and combinations.

4.2 The Customer undertakes to report faults, defects and damage to the Tool to Tünkers immediately. The Customer must reimburse Tünkers for the costs incurred for the rectification of such faults, defects and damage, if these are attributable to the Customer.

4.3 Farther-reaching services, such as individual creation or adaptation of software products as well as guarantees or assurances of services, require an express, written agreement.

4.4 The Customer is aware that it is in the nature of an EDP-assisted Tool that all technical decisions concerning the specific case of application must be taken by the user. In addition, the clamping technology proposed by the Tool is not infallible. In case of doubt, the Customer must check the correctness and functionality of the Tool in a suitable manner.

4.5 The Customer is responsible for the correct selection and the consequences of use of the software as well as of the results intended or achieved through this.

4.6 The warranty does not cover defects caused through deviation from the conditions of use, envisaged for the program and set out in the performance specification.

4.7 The Customer must carry out a diligent advance check, on its own responsibility, in terms of whether the installation and use of the Tool can result in impairment or damage to the internal company EDP network.

4.8 Tünkers hereby warrants to the Customer that the 3D models, created by the Customer with the Tool and which will be forwarded to Tünkers for further processing, will be treated as confidential and only made available to third parties following consultation with the Customer.

5 Limitations of liability

5.1 Within the scope of the statutory provisions, Tünkers shall be unrestrictedly liable for damage resulting respectively from

- injury to life, limb or health, based on intentional or negligent violation of obligations, or otherwise based on intentional or negligent conduct on the part of Tünkers or one of its legal representatives or vicarious agents
- the absence or lapsing of an assured feature, or in the event of failure to comply with a guarantee
- intentional or grossly negligent violation of obligations, or otherwise from intentional or grossly negligent conduct on the part of Tünkers or one of its legal representatives or vicarious agents.

5.2 Tünkers shall be liable for damage resulting from slightly negligent violation of essential obligations by the provider, one of its legal representatives or vicarious agents; this liability shall be restricted to compensation for contractually-typical, foreseeable damage. Essential obligations are obligations whose fulfilment makes correct execution of the contract possible in the first place, and in compliance with which the Customer can trust.

5.3 The above provisions shall also apply analogously to the liability of Tünkers concerning compensation for futile expense.

5.4 Liability under the Product Liability Act shall remain unaffected.

6 Period of use and ending

6.1 Use shall begin upon recognition of the Software Terms and Conditions of Use and the provision of the download link by Tünkers, and is for an indefinite period.

6.2 The Customer can terminate the use at any time, and undertakes to inform Tünkers in writing of the ending of use of the Tool, and to delete the Tool.

6.3 In the event of violation of Section 3.1 to Section 3.4, Tünkers shall be entitled to demand cease-and-desist as well as unrestricted return of the Tool

7 Agreement on place of jurisdiction

If the Customer is a merchant, a juridical person under public law or a public-law special fund, the place of jurisdiction shall be Ratingen.

8 Subsidiary agreements

8.1 Employees of Tünkers are not authorised to declare amendments or extensions to the present Terms and Conditions of Use, or other special assurances and agreements.

8.2 Should a provision of the present contract be or become ineffective, either in part or in full, or in the event of a loophole in the contract, the legal effectiveness of the other contract provisions shall remain unaffected.

Ratingen, 23.02.2016