

**Terms of use for 3D data models  
available in the context of using the section “Operating and Examination  
Lights | 3D files” at the KLS Martin Extranet:  
[KLS Martin | Login](#)**

**Preamble**

The KLS Martin Group is an international company group for innovative medical technology in almost all surgical areas. In line with the company philosophy “Surgical Innovation is our Passion”, the KLS Martin Group develops and distributes medical technology products such as implant systems, electrosurgery units, surgical laser systems, operating lights as well as surgical instruments.

KLS Martin SE & Co. KG (hereinafter referred to as “**KLS Martin**”) provides external contract dealers (hereinafter referred to as “**User**”) with a protected online area ([KLS Martin | Login](#)) (hereinafter referred to as the “**KLS Martin Extranet**”) through which Users can download standard 3D product data models from KLS Martin and use them for the purpose of spatially visualizing products in a potential environment of use (hereinafter referred to as “**Data Model**” or “**Data Models**”).

By registering on the Planner Extranet for the first time, the User agrees to the following Terms of Use and expressly accepts these.

The data models may contain both products from KLS Martin and products from companies with which KLS Martin has an (indirect) shareholding relationship within the meaning of Sections 15 et seq. of the AktG (German Stock Corporation Act) (“**affiliated companies**”). The products from KLS Martin and the products from the affiliated companies are hereinafter referred to as “**Medical technology**”.

Planning-relevant data such as dimensions of the medical technology, connection points for electrical and other media installations, as well as the necessary on-site installations are hereby recorded.

A data model is primarily used for pictorial representation of medical technology at a possible point of use on suitable data processing systems. In addition to this, the data model should enable easy and fast planning in two- and, in some cases, three-dimensional views from all perspectives. The User will be granted the right to use these data models on their systems on the condition that they accept the following Terms of Use and comply with the scope of use specified below. This User Agreement serves in particular to protect the intellectual property of KLS Martin and that of the affiliated companies as well as to protect the interests of KLS Martin as the author of these works.

**§ 1 Subject matter of the Agreement**

- 1.1 The subject of these Terms of Use refer to 2D and 3D data models for visualizing medical technology at a potential point of use. The spectrum of data models ranges from illustrations of individual devices and permanently installed medical technology (e.g. surgical lights, ceiling supply units) through to data models for operating theaters equipped, in full or in part, with medical technology, treatment rooms and medical institutions.

- 1.2 The User acknowledges that the provision of a data model is a purely voluntary service provided by KLS Martin. The Parties agree that the User shall not be granted an enforceable right to the provision of a data model, to its revision, improvement or any other comparable service, either on the basis of these Terms of Use nor for any other reason. In particular, the User shall have no right to the release of raw data, to the disclosure of work steps, or to the communication of other information or data, particularly of a technical or product-related nature.

## **§ 2 Right of use**

- 2.1 Upon accepting these Terms of Use, the User acquires the simple, revocable (at any time), non-exclusive, non-transferable right to use the 3D data of medical technology to support the performance of existing or future business ties with KLS Martin within the meaning of Section 31(1) and (2) of the German Copyright Act (UrhG). Any copyright and comparable notices must be adopted in unchanged form; they must not be changed or removed.
- 2.2 The sole permissible scope of usage for the User is specified as follows:
- a) The User is authorized to pass on data models from KLS Martin to third parties that are neither in competition with KLS Martin, nor have close links to the competition. The User must ensure at all times that these third parties do not share the data models or become buyers from KLS Martin themselves by accepting these Terms of Use.
  - b) Labels or company names on the data models must not be changed or removed. The data models must not be individually evaluated and thus used as a basis for the scientific or technical development of competitor products or passed on for these purposes.
  - c) The data models must neither be used, copied, sold on, lent, changed or – subject to Clause 1) – passed on contrary to KLS Martin's inventory and integrity interests (Section 14 of the UrhG) or contrary to the type of use agreed here. The User is prohibited from publishing the data models.
  - d) The KLS Martin data models include information that should be treated as confidential or as trade secrets. The data models to be classified as confidential, which are drafts of a technical nature, are entrusted by KLS Martin to the User as confidential based on these Terms of Use. KLS Martin asks that the User treats the data models and the work results created in this context as confidential.
  - e) The User is prohibited from reverse engineering, compiling, disassembling or re-programming the data models into other usable forms.
  - f) Insofar as the current version of the German Copyright Act stipulates that usage does not require consent as an exception under certain unavoidable circumstances, the restrictions to the User's rights of usage in the previous clauses shall not prevent this.

### **§ 3 Period of validity, right of revocation and termination**

- 3.1 This User Agreement is valid with regard to the right of use for as long as the User has access to the Planner Extranet. All rights and obligations arising from this User Agreement automatically lapse upon cessation of the business relationship with KLS Martin, without the need for a recall, withdrawal or termination by the Parties. KLS Martin is entitled at any time to decide whether a user has access to the Planner Extranet or whether access is revoked.
- 3.2 Upon termination of the business relationship between KLS Martin and the User and/or withdrawal of the User's access authorization to the Planner Extranet, the provided data models may no longer be used. Upon termination of the business relationship, the User shall immediately notify KLS Martin so that the user account can be deleted.
- 3.3 Furthermore, with regard to usage authorization, KLS Martin has a contractual right to termination. KLS Martin can exercise this right at any time and with immediate effect. Exercising the contractual right to termination has the consequence that any distribution of the data models previously covered by the scope of usage shall cease in its entirety from this point in time.

### **§ 4 Further development or amendment**

KLS Martin reserves the right to further develop or amend its data models at any time without notifying the User. This also includes, in particular, taking new data sets from medical technology and/or the removal of such data sets from medical technology that are no longer offered for sale. Such changes, regardless of the type, do not constitute any rights on the part of the User vis-à-vis KLS Martin. In particular, the User has no claim against KLS Martin to amend, further develop, or adjust the data models. It is incumbent upon the User to enquire themselves about any changes to data models that were previously valid.

### **§ 5 Copyright**

- 5.1 The data models belonging to KLS Martin are legally protected, particularly by copyright, as per Section 2(1) and Sections 3 et seq. of the UrhG, whether fully created by KLS Martin or produced by way of further development or revision. The User hereby acknowledges that the data models provided – including both illustrations of medical technology and room planning – are works whose authorship within the meaning of Section 13 of the UrhG lies with KLS Martin. This authorship will also remain with KLS Martin at all times while being used by the User.
- 5.2 The User may only use the models provided, with particular reference to copying, distribution, performance, presentation, transmission, making available, and any other form of reproduction, or make edits and modifications, within the context of the abovementioned scope of use or with the express prior written consent of KLS Martin.

## **§ 6 Transfer, consent of the User**

KLS Martin intends to make the data model or data models available to the User for download as soon as the User has agreed to these Terms of Use in their entirety and without restrictions or modifications and KLS Martin has received the User's declaration of consent in a verifiable form.

## **§ 7 Liability**

- 7.1 A data model is only used to visualize medical technology and the representations, dimensions or data do not constitute guaranteed features, even if a data model has prompted the User to conclude an agreement. A data model does not bestow any guarantees or assurances. The User can therefore not raise any claims against KLS Martin in the event that a contractual product deviates from the visual representation or from the underlying data of the data model (with particular reference to warranty claims).
- 7.2 Any liability on the part of KLS Martin for the correctness, integrity, quality and reliability of the data models, and for results that can be achieved using the data models, is excluded. KLS Martin shall not be held liable for any consequential damage resulting from the use of the data models, such as business disruption, lost profits, and loss of information and data.
- 7.3 KLS Martin shall not be held liable for damage, regardless of the legal grounds, that arise from the use, the impossibility of use, any hardware or software errors, or incorrect system settings on the part of the User. The User uses the data models at its own risk. KLS Martin accepts no liability for the data models and information, in particular not with regard to their usability, correctness, integrity and freedom from viruses.
- 7.4 KLS Martin accepts no liability for damage that may be or is caused due to compromised data models, for example by viruses, hoax viruses, Trojan horses, or comparable malicious programming, as well as for programs, program parts or codes that may cause similar damage, destruction or shutdown of systems or parts thereof. The User shall be responsible for taking its own measures to protect against viruses and other destructive data.
- 7.5 KLS Martin's liability is not limited or excluded as per the abovementioned provisions where liability is mandatory, namely, for example, in cases of intent, gross negligence, where assurances as to properties are provided, or due to the breach of essential contractual obligations, in the case of injury to life, limb or health, and in the event of liability as per the German Product Liability Act.

## **§ 8 Legal consequences for violations**

The User undertakes to refrain from breaching this User Agreement in any way. In the event of a violation, the User shall become liable for damages as per the statutory provisions (including as per Sections 97 et seq. of the UrhG) as well as on the basis of breach of its contractual duties. The Buyer has been made aware of Section 23(3) of the German Law on the Protection of Trade Secrets (GeschGehG) and Section 106 et seq. of the UrhG.

## **§ 9 Applicable law and place of jurisdiction**

- 9.1 This User Agreement is subject to the law of the Federal Republic of Germany, which is applicable exclusively. The Parties assume that this is not an agreement with elements typical of a purchase agreement and that no acquisition of title, of whatever kind, is due. Purely as a precaution, the Parties agree that the UN Sales Convention shall not apply to this Agreement.
- 9.2 The place of jurisdiction for all disputes arising from or in connection with this User Agreement is Tuttlingen.