

## Preamble

The HAYER & BOECKER OHG (hereinafter referred to as "HAYER & BOECKER") is the developer and owner of the software licensed herewith. The Licensee wishes to purchase license rights of the software. HAYER & BOECKER is willing to grant license rights to the Licensee against payment of license fees on the basis of the license conditions stated hereinafter.

## 1. Terminology

Unless otherwise expressly specified in the contract, the following terms have the meanings as enlisted below:

1.1 "Licensed Software" or "Software" means the software program modules as specified in the offer or under [www.niaflow.com](http://www.niaflow.com).

1.2 "Revision Release" means an ongoing release (update) of the licensed software containing bug fixing. It is displayed by HAYER & BOECKER at its sole discretion as change of fourth digit in the product version number [x.x.x.(x)].

1.3 "Build Release" means an ongoing release (update) of the licensed software containing bug fixing and minor changes. It is displayed by HAYER & BOECKER at its sole discretion as change of third digit in the product version number [x.x.(x).x].

1.4 "Minor Release" means an ongoing release (update) of the licensed software containing extensions and functional improvements. It is displayed by HAYER & BOECKER at its sole discretion as change of second digit in the product version number [x.(x).x.x].

1.5 "Major Release" means a ongoing release (update) of the licensed software with essential changes. It is displayed by HAYER & BOECKER at its sole discretion as change of first digit in the product version number [(x).x.x.x].

1.6 "Basic, and Mining" mean different software products with different configurations and different applications.

1.7 "Service Package" means a software maintenance contract by which the Licensee gains access to the ongoing releases (updates) of the licensed software. Within the framework of the service package the Licensee can make use of an e-mail support.

1.8 "Designated Hardware" means the computer hardware and the operating system as specified by HAYER & BOECKER, on which the software is licensed for use.

1.9 "Licensee" means the purchaser of the software.

## 2. License grant

2.1 Subject to the payment of the license fee and to these conditions HAYER & BOECKER hereby grants the Licensee the non-exclusive, non-transferrable and time-limited right (license) to apply the licensed software in the object code and the software documentation for the Licensor's internal use, in the country of the Licensee, on the designated hardware (hereinafter referred to as the "license" or software license").

Without limiting the foregoing, the license especially does not include the right to change, to copy, to port, to decompose, to reverse or to translate the licensed software and/or the software documentation. Besides, the Licensee has no right to transfer the rights of the licensed software and the software itself to third parties or to offer it for leasing or hiring or pawning, or to decree on the software in any other way.

2.2 The software is structured for one single user only. HAYER & BOECKER allows the Licensee the installation of the software on one single computer per user, without being bound to a specific computer. In case that the licensed software should be structured by a number of parameters (as for example number of users, customers, workplaces, servers, units, work stations, or user interfaces), the exceedance of these specified parameters is not permitted unless an appropriate modification is applied for by the Licensee and agreed to by HAYER & BOECKER as Licensor.

2.3 Each new license purchase is linked to the purchase of a separate and time-limited service package. The beginning and the expiry of the service package therefore depend on the delivery date of the purchased software license.

2.3.1 The term of the service package is 12 months and has to be renewed every 12 months. The Licensee shall be informed about the expiration of the service package in time. The renewal of the service package is subject to the conclusion of a new purchase contract on a further, timely-limited service package (12 months) by the Licensee. A partial acquisition of the service package is not possible. In case of the renewal of the service package no further license fee has to be paid in terms of clause 2.1 and clause 2.4.

2.3.2 Licensees, who do not prolong the service package, loose with expiration of the active service package the software license as well. The Licensee is granted to reactivate the software license by purchasing a new service package. This possibility exists within a period of 24 months after expiration of the service package respectively the software license. Should the Licensee reactivate his software license accordingly, HAYER & BOECKER will charge a reactivating fee for each month the license was not activated after expiring of the last service package. This reactivating fee amounts to 1/24 of the current sales price of an annual service package (please see [www.niaflow.com](http://www.niaflow.com)) for each month of deactivation. In case of the aforementioned renewal of a service package no further license fee has to be paid in terms of clause 2.1. At the end of the reactivating period of 24 months, there is no longer entitlement to the activation of the service package, the software license is expired and there is only the possibility to purchase a new software license as per clause 2.4 on the basis of the respectively valid conditions.

2.3.3 The Licensee shall be informed by HAYER & BOECKER on the expiration dates as per 2.4.1 and by email and a message box in the software.

2.4 For universities, universities of applied sciences and other scientific institutes HAYER & BOECKER grants a research discount on the sales price of the software license (not on the service package) compared to the price of the software license for a commercial use. Discounted software licenses are not permitted for a commercial use. Should a Licensee use a discounted research software license for commercial purposes HAYER & BOECKER shall be entitled to claim a compensation at the rate of 50 % of the value of the project for which the discounted license was used illegally. Further legal actions of HAYER & BOECKER remain unaffected by this compensation claim.

### **3. Software of third parties**

3.1 The licensed software may include freeware or shareware provided to HAYER & BOECKER by third parties. HAYER & BOECKER does not pay license fees for such freeware or shareware, and no license fees shall be invoiced to the Licensee for the use of such freeware or shareware as well. The Licensee takes notice and agrees to that HAYER & BOECKER assumes no warranty and no liability regarding the property and/or use of freeware or shareware by the Licensee.

### **4. Copyright, trademark, property, public relations**

4.1 All rights, titles, and legal claims regarding the licensed software (and parts of the same) and the software documentation (and parts of the same) completely remain with HAYER & BOECKER or its third party license providers, with the exception of the rights explicitly granted by this License Agreement. The Licensee acknowledges that no rights regarding the licensed software and software documentation are granted to him with the exception of the rights explicitly granted by this License Agreement.

4.2 As per contract, the Licensee has not the right to use trademarks of HAYER & BOECKER, its third party license providers or other trademarks which are identical or confusingly similar without explicit written approval of HAYER & BOECKER.

4.3 The Licensee is obliged to keep all declarations and notes (including copyright and trademark notes) which are contained in the licensed software or software documentation, in all copies of the licensed software and/or software documentation in the same form and way as being provided by HAYER & BOECKER.

4.4 The Licensee in any case has to take any efforts acceptable to keep the property respectively property rights of HAYER & BOECKER and those of the license provider(s) to HAYER & BOECKER regarding the licensed software and software documentation.

4.5 The license holder is not authorized – and has to take any reasonable efforts prevent others from – to copy, to translate, to modify, to produce derived works, to decompose, to re-develop, to decompile or to apply the licensed software and software documentation in any other way than specified in the amount defined by contract or usual law.

4.6 HAYER & BOECKER is authorized for advertisement purposes to report publicly about the business connection between HAYER & BOECKER and the licensee, if it has obtained the Licensee's prior consent, e.g. in the form of press releases, homepage news, flyers, or public talks. HAYER & BOECKER undertakes to protect every known company secrets of the licence holder in connection with the business relationship. HAYER & BOECKER assures to consider all advertising interests and PR interests of the licence holder by every publication appropriately. The licence holder commits himself to support HAYER & BOECKER in all PR efforts which refer to the business relationship between HAYER & BOECKER and the licence holder by providing information and media (e.g. graphics, company logo) and to consider besides all advertising interests and appointment interests of HAYER & BOECKER appropriately.

4.7 The Licensee shall be entitled for advertisement purposes to report publicly about the business relationship between HAYER & BOECKER and the Licensee, e.g. in the form of press releases, homepage news, flyers, or public presentations. The Licensee commits himself to keep in strict confidence any company secrets of HAYER & BOECKER which become known to him in connection with the granting of the license. The Licensee shall be obligated to consider all advertising interests and PR interests of HAYER & BOECKER by every publication appropriately. HAYER & BOECKER commits itself to support the Licensee in all PR efforts which refer to the business connection between HAYER & BOECKER and the

Licensee by providing information and media (e.g. graphics, company logo) and to consider besides all advertising interests and appointment interests of the Licensee appropriately.

## **5. Material defects – software or documentation faults**

HAYER & BOECKER shall be liable for material defects as per this clause 5, i. e. deviations of the software from the related documentation (in the following called fault) or the documentation, occurring within the limitation period as per clause 5.2 and whose cause already existed at the time of provision of the software or documentation.

5.1 HAYER & BOECKER warrants that the supplies and services conform to the functional and performance features as described in the applicable product description or as expressly agreed upon between the parties. Any technical data or quality descriptions issued by HAYER & BOECKER shall not be regarded as explicit warranties, unless expressly confirmed as such by HAYER & BOECKER. The Licensee shall be advised that, according to the current technical level of development, faults in the software cannot totally be excluded. In general any repair of the software is effected by the delivery of updates, which include the correction of faults detected by the Licensee or by HAYER & BOECKER. The Licensee agrees that the development of updates takes a reasonable period of time for implementation.

5.2 In case of a fault HAYER & BOECKER shall – at its option - correct the defect, e.g. in the form of delivery of a software update, or shall take back the supplies and services and refund the payments. Any new or additional features, which might be provided for free in connection with the fault correcting updates shall not be subject to warranty, unless otherwise agreed upon between the parties. Furthermore HAYER & BOECKER assumes no liability that the provided software fulfills specific requirements of the Licensee and that the accompanying documentation and manuals describe in detail all parts of the software. HAYER & BOECKER shall perform the warranty works at its discretion and at its cost either at Licensee's or at HAYER & BOECKER's site. The Licensee shall be entitled to request the withdrawal from the contract or an adequate reduction of the purchase price only if HAYER & BOECKER fails to remedy the fault within an adequate grace period set by the Licensee in writing. Licensee's rights with regards to damages and reimbursements of unavailing expenses shall be limited as determined in clause "liability".

5.3 Before asserting warranty claims, the Licensee shall be obliged to give a detailed description of the defect to HAYER & BOECKER and to use all available diagnosis tools – including telephone support by HAYER & BOECKER – to create this description. Any error reports shall be recorded in writing and any system status shall be specified in writing.

5.4 The limitation period for Licensee's warranty claims according to clause 5.2 is 12 months from the date of software installation. This time limit shall not apply in the event of intent or gross negligence or injury to life or health or personal injury. The Licensee shall not be entitled to claim warranty in the event that the supplies and services are modified, improperly installed, maintained or repaired by the Licensee respectively used by him in an environment which does not comply with the requirements for installation, unless the Licensee can prove that aforesaid circumstances are not the cause for the notified defect.

5.5 If the verification of a notified fault shows that no warranty applies, the costs of verification and repair shall be invoiced to the Licensee at cost. A functional impairment of the software resulting from hardware defects, environmental conditions, faulty operations etc. is not a defect.

5.6 Any transfer of the warranty claims by the Licensee is subject to prior written consent of HAYER & BOECKER.

5.7 HAYER & BOECKER assumes no responsibility for the correctness and accuracy of the provided information or the Software of the calculated results/performance figures of the software. These information or calculated results/performance figures are only guideline informations. The software shows results/performance figures of crushing tests with samples provided by the Licensee or parameters published by manufacturers. The final and real performance figures like for example machine capacity or output may change due to deviations in operating and working conditions and used equipment.

## **6. Prices and payment terms; delivery**

6.1 The prices of the software license and the service package are specified in the price list under [www.niaflow.com](http://www.niaflow.com) or in an individual offer. All prices are to be understood as software download, plus the applicable value added tax.

6.2 Payment terms for the software license and the service package: 100 % in advance, unless not otherwise agreed in an individual offer.

6.3 The Licensee may only offset claims that are undisputed or legally valid.

6.4 The following services are invoiced separately by HAYER & BOECKER on the basis of the respectively valid list prices (terms of payment as per quotation):

6.4.1 Support of commissioning of the software at Licensee's place.

6.4.2 Support at Licensee's place for the analysis and removal of defects resulting from improper handling or other circumstances not originating from the software, or about which the Licensee informed HAYER & BOECKER in writing after expiry of the limitation period as defined in clause 5.4.

6.4.3 Individual trainings and advisory services

6.5 There is no entitlement to the granting of discounts as per clause 2.5.

6.6 After registration on [NIAflow.com](http://NIAflow.com) the software can be downloaded and installed. Upon receipt of payment, the software license will be adjust by the license server during the restart of [NIAflow.com](http://NIAflow.com).

## **7. Taxes / Fees:**

Value-added tax and any others taxes , duties, bank charges, fees, levies and similar charges which may become due outside the Federal Republic of Germany for the software license and the service package are not included in the listed prices and have to be borne and paid by the buyer.

## **8. Technical requirements**

8.1 Hardware: minimum screen resolution is 1280 x 800

8.2 Software: Microsoft Windows 7 Service Package 1 und higher, Microsoft Framework 4.5.1

8.3 HAYER & BOECKER recommends that the designated hardware is permanently connected to the Internet. For the proper use of the service package, a connection to the internet is in any case necessary at least once a calendar month.

## **9. Liability**

### **9.1 Business between German business partners**

9.1.1 Notwithstanding anything to the contrary of the contract, HAYER & BOECKER shall under no circumstances be liable for loss of profit, loss of use, loss of production, costs for downtime, loss of contract or any other consequential or indirect damage. This also includes, but is not limited to, the loss of data, even if HAYER & BOECKER has been advised of the possibility of such loss or damage. Consequently, HAYER & BOECKER is not liable for the loss of data and / or programs, databases, etc. through the use of the software, especially if the damage is due to the licensee's failure to carry out antivirus or data backups and thereby ensure that lost software is used Data, etc. can be restored.

9.1.2 This limitation of liability does not apply in the case of intent or gross negligence or culpable injury to life, limb or health. It also does not apply in the case of culpable violation of essential contractual obligations. In the case of a slightly negligent breach of essential contractual obligations, however, the supplier is only liable for the contractually typical, reasonably foreseeable damage. Furthermore, the limitation of liability does not apply in those cases in which, according to the Product Liability Act, faults of the delivery item for persons or property damage to privately used objects are liable. It also does not apply to damage caused by fraudulent misrepresentation or under special guarantee commitments. The rules on the burden of proof remain unaffected.

### **9.2 Business between Hayer & Boecker and international business partners**

The maximum extent permitted by law, and notwithstanding anything to the contrary in the contract, in no event shall HAYER & BOECKER be liable, whether as a result of breach of contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, statutory duty or otherwise, for loss of profits or revenues, loss of use of equipment, loss of production or downtime cost, loss of opportunity, loss of contract, loss of goodwill, or consequential or punitive damage, in each case whether direct or indirect, arising out of the use or the inability to use the software. This includes but is not limited to the loss of data or loss of profit, even if HAYER & BOECKER was advised of the possibility of such damages. In jurisdictions that limit the scope of or preclude limitations or exclusion of remedies or damages, or of liability, such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein is intended to apply to the maximum extent permitted by applicable law. The Licensee may also have other rights that vary by state, country or other jurisdiction.

HAYER & BOECKER shall not be liable for the loss of data and/or programs, databases etc. through the installation of the software, especially if the loss is due to the Licensee's omission to use anti-virus software or implement backup strategies to ensure the restoration of lost data. The plea of comparative negligence on the part of the Licensee remains open to HAYER & BOECKER.

## **10. Applicable law and arbitration**

### **10.1 Business between German business partners**

10.1.1 The sole place of jurisdiction, if the licensee is a merchant, is the district court of Münster

10.1.2 All legal relationships between HAYER & BOECKER and the Licensee are governed exclusively by the law of the Federal Republic of Germany, which governs the legal relationships between domestic parties.

10.2 Business between Haver & Boecker and international business partners

10.2.1 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration tribunal shall meet in Düsseldorf. The language for arbitration proceedings shall be English.

10.2.2 This Agreement shall be subject to Swiss law.