

Dear Licensee,

Thank you for your interest in our WUFI® software family. In order to facilitate quick processing of your license application, please return the required document pages to one of the following addresses:

Fax: +49 (0)8024 643-366  
PC-Fax: +49 (0)8024 643-5648  
E-Mail: order@wufi.de  
Postal Address: Fraunhofer-Institut für Bauphysik  
Fraunhoferstrasse 10  
D-83626 Valley  
Germany

The required document pages are:

page 2: Licensee; please fill in

page 10: signature

page 13: choice of program and quantity; please fill in

Billing address if different from licensee / delivery address on page 2:

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If necessary, remarks, which should be on the invoice, such as order no. etc.

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**COMPUTER PROGRAM - LICENSE AGREEMENT  
(USA, CANADA)**

„WUFI“

between

**Fraunhofer-Gesellschaft zur Förderung  
der angewandten Forschung e.V.,**  
Hansastraße 27 C  
80686 München

- hereinafter referred to as "FhG" -  
on behalf of

**Fraunhofer-Institut für  
Bauphysik Holzkirchen**  
Fraunhofer Strasse 10  
83626 Valley

- hereinafter referred to as "FhI" -

and

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Email address: \_\_\_\_\_

- hereinafter referred to as "the Licensee" -

## **I. PREAMBLE**

1. In the course of its research activities, FhG/FhI has developed an individual computer program, hereinafter referred to as "the computer program."
2. FhG and the Licensee presume the computer program is of copyright quality. The Licensee is aware that he/she is undertaking the obligation of secrecy not on the basis of the computer program's copyright quality, but because of the secret nature of the imparted knowledge.

## **II. DEFINITIONS**

1. "**Computer program**" is the individual software system specified in the ANNEX (section 1), including any drafts and associated documentation.
2. "**Secret**" means that the computer program is not generally known nor easily accessible in whole or in the precise structure or composition of its parts. "Secret" is not limited to its narrow sense in which each individual part of the computer program must be totally unknown or may not be available beyond the context of the operations of FhG.
3. „**Warranty**“ shall mean „Mängelhaftung“ according to German Civil Code of January 1, 2002.

## **III. CONTENTS OF AGREEMENT**

### **1. Exploitation**

- 1.1 FhG shall be obligated to provide to the Licensee the computer program on a data medium in machine-readable form in the quantity specified in the ANNEX (item 2.8) and the type and quantity of documentation specified in the ANNEX. The source code shall not be part of the subject matter of the present contract. Upon acquisition of the computer program or parts thereof, the Licensee shall

obtain ownership only of the physical data medium on which the computer program is recorded.

1.1.1 The Licensee shall be authorized (e. g.) to perform the following actions only with FhG's prior written approval:

- (1) to resell the computer program;
- (2) to reproduce the computer program for a parallel use;
- (3) to use the computer program in network operations or in floating operations;
- (4) the making available for use for a limited period of time and for profit making purposes (rental) of the computer program;
- (5) to transmit informations produced by legitimated reverse engineering to third parties;
- (6) servicing and especially up-dating of the computer program;
- (7) to transmit back-up copies;
- (8) to perform the reproduction technically not necessary for the use of the computer program by the Licensee.

1.1.2 These restrictions could be rescinded upon mutual consent of FhG and the Licensee in the ANNEX (item 2.).

1.2 The ANNEX shall be a component part of the present Agreement.

1.3 Supplementary programs, options for the computer program, etc. which the Licensee decides in favor of at a later date must be recorded in an addendum to the ANNEX, for which the provisions of this Agreement shall apply accordingly.

## **2. Delivery, installation**

FhG/FhI shall deliver and/or install the computer program in the form agreed in the ANNEX (section 3). FhG shall bear the risk and expense of delivery to the Licensee.

### **3. Instruction**

Instruction of the Licensee by FhG/FhI shall take place in the form specified in the ANNEX (section 4).

### **4. Warranty, liability**

- 4.1 The computer program has been developed in observance of scientific care and accepted technological principles, particularly accepted programming principles.
- 4.2 FhG/FhI shall correct defects detected within six months upon delivery (date of receipt by the Licensee; the Licensee has to acknowledge the receipt of the computer program immediately in writing). Such defects have to be notified to FhG/FhI without undue delay in writing.
- 4.3 FhG/FhI shall be entitled to refuse to correct detected defects if it requires a disproportionately great effort.
- 4.4 In the event repair or replacement fails to be effective, the Licensee may demand a reduction in fees from FhG or, in lieu of reduction, may terminate this Agreement with immediate effect if the Licensee so chooses (III. 12).
- 4.5 In the event third parties assert claims upon the Licensee arising from infringement on their protected privileges on the basis of distribution of the computer program, then FhG/FhI shall provide the Licensee with information for defense from such claims in exchange for reimbursement of its expenses (such as for individual consultation, travel, copies) to the extent FhG/FhI is authorized to dispose of such information and there are no major contradictory interests of FhG/FhI.
- 4.6 No warranty or liability is provided that utilization of the license will not interfere with third-party protected privileges or copyrights or will not cause damage to third parties. This shall not apply to cases where FhG/FhI is aware of contradictory third-party rights or damages prior to the signing of this Agreement or

is unaware of them as a result of gross negligence. FhG/FhI is not currently aware of any such rights.

- 4.7 Liability shall be limited to typical, foreseeable damage caused with intent and gross negligence, to the extent it is not a matter of characteristics of the computer program warranted in the ANNEX or it is not a matter of the infringement of life or of personal injury or of injury to health or of product liability. The liability amount shall be limited to EURO 50.000,00 for cases of slight negligence. Greater liability shall be undertaken only if there is insurance, which may be taken out at the request and expense of the Licensee.
- 4.8 In case sub-licenses are granted in accordance with the ANNEX (item 2.3), the Licensee shall also be liable for payment of the sub-licensee's fees. The Licensee shall make agreements with sub-licensees stipulating that the sub-license is dependant on the existence of the license (FhG-Licensee).
- 4.9 FhG and the Licensee shall inform each other of claims asserted by third parties.
- 4.10 Retention Clause  
Fraunhofer-Gesellschaft shall not be obliged to supply products or perform other contractual obligations if such supply would violate applicable export control regulations of the Federal Republic of Germany, the European Union, the United States of America or other countries.
- 5. Fees**
- 5.1 The type and extent of fees for the license granted by virtue of this Agreement are stipulated in the ANNEX (section 5). The Licensee's responsibility to pay such fees shall not be affected by the secret technical information provided with the computer program becoming obvious or through any lack of copyright quality.

5.2 The Licensee shall be responsible for any and all taxes levied in the Licensee's country on the basis of these payments.

## **6. Accounting, payment**

6.1 License fees shall be due and payable within 14 days after the receipt of the invoice.

6.2 The fees are to be paid to FhG after deducting all direct and indirect taxes which it is the Licensee's responsibility to pay.

6.3 The Licensee may not make set-offs except with uncontested claims or such claims as have become res judicatæ.

The Licensee shall submit statements of account to

Fraunhofer-Institut fuer Bauphysik  
Fraunhofer Strasse 10  
D-83626 Valley

Payments should be made to the following account:

Deutsche Bank Muenchen  
Financial institution number (BLZ): 700 700 10  
Account number: 75 - 21 933  
Name of account: Fraunhofer-Institut fuer Bauphysik

## **7. Secrecy**

7.1 FhG and the Licensee shall be obligated to keep secret any information or documents communicated between the two and marked as secret and to use such information and documents only in the scope defined in the present contract. FhG and the Licensee shall impose corresponding conditions upon their own employees, suppliers, sub-licensees, and other third parties having access to the computer program, to the extent this has not already been done.

7.2 The obligation to maintain secrecy regarding the information communicated to one another shall not apply to the extent that:

- The information was known to the informed party prior to communication and there is evidence of this;

- The information was publicly known or generally accessible prior to communication;
- The information becomes publicly known or generally accessible after communication without contributory or negligent action on the part of the informed party;
- The information corresponds basically to such information as is revealed or made accessible to the informed party by an authorized third party at any time whatsoever.

#### **8. Copyright**

If the Licensee is authorized by this Agreement to make copies, then he/she must always maintain any copyright notices installed in the computer program by FhG/FhI. The Licensee may not destroy or change any copyright notices or registration numbers contained in the computer program.

#### **9. Defense**

The parties hereto shall be obligated to inform each other mutually and without undue delay of any unauthorized use of the computer program. They shall notify each other of any and all measures to be taken to prevent unauthorized use of the computer program by third parties.

#### **10. Improvement, further development**

Improvements to and further developments of the computer program by FhG/FhI shall be offered to the Licensee in writing to the extent FhG is authorized. The Licensee shall, within a reasonable period of time, inform FhG/FhI in writing as to whether he/she will accept the offer.

#### **11. Duration of Agreement**

This Agreement shall enter into force on the day it is duly signed. The expiry date of the Agreement is stipulated in the ANNEX (section 6).

## **12. Termination**

12.1 First, this Agreement may be terminated in the cases intended by the Agreement (III.4.4).

12.2 Termination may be effected for good cause. Examples of good cause for FhG are bankruptcy of the Licensee, non-fulfillment of obligation to exercise or non-observance of the Licensee's payment obligations. An example of good cause for the Licensee is the economic impossibility of exploiting the computer program. Payments are not refundable.

## **13. Supplements, changes**

Any supplements or changes must be made in writing and shall be binding if duly signed by both parties. FhG undertakes to omit any tortuous interference on decisions of Licensee staff or third parties involved through offer or grant of amenities.

## **14. Disputes, applicable law**

In case of dispute, the parties will first attempt to arrive at an amicable agreement.

The parties' legal relations shall be governed by the laws of the Federal Republic of Germany.

## **15. Addresses**

Questions dealing with the stipulations of this Agreement as well as questions dealing with the technology or software should be directed to:

Fraunhofer-Institut fuer Bauphysik  
Fraunhofer Strasse 10  
D-83626 Valley  
Germany

**16. Salvatorian clause**

Should this Agreement contain a gap or should a provision thereof be or become wholly or partially unenforceable, the rest of the Agreement shall remain enforceable. To the extent the Agreement contains a gap or is or becomes wholly or partially unenforceable, the contents of the Agreement shall be oriented toward the statutory regulations. In lieu of the missing or unenforceable provision, a provision shall be agreed upon which; approximates as closely as possible the economic purpose of the missing or unenforceable provision originally intended by the parties.

**17. Signatures**

.....  
Place, Date

.....  
Licensee

Holzkirchen,.....

Fraunhofer-Gesellschaft zur Förderung  
der angewandten Forschung

.....  
Daniel Zirkelbach  
Department Hygrothermics

## ANNEX

**ANNEX to the COMPUTER PROGRAM License  
Agreement  
between FhG and the Licensee**

**1. Designation of computer program**

1.1 Name of computer program: WUFI

Brief description of computer program:

Simultaneous heat and moisture transport in multi-layer building components

Form of computer program documentation:

On-line documentation (ca. 200 DIN A4 pages)

**2. License**

2.1 Computer program user:

Licensee is final purchaser.

Number of copies supplied: 1

Licensee's computer systems on which the program will be used:

PC, IBM-compatible

Licensee's operating systems the program will be run on:

MS-Windows (2000, XP, Vista, 7)

Multiple installations are permitted (see section 5) but only at the licensee.

2.2 Type of license for the computer program:

non-exclusive.

2.3 The Licensee is not entitled to grant sublicenses or to transfer the license. The Licensee is entitled to transfer to third parties the data and ancillary files needed for the purpose of displaying the results of WUFI calculations.

2.4 The Licensee is entitled to produce a back-up copy of the computer program for his records and to produce a back-up copy of the computer program (or to demand a back-up copy from FhG/FhI) if this back-up copy is necessary to secure the (future) use of the computer program.

2.5 Other user rights:

2.5.1 The Licensee is entitled to observe, study, test the functioning of the computer program or to correct defects by acts of loading, running, transfer or storage of the computer program necessary for the use of the computer program.

2.5.2 (1) The authorization of FhG/FhI shall not be required where reproduction of the code and translation of its form within the meaning of § 69 c No.1 and 2 of the German Copyright Act (Urheberrechtsgesetz) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

1. these acts are performed by the Licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;
2. the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (1); and
3. these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) The provisions of paragraph (1) shall not permit the information obtained through its application:

1. to be used for goals other than to achieve the interoperability of the independently created computer program;
2. to be given to others, except when necessary for the interoperability of the independently created computer program; or
3. to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) The provisions of paragraph (1) and (2) may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices FhG's/FhI's legitimate interests of conflicts with a normal exploitation of the computer program.

2.6 The license for the computer program is restricted:

Territorially to the following countries: USA, Canada.

2.7 Other agreements on the type of license for the computer program:

If WUFI calculation results are published they have to be identified as such.

2.8 Quantities delivered:

2.8.1 Quantity of computer program copies provided: 1.

2.8.2 Quantity of documentation copies provided: 1.

**3. Delivery of computer program and documentation**

Delivery location: upon mutual agreement.

Delivery date: after receipt of payment.

**4. Instruction**

The manual and on-line help are self-explanatory. Support will be given by e-mail or phone.

**5. Fees**

Number of licenses; WUFI Pro 1D

1	US-\$ 2400,-	<input type="checkbox"/>
2	US-\$ 3500,-	<input type="checkbox"/>
3	US-\$ 4300,-	<input type="checkbox"/>
5	US-\$ 5400,-	<input type="checkbox"/>
7	US-\$ 6500,-	<input type="checkbox"/>
10	US-\$ 7800,-	<input type="checkbox"/>
20	US-\$ 10900,-	<input type="checkbox"/>
30	US-\$ 13400,-	<input type="checkbox"/>

Number of licenses; WUFI 2D

1	US-\$ 3700,-	<input type="checkbox"/>
2	US-\$ 5200,-	<input type="checkbox"/>
3	US-\$ 6500,-	<input type="checkbox"/>
5	US-\$ 8400,-	<input type="checkbox"/>
7	US-\$ 10000,-	<input type="checkbox"/>
10	US-\$ 11900,-	<input type="checkbox"/>
20	US-\$ 16800,-	<input type="checkbox"/>

Number of licenses; WUFI Plus

1	US-\$ 5900,-	<input type="checkbox"/>
2	US-\$ 8400,-	<input type="checkbox"/>
3	US-\$ 12300,-	<input type="checkbox"/>
5	US-\$ 13300,-	<input type="checkbox"/>
7	US-\$ 15800,-	<input type="checkbox"/>
10	US-\$ 18800,-	<input type="checkbox"/>
20	US-\$ 25000,-	<input type="checkbox"/>

## **6. Expiration of Agreement**

This Agreement expires on December 31, 2020. (When buying an update for the software, the ten-years expiration period automatically starts from the beginning.)

## **7. Addresses**

For matters relating to the stipulations of the Agreement as well as to the technology of the computer program:

Fraunhofer-Institut fuer Bauphysik,  
Fraunhofer Strasse 10, D-83626 Valley, Germany