

**AUTOMATED MANUFACTURING SOLUTIONS, INC.**

---

This License Agreement is between Automated Manufacturing Solutions, Inc. (hereinafter referred to as "Licensor") and \_\_\_\_\_ (hereinafter referred to as "User"). User desires to license the Product from Licensor on the terms set forth below and on the attached Order Form titled "Exhibit A" executed by the User in connection with this agreement. "Product" means Licensor's proprietary software information processing program known as "Window Magic" and any and all improvements, modifications, upgrades, versions, releases, correction plug-ins, custom programming or deliverables, if any, whether designed by Licensor or any other party whether pursuant to service or maintenance agreements or otherwise, which may be made or delivered at a later date, and all user manuals or other written or machine readable documentation provided by Licensor together with all electronic storage media containing or accompanying such material.

**1) License:**

- a) Subject to the terms and conditions of this agreement, Licensor will grant User a limited license to use the Product. This License shall be granted when User has made all payments, within their terms, as itemized on the Order Form. User does not acquire any ownership rights of the Product in any form under the limited license. This license is an "exclusive" and "non-transferable" license to use the Product solely for the number of sites set forth on the Order Form in connection with the internal operations of the User. The license may not be sub-licensed, sold, or used by any other person or entity other than the registered User signed below. The term of this limited license shall be twenty years.
- b) User may use the Product whether on a single computer workstation, a local area network, or a wide area network, whether at a single location or multiple locations, provided the total number of concurrent users does not exceed the total number of licensed sites and concurrency limits as set forth on the Order Form. User may not use the Product on a time sharing basis with any other company or person. User shall not allow any non-employee to have access to the Product without an AMS acceptable non-disclosure form having been signed prior to such access. In the event that User desires to add more sites or concurrency, it shall notify Licensor and pay it the applicable additional user fees, established by Licensor and subject to change without notice, except as provided on the Order Form.

- 2) License Fees:** In consideration of the license granted by Licensor to User, User shall pay to Licensor a License Fee as set forth in the Order Form and subject to all terms of payment as indicated on the Order Form. All payments are due in US Dollars. All license fees are exclusive of all taxes, and User agrees to pay any and all taxes imposed on the Product and User's use thereof however designed or levied. All license fees are exclusive of all fees and costs for computer hardware and peripherals, networking software and installation services, operating system software, and other required third party software packages which may be related to the use of or used in conjunction with the Product. Except for those third party software packages specifically designated on the Order Form, User is responsible for the purchase and setup of all computer hardware, third party software packages, and services related to these products. All license fees are exclusive of maintenance, support, training, installation, and other services provided by Licensor, which are separately contracted.

**3) Restrictions:**

- a) The Product is protected by copyright, trademark, trade secret, and other laws respecting proprietary and intellectual property rights. Licensor retains all rights in and to the Product, including (without limitations) any and all trademark, copyright, and other proprietary rights worldwide, and all media. User may not use, duplicate, reproduce, make extracts or copies of the Product in any media or format, whether for distribution, internal use or otherwise, except as expressly permitted under this License Agreement. User shall maintain Licensor's copyright notice on all copies of the Product and media containers therefore.

- b) Any redistribution of any portion of the product to any third parties is expressly prohibited.
- c) The User acknowledges that the Product (and the licensed materials contained therein) is proprietary in nature and that unauthorized copying, transfer, or use may cause Licensor or Licensor's suppliers' irreparable injury. Such injury cannot be adequately compensated by means of monetary damages. User agrees that any breach of the license by User may be enforced by Licensor or any of its suppliers by means of temporary restraining order, injunction, or other equitable relief in addition to any other rights and remedies available to the Licensor or its suppliers.
- d) No User is permitted to decompile or reverse engineer any of the Product as well as to alter, translate, modify, or adapt the Product or perform, distribute, or display the Product before audiences. Unauthorized reproduction, transfer, and/or use may be a violation of criminal as well as civil laws in the United States and other jurisdictions.
- e) User may not and is expressly prohibited from interfering with or bypassing controls that restrict the number of concurrent users provided in this license.
- f) If a breach or imminent threat to breach any provisions of this License Agreement occurs, Licensor may immediately terminate this license and all Users' rights without prior notice in addition to any other available rights and remedies. User shall still be obligated to pay any and all outstanding invoices issued by Licensor for products or services provided before the termination of this license, whether invoiced or not before such termination, including all license fees as provided on the Order Form.

#### **4. Warranties:**

- a) THE PRODUCT IS PROVIDED TO USER "AS IS." LICENSOR AND ITS SUPPLIERS MAKE NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED. USER IS ADVISED TO SEEK ADVICE FROM ITS OWN ADVISORS WITH RESPECT TO THE MATERIAL CONTAINED IN THE PRODUCT AND ITS SUITABILITY FOR THE PURPOSES FOR WHICH THE USER INTENDS TO PUT THE PRODUCT. LICENSOR AND ITS AGENTS DO NOT WARRANT THE PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCT. LICENSOR AND ITS AGENTS SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES TO USER OR TO ANY OTHER ENTITY FOR ANY DAMAGES CAUSED IN ANY PART BY USER'S USE OF THE PRODUCT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, PUNITIVE, SPECIAL OR SIMILAR DAMAGES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. If the foregoing limitations are held to be unenforceable, Licensor's liability for damages under this License Agreement to User or any other person or entity shall in any event not exceed the amount of the license fee paid by the registered licensed User to Licensor. User may not commence any action for any breach of warranty or other claim arising under the License more than six (6) months. A failure or delay by Licensor in the enforcement of any provision of hereof will not waive Licensor's rights.
- b) User agrees to indemnify, defend, and hold Licensor, its suppliers, and distributors, harmless from and against any and all claims from third parties rising out of or in any way related to User's use of the Product and against any and all claims, losses, damages, and expenses resulting from: (I) breach of any of the terms of this License Agreement; (II) use or distribution of any Product or portion thereof after Licensor's notice that User should cease distribution of such Product due to an intellectual property infringement claim; (III) combination or use of the Product or any portion thereof with another program, product, user, or third party data; (IV) use of a version of the Product after a later version has been issued; or (V) use of the Product upon a CPU or platform for which User does not have a current license from Licensor to use the Product.
- c) User shall be solely responsible for conversion and input of data and making regular backups of its data, job, and project files on a regular basis. Unless User has separately contracted data loading services from Licensor, Licensor is not responsible whatsoever for data entry and setup of the Product, or for any failure of the Product to perform to User's specifications because User has not entered sufficient and adequate setup data. User acknowledges that the customary use of the Product requires that a significant amount of setup data be entered into the system, and User is prepared to commit the necessary resources, whether personnel or financial, to perform this data entry. User shall solely be responsible for installation and configuration of all hardware and appropriate and current versions of all operating systems which shall be licensed to User by the

owners and licensors thereof. User is also advised that installation or updates of hardware and other software in the systems Window Magic functions within can have an adverse affect on its successful operation. User is advised to always maintain backups before updating such systems and monitor carefully for behavioral changes. Should conflicts arise, fees charged by Licensor to modify Product to conform or to detect the cause or solution shall be the User's responsibility.

- d) User shall on a regular basis as dictated by good standards of computer management, make full backup copies of all data whether created or modified by Product. Such backup copies shall be regularly tested as functional. The minimum standard of backup of data is each day that Product is utilized, once monthly for testing of backups, and two copies of Product each time the Product is revised.
- e) A qualified Computer resources manager shall be appointed by User that shall supervise, direct, and perform the duties necessary to support the correct operation of Product. This person shall have the above duties as their primary responsibility. Although these functions may not always demand a full time position, during implementation of product continuous and complete attention to such needs are of extraordinary importance to successful Product implementation. The resources manager shall also assure that the knowledge base provided to the User, shall be duplicated so that a loss of an individual will not require, without extra cost, retraining of replacement personnel. The Resources manager shall direct the communication of any detected or otherwise perceived errors of the Product, with accompanying documentation clearly defining the request for explanation, directions, and possible product modification. Such warranty type services are fee based and either charged for based on time and materials, or provided under a prepaid support time and materials budget. Should User be in default of payment on warranty type services, AMS shall have the right not to have any obligation to perform such services, and User may continue to utilize the balance of the Product within User's as-is terms. Notwithstanding, services by AMS for modifications due to code logic errors, if chargeable are invoiced at a time and materials charge of no more than 50% of customary service fee rates. For systems on support and maintenance, the billing rate is at 25% of customary fee rates. User agrees that this is an equitable term as the license fees for Window Magic are heavily discounted and in consequence AMS is not obligated to provide free of cost service in the above defined conditions but have agreed to perform such services on a no profit basis.
- f) Specifications for custom modifications are the User's responsibility. Incomplete or erroneous logic or design concepts can lead to programming delays and extra cost to User beyond forecast. Sample data is customarily requested by Licensor in order to test and validate Product fulfillment of User's request. Recommendations by Licensor concerning desirability, feasibility, and stylization of Product shall as normal course of such projects be offered for User's benefit. User is expected to consider such recommendations and chose those of preference, but recognize that alternative choices may have unexpected as well as unintended consequences when dealing with complex projects.
5. **Binding Arbitration:** The Parties agree that any and all disputes arising out of the interpretation or enforcement of this Agreement shall be resolved by binding arbitration in Orange County, California by a single arbitrator, and in accordance with the Commercial Rules of the American Arbitration Association in effect at the time this Agreement was executed. The arbitrator selected by the Parties must be a retired judge. *BY SIGNING THIS AGREEMENT IN THE SPACE PROVIDED BELOW, THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT TO ARBITRATE RESULTS IN A WAIVER BY ALL PARTIES OF MANY OF ITS/THEIR RIGHTS, INCLUDING WITHOUT LIMITATION, THE RIGHT TO A COURT OR JURY TRIAL FOR ANY CLAIM WHATSOEVER, THE RIGHT TO APPEAL, AND VARIOUS DISCOVERY RIGHTS.* The Parties further agree that the prevailing party in any arbitration under this Agreement shall be awarded its reasonable attorneys' fees and costs, as determined by the arbitrator. Should either party attempt a court action in any jurisdiction rather than abiding by the arbitration requirement set forth herein, and if that offending party is subsequently found to be the prevailing party, whether the matter is eventually adjudicated in court or via arbitration as a result of the non-offending party's waiver of the arbitration rights contained herein, the offending party shall not be entitled to attorneys fees and/or costs. However, in the event that the non-offending party is the prevailing party, the non-offending party shall be entitled to its reasonable attorney's fees and costs.

Customer Initial and Date \_\_\_\_\_

AMS Initial and Date: \_\_\_\_\_



6. **Miscellaneous:** If any part of this License Agreement is declared void, this License Agreement shall, to the maximum practicable extent, be construed without reference to such part. User may not assign or sub-license this License Agreement without Licensor’s prior written consent in each instance. This License Agreement constitutes the entire agreement between the parties with respect to its subject matter and may not be modified or amended except in a writing signed by a senior executive of both Licensor and User. No term or provision of the License Agreement shall be waived unless such waiver is in writing and signed by the party against whom the waiver is to be asserted. Any waiver shall apply only to the specific event or situation which it describes and shall not be deemed to be a continuing waiver. Each party acknowledges that this Agreement was entered into at arm’s length and between persons who fully understood its meaning and consequences. Accordingly, any rule of law or legal decision that would require interpretation of this Agreement against the party that has drafted it is not applicable and is irrevocably and unconditionally waived. The parties expressly agree that every limitation of liability, disclaimer or warranties, or exclusion of damages is intended to be severable and independent of any other such provision and to be enforced as such, and shall remain in effect even if a remedy is held to have failed of its essential purpose. Licensor shall not be responsible for delay or failure in performance resulting from strikes, lockouts, governmental regulations, fire, communication line failure, power failure, acts of God, or any other causes beyond its control. Nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto and their respective successors and assigns, any claim, legal or equitable right, express or implied, under or in respect of this Agreement, or any provisions herein. This Agreement is made in, and shall be construed and governed under the laws of the State of California.

END OF DOCUMENT

User Signatory: \_\_\_\_\_ Date: \_\_\_\_\_

Licensor Signatory: \_\_\_\_\_ Date: \_\_\_\_\_

Customer Initial and Date \_\_\_\_\_

AMS Initial and Date: \_\_\_\_\_