

Terms and Conditions

These Terms and Conditions (from here on referred to as “**Terms**”) apply to all purchases of Vrgineers, XTAL, and Somnium Space products (including without limitation, hardware, accessories, firmware, and software). In order to obtain and use the Vrgineers/XTAL/Somnium Licensed Product (“**Product(s)**”), You (the purchaser) must first agree to the terms and conditions of this agreement (“**Agreement**”). By agreeing to the terms and conditions of this Agreement you conclude this Agreement and hence may use the Products solely in accordance with the terms and conditions hereof. If You do not agree to the Terms of this agreement, then You may not use the products.

1. DEFINITIONS

- 1.1. Unless clearly required otherwise by context as used herein, the following capitalized terms shall have the following meanings:

“**Company**” means Vrgineers, Inc., with its registered offices at 8 Green STE R, Dover, Delaware, 19901 USA.

“**Customer**” or “**You**” means the company or the person as identified through the purchase under this Agreement.

“**Firmware**” means software ingrained in the Product.

“**Force Majeure**” means any fire, flood, earthquake, riot, strike, act of God, work stoppage or other labor disturbance, failure or lack of transportation facilities, mechanical breakdown, inability to obtain equipment or parts, war, invasion, terrorist act, insurrection, enactment of legislation or issuance of governmental orders or regulations or other casualty or cause beyond the reasonable control of a Party required to perform any obligation hereunder;

“**Intellectual Property**” means any copyright, invention, technology, know-how, trademark, trade secret, and/or patent arising out of and connected to the Product.

“**License**” means the license granted hereunder, as identified by the applicable purchase order between the Company and the Customer.

“**License Fees**” mean the amounts due and owing to the Company by the Customer as established in the applicable quote and order between the Company and the Customer, or as otherwise set forth in writing at the time Customer subscribes for or renews the License granted hereunder; the License Fees may be as established or set forth on an applicable customer invoice.

“**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“**Purchase Order**” means a binding document approved by Client in electronic or any other form to purchase defined Products of Company for specific price.

“**Product**” means any Vrgineers /XTAL/Somnium Licensed Product manufactured by Vrgineers, Inc.

“**Services**” means any work related to software/hardware development, integration, or implementation that is similar to and/or one carried out by Vrgineers, its affiliated companies and/or by Vrgineers’ partners, whether legal entities or natural persons, in an employment relationship or in a freelance relationship.

“**Simulator**” means any Vrgineers simulator or trainer provided by the Company.

“**Software**” refers to the Vrgineers, Inc. software and associated software components, including software programs, drivers, documentation, and accompanying features available under the Customer’s applicable License.

“**Website**” shall mean the website <https://vrgineers.com/>, or <https://www.xtal.training/>, or <https://www.xtal.pro/> in addition to any sub-pages that are integrated within this website.

2. LICENSE

- 2.1. You shall be granted a non-exclusive, non-transferable License to use the Software with the hardware incorporated in the Product(s) as purchased.
- 2.2. You agree not to (except as expressly permitted by applicable law):
 - a. disassemble, decompile, reverse engineer, merge or combine the Software with other software, or copy, translate, adapt, vary or modify any parts of the Software;
 - b. distribute any parts of the Software in any form.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1. You shall not acquire any other right, including the right to file for and /or obtain the registration of any intellectual property that is confusingly similar to the intellectual property of Vrgineers, including but not limited to logos, trademarks, domain names, trade names, and other denominations used/registered by Vrgineers. Vrgineers retains all rights to Vrgineers IP and does not grant You any intellectual property rights of any kind whatsoever in or to the Vrgineers IP or any of its constituent components, other than as expressly provided herein. You shall not alter, amend, modify, enhance, improve or manipulate in any way, any part or whole of the Vrgineers IP (“**Unauthorized Improvements**”). Notwithstanding the foregoing, You waive any and all moral rights attached to Unauthorized Improvements and agrees that such Unauthorized Improvements shall be deemed as owned by Vrgineers.
- 3.2. You shall not re-sell Products and/or Services without Vrgineers’ prior written consent.
- 3.3. You agree not to modify, reverse engineer, attempt to derive the composition of or the underlying information of the Product,
- 3.4. A failure to adhere to Articles 2.1, 2.2, 3.1, 3.2, 3.3 hereof shall be subject to a contractual penalty amounting to \$10,000 USD per each breach whereby such a penalty is to be paid within 10 (ten) days of a written notice about such breach sent by Vrgineers to You.

4. OBLIGATIONS AND RIGHTS

- 4.1. Subject to the terms and conditions of this Agreement, You hereby covenant and agree to:
 - a. acquire the Products/Services only on Your own behalf and on Your own account or on behalf of Your Affiliates;
 - b. comply with all applicable regulations of laws and respective local laws, as well as with any other regulation as indicated in this Agreement;
 - c. arrange, at Your own expense, for all registration, licenses, permissions, and other documents necessary for the use of Products and Services hereunder (“**Registration**”);
 - d. refrain from engaging in any activities that may directly or indirectly damage or disparage the goodwill or reputation of Vrgineers.
- 4.2. Subject to the terms and conditions of this Agreement, Vrgineers hereby covenants and agrees to:
 - a. provide technical support and after-sale support to You. In case the need for technical support exceeds the scope provided for in the respective purchase agreement and license, the terms and conditions of such support shall be agreed upon on ad hoc basis;
 - b. render to You adequate technical assistance in connection with the use of the Products/Services. The cost of such assistance will be agreed in writing in advance between the Parties.

5. SPECIAL TERMS

- 5.1. You buy the Product(s) “as-is” at your own risk
- 5.2. Virtual/Mixed/Augmented etc. Reality headsets may by their nature cause dizziness, disorientation, nausea, and/or other similar ailments to individuals through use. Vrgineers makes no warranty nor representation that You will not experience any of the aforementioned ailments or those similar through use of the Product(s). You are advised to seek medical advice prior to use.
- 5.3. Partner shall not acquire any right in the logo of Vrgineers or use the logo of Vrgineers for any other purposes than set forth hereunder.

6. HARDWARE AND SOFTWARE REQUIREMENTS

- 6.1. You acknowledge that Product(s) may require a specific technology setup that is not part of the delivery of the Product(s) and confirm that You have the necessary infrastructure for the operation of the Product(s). In the case of the XTAL or Somnium headset, it is a computer with a supported graphics processing unit (GPU), supported operating system with driver; in the case of Simulators, it is a suitable power source.
- 6.2. At Your request, Vrgineers shall set up and integrate the Product(s) into a specific technological environment for a price and under the terms and conditions that shall be agreed upon between Vrgineers and You in advance. The setup of the Product(s) will require Your assistance and cooperation.

7. THIRD PARTY SOFTWARE

- 7.1. The Product(s) may come bundled with or otherwise include or be distributed with third party software licensed by Vrgineers’ supplier and/or open source software provided under an open-source or other license. Use of third party software is subject to the third party license terms and in the event of a conflict with these terms the third-party license shall govern

Software	Link
NatNet Library	https://optitrack.com/software/natnet-sdk/ https://optitrack.com/about/legal/web-site-terms.html
DTrack	https://github.com/ar-tracking/DTrackSDK/blob/master/license.txt
OpenCV: Open Source	https://github.com/opencv/opencv/blob/4.10.0/LICENSE
OpenVR	https://github.com/ValveSoftware/openvr/blob/master/LICENSE
Intel® Embree	https://github.com/embree/embree/blob/master/LICENSE.txt
Assimp	https://github.com/assimp/assimp/blob/master/LICENSE
Capnproto	https://github.com/capnproto/capnproto/blob/v2/LICENSE
UltraLeap	https://central.leapmotion.com/agreements/SdkAgreement
CUDA Toolkit	https://docs.nvidia.com/cuda/eula/index.html
FreeRTOS	http://freertos.org/Documentation/02-Kernel/01-About-the-FreeRTOS-kernel/04-Licensing
zlib	https://zlib.net/zlib_license.html

Mbed TLS	https://mbed-tls.readthedocs.io/en/latest/kb/licensing/how-is-mbedtls-protected/
microjson	https://gitlab.com/esr/microjson/-/blob/master/COPYING?ref_type=heads
tiny-json	https://github.com/rafagafe/tiny-json/blob/master/LICENSE
EZ-USB™ FX3 Software Development Kit	https://www.infineon.com/cms/en/design-support/tools/sdk/usb-controllers-sdk/ez-usb-fx3-software-development-kit/

8. UPDATES

- 8.1. By installing Software You agree to receive information regarding updates and upgrades. You may decide whether or not the updates and/or upgrades should be installed. Vrgineers does not force any updates and/or any upgrades.
- 8.2. Vrgineers is not responsible for the updates and/or upgrades of the third party software. Vrgineers makes no warranty nor representations for their safety or compatibility.

9. GOVERNING LAW, EXPORT COMPLIANCE & CONTROL

- 9.1. The Agreement is subject to the laws of the Czech Republic, excluding conflict of law rules. Any dispute that cannot be settled amicably shall be handled by a relevant Czech court.
- 9.2. The governing language of the Agreement is English; and translations of the Agreement shall be for informational purposes only. In any disputes that may arise, including through or as a result of translation, the English version shall prevail.
- 9.3. You assume full responsibility for compliance with US ITAR, EU Dual-Use Regulations (2021/821) and Czech export controls. Vrgineers reserves the right to cancel orders violating these laws and regulations.
- 9.4. This Agreement is subject to applicable export control legislation. Applicable export control legislation includes, but is not limited to, rules and policies that have been issued by the United States and the European Union's authorities prohibiting export activities to certain countries, including but not limited to at the date of signing this Agreement, Iran, North Korea, Sudan and Cuba, Russia, and/or with their nationals (the "**Prohibited Countries**") and restricting export activities to certain other countries, persons or entities ("**Applicable Export Control Legislation**"). Both Parties are prohibited to negotiate, to deal and/or to have any involvement direct or indirect with Prohibited Countries.

10. TERMS OF USE

- 10.1. Vrgineers provides You a 12-month limited express warranty against manufacturer's defect of the Product ("**Warranty**").
- 10.2. Warranty does not apply if the software component of the Product is changed or modified by a person not from or licensed by Vrgineers or in the case that the functionality of the Software provided by Vrgineers has been changed to use of software not provided with or for the Product by Vrgineers.
- 10.3. Vrgineers does not guarantee that the Product shall be fit for any other purposes than those set forth in the quote or proposal.
- 10.4. Vrgineers warrants that the Product will arrive undamaged (unless specified as "used" or "refurbished") when received by You and that the Product will perform in accordance with its specifications for a period of twelve (12) months from the date of delivery to You.
- 10.5. In the event that the Product arrives damaged upon receipt by You, You shall notify Vrgineers in writing of any damage or shipping damage to the Product within sixty (60) days of initial delivery, this only applies to shipping which was undertaken by Vrgineers and does not apply to shipping organized by the customer.
- 10.6. Vrgineers ask that You please do not throw out any shipping or packaging materials.
- 10.7. Vrgineers shall at its sole discretion provide either a replacement of the Product (such replacement shall be new in the box) or provide a refund within thirty (30) days of receipt of the damaged Product.

- 10.8. Vrgineers shall, if possible, repair or replace any defective Product within ninety (90) days of receipt of the defective Product
- 10.9. If there is a problem or failure with any component of the Product, the issue will be diagnosed by a Vrgineers technician, and advice on how to solve the problem will be provided.

11. EXCLUSION OF WARRANTY

11.1. Warranty does not cover any of the following:

- a. Defects or damage resulting from accident, misuse, abnormal use, abnormal conditions, improper storage, exposure to liquid, exposure to the elements or weather conditions, including exposure to sunshine, moisture, dampness, sand, dirt, neglect, or unusual physical, electrical or electromechanical stress, blown fuses, or improper use of any electrical source;
- b. Scratches, dents, and cosmetic damage, unless the Product is specified as “used” or “refurbished”;
- c. Ordinary wear and tear, or
- d. Theft.

12. WARRANTY CONDITIONS FOR SIMULATORS

- 12.1. Vrgineers warrants that the Simulators provided by Vrgineers will be free from material and manufacturing defects for a period of one (1) year from the date of delivery to the Customer, and that the Simulators will possess substantially similar characteristics and functionality as listed on the Company’s Website and datasheets as of the date of this Agreement.
- 12.2. Vrgineers does not warrant that the functions contained in the Simulators will meet the Customer’s requirements or that the operation thereof will be uninterrupted or entirely error free, appear or perform precisely as described, or comply with regulatory requirements.
- 12.3. You acknowledge and agree that the functionality of the Simulators greatly depends on Your use and that any errors in use may impact the performance results thereof.

13. EXTENDED WARRANTY CONDITIONS FOR SIMULATORS

- 13.1. You can purchase an Extended Warranty for any type of Simulator (pending Your eligibility for purchase of Simulators subject to purchase requirements).
- 13.2. The price of the Extended Warranty depends on the Simulator type as defined in the Purchase Order.
- 13.3. The Extended Warranty covers:
 - a. Immediate exchange of any malfunctioning component;
 - b. Regular Software updates and/or upgrades;
 - c. In case of any update and/or upgrade of the Software or Hardware or any other components, Vrgineers guarantees that the Simulator will work as a whole.

14. WARRANTY CLAIMS FOR SIMULATORS

- 14.1. If a defect is found that is potentially covered by the Warranty, You should:
 - a. Contact Vrgineers support to confirm whether or not the defect is covered by the Warranty and be prepared with the following information:
 - b. Part number
 - c. Serial number
 - d. Full details of the alleged defect
 - e. Invoice #
 - f. If the defect is confirmed and is to be covered under the Warranty, obtain a claim form from Vrgineers for the item(s) confirmed as a warranty repair.

- g. In the event of a faulty or failed component (through normal use), detailed instructions will be given to You on how to remove the faulty part, a replacement component will be couriered to You with instructions on how to reinstall.
- h. If the defect is NOT covered by the Warranty but nonetheless required repair by Vrgineers, download or obtain a claim form and Vrgineers will evaluate the defect(s) and provide a quote for repair and/or replacement.
- i. Vrgineers endeavor to resolve all complaints immediately upon the report thereof – the period of resolving a complaint depends on the type of warranty. The standard period of resolving a complaint is six (6) weeks depending on the complexity of the defect or any other cause. Should a longer resolution time be necessary then Vrgineers shall communicate this to You as quickly as possible.

15. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

15.1. Each of the Parties hereby represents and warrants to the other as follows:

- a. The representing Party has the authority to conduct the business it is currently engaged in.
- b. The representing Party has the legal capacity to execute this Agreement and to perform its obligations under this Agreement.

16. LIMITATION OF LIABILITY

- 16.1. Subject to any limitations or exclusions imposed by mandatory applicable law and subject to article 17.2, each Party's aggregate liability to the other Party, whether for negligence, breach of contract, misrepresentation, or otherwise, shall in no circumstances exceed the price of the defective, non-conforming, damaged or undelivered Products/Services which give rise to such liability as determined by net price invoiced to the Party in question in respect of any occurrence or series of occurrences.
- 16.2. In no circumstances shall Vrgineers Party be liable to You for any indirect, incidental or consequential loss, damage or injury, including without limitation, loss of anticipated profits, goodwill, reputation, or losses or expense resulting from third party claims.
- 16.3. Vrgineers shall not be liable for breach-of-contract damages suffered by You that are remote or speculative, or that Vrgineers could not have reasonably foreseen on entry into this agreement. In no event and under no legal theory will the Vrgineers' liability under the Terms shall not exceed the price for the Product(s) paid by the You to Vrgineers. Vrgineers shall not be liable for any health nor mental disorders, or other negative consequences resulting from the use of the Device by the Customer or any third person. Neither the company nor its Licensors shall be liable to You or any Third Party for Special, Punitive, Incidental, Indirect, Consequential or Exemplary Damages. The Company shall not be liable for the use of any personal data collected via the use of the Device(s). The Company shall not be liable for any breach of intellectual property rights of third parties as a result of the use by the Customer of any third person of the Device(s).

17. PAYMENT

- 17.1. Purchase Order must be accepted in writing or via commercially reasonable electronic communication, e.g., via e-mail reply to the Purchase Order sender, or to info@vrgineers.com.
- 17.2. Further payment terms will be specified in each Purchase Order, the Purchase Order is a legally binding document.
- 17.3. All invoices are due within fourteen (14) calendar days of receipt unless otherwise set forth in the Purchase Order.
- 17.4. All invoices will be sent to Your contact e-mail used to confirm the Purchase Order. In case of cancellation of the Purchase Order after acceptance, the down payment paid by You is non-refundable and will not be returned to You.
- 17.5. If the Product is not delivered to You within the agreed upon period of time, Your sole remedy shall be the right to a refund.

18. DELIVERY AND SHIPPING COSTS

- 18.1. Vrgineers shall deliver the Product(s) within three (3) months of receipt of the full price for the Product(s) from You unless agreed otherwise in the Purchase Order. Note that some products are made-to-order and/or may be subject to supply chain disruption from time to time.
- 18.2. The installation date of the Product(s) shall be agreed upon by Vrgineers and You prior to the delivery date.

19. SPECIAL DELIVERY CONDITIONS

- 19.1. The standard Incoterms shipping method for Vrgineers is Ex Works (EXW).
- 19.2. This applies within the countries of the European Union as well as in Switzerland, the United Kingdom, the United States, Brazil, Australia, and Japan unless Vrgineers and You agree otherwise in writing or in a suitable electronic form.
- 19.3. Deliveries shall take place on workdays via a forwarding agent or a cargo service commissioned by Vrgineers for the delivery.

20. PRODUCT RETURNS

- 20.1. You can return the Product(s) within a fourteen (14) day period without case, provided that the Product(s) do not show any visible signs of use and that it/they are returned in the original packaging.
- 20.2. You can return the Product within a period longer than fourteen (14) days only for reasons by dint of Vrgineers (e.g. defect of the Product(s), damage or, as the case may be, Your reasonable dissatisfaction with the Product(s)).
- 20.3. Return shipping costs of are borne by You.

21. FORCE MAJEURE

- 21.1. If performance of this Agreement or any obligation under this Agreement by Vrgineers is hindered or prevented by a Force Majeure Condition and without Vrgineers's fault or negligence, performance by Vrgineers to the extent so impeded shall be excused during the period of the Force Majeure Condition. However no Force Majeure Condition shall relieve You of the obligation to pay for Products which have been delivered by Vrgineers. Promptly, and in no event later than ten (10) calendar days after discovery of a Force Majeure Condition, the Party whose performance is impeded by the Force Majeure Condition shall notify the other Party of the existence of the Force Majeure Condition and the anticipated duration thereof and shall be diligent in attempting to remove such Force Majeure Condition.

22. LOGIN INFORMATION

- 22.1. You are responsible for your log-in information and all activities under your account.
- 22.2. You may be asked to provide information necessary to create an account and securely login to Vrgineers' web portal and access the Software. The information may for this purpose be anonymous.
- 22.3. You are entirely responsible for maintaining the confidentiality of Your account information, including a password, and for any and all activity that occurs under such account. You agree to notify Vrgineers immediately of any unauthorized use of Customer's account or password, or of any other breach of security. You may be held liable for losses incurred by Vrgineers or any other use or visitor due to the use of Your Company ID, password, or account by You or any third party.
- 22.4. You may not use anyone else's Company ID, password, or account at any time without the express written permission of the holder of that Company ID, password, or account.
- 22.5. Company ID, password, and account are for individual use only and should not be shared, group-based and generic accounts are prohibited.
- 22.6. Vrgineers cannot and will not be liable for any loss or damage arising from Your failure to comply with these obligations.

23. ASSIGNMENT

- 23.1. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns. No assignment, transfer, sale, or delegation of either Party's rights and obligations under this Agreement shall be permitted without the written consent of the other Party. Either Party specifically agrees that they may, at any time during the term of this Agreement, transfer all of its rights and obligations under this Agreement to any affiliate of a respective Party.

24. PUBLIC INFORMATION

- 24.1. You have the right to use Vrgineers' name and logo in connection with usage of the Product(s). At Your request, Vrgineers can provide its logo and/or pictures of the Product(s).
- 24.2. Vrgineers reserves the right to use Your name and logo as a references on Vrgineers' Website and in its promotional materials, You have the right to withdraw Vrgineers' permission to use your name and logo by sending a written notice to Vrgineers at info@vrgineers.com or by communicating with any representative of Vrgineers.

25. COMPLIANCE

- 25.1. Each Party agrees that in performing its obligations under this Agreement, it shall always comply with all applicable laws, regulations, and governmental orders of any jurisdiction in which they perform their obligations under this Agreement or that could otherwise be applicable.

26. TERMINATION

- 26.1. Vrgineers shall have the right to terminate the contract concluded between Vrgineers and You by written notice to You with immediate effect if You fail to pay the cost of the Product(s) in due time and a possible additional 10-day period.
- 26.2. In case of agreed upon down payment(s) of the price for the Product(s), You shall not be entitled to a refund of such down payment(s) if You fail to pay the full purchase price for the Product(s) before the due date plus an additional ten (10) day grace period.

27. RELATIONSHIP OF THE PARTIES

- 27.1. Nothing in this Agreement shall be construed to constitute either Party as the partner, legal representative, or statutory/legal agent of the other or to authorize either Party to assume or undertake any obligations of any kind, express or implied on behalf of the other Party. Neither Party shall have any authority to bind the other in any respect.

28. MISCELLANEOUS

- 28.1. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction in which this Agreement is sought to be enforced, such decision shall in no way affect the validity or enforceability of any other provision hereof, and the Agreement shall be interpreted, as to such jurisdiction, as if such term or provision were not included in the Agreement.
- 28.2. The failure of either Party to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future; nor shall it be a waiver or estoppel with respect to a later breach of a similar nature or otherwise.
- 28.3. The terms and conditions of this Agreement prevail any previous agreements between the Parties, whether made in writing or by word of mouth. This Agreement, including all exhibits (which are hereby incorporated herein and shall be a part hereof) sets forth and constitutes the entire agreement and understanding of the Parties with respect to the matters set forth herein or therein. This Agreement supersedes and terminates all prior agreements and understandings, whether written or oral, of the subject matter contained herein.
- 28.4. This Agreement shall be governed by and construed in accordance with the laws of the Czech Republic.
- 28.5. This Agreement may not be amended or modified except in writing signed by authorized representatives of each of the Parties.

- 28.6. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall be one and the same instrument.
- 28.7. This Agreement has been prepared in the English language and English shall control the interpretation or meaning of the provisions of this Agreement in all respects. Any translations of this Agreement into another language shall be for the convenience of the Parties only.
- 28.8. Each Party to this Agreement shall execute and deliver, upon reasonable request, all such documents and instruments and shall do and perform all such things as may be necessary to give full effect to the intent and meaning of the terms and provisions of this Agreement.