

End User license agreement for O&O Defrag 11 Professional, Workstation and Server Edition

IMPORTANT – PLEASE READ CAREFULLY

Once accepted, these license terms will become part of your contract with O&O Software GmbH, Am Borsigturm 48, 13507 Berlin. If you have any questions regarding this contract and the license terms, our Service Team is available to help you under info@oo-software.com.

The software product is protected by copyright laws and international copyright contracts as well as other laws and agreements concerning intellectual property.

1. OBJECT AND FORM OF DELIVERY

- (1) You receive the software covered by the contract in executable form (Binary code) together with the relevant documentation released by O&O according to Section (6).
- (2) The software provides the range of functions described in the given documentation. The documentation regarding functionality may be consulted prior to concluding the contract in the internet presentation on the following site: <http://www.oo-software.com/>.
- (3) Delivery will be made according to the way in which you have purchased the software, either by having a disk directly handed over or sent by mail to an address you have supplied or through the forwarding of license as well as any required download information to a given E-mail address.
- (4) If you are currently receiving updates as part of a maintenance agreement, these will continue to be supplied in the same way as the initial software delivery, i.e., for a disk sent by mail, a disk containing the update will be sent to the given address: for electronically delivered keys, a key for downloading updates will be sent to the given E-mail address.
- (5) Changes to the delivery or E-mail address can only be taken into consideration when they are supplied in writing or by E-mail to the address or E-mail address indicated on <http://www.oo-software.com> at least two weeks before delivery of the update.
- (6) A printed copy of the documentation will not be included in delivery. The documentation consists primarily of electronic aids.

2. REQUIREMENTS FOR APPLICATION (SYSTEM REQUIREMENTS), PRODUCTS NOT INCLUDED IN DELIVERY

- (1) Installation of the software is not part of the agreement.
- (2) Depending on the software, there are certain system requirements that must be met in order to use the software according to the terms of this contract:

O&O DEFRAG PROFESSIONAL EDITION:

The software requires the Windows 2000 Professional or Windows XP (all Editions) or Windows Vista (all Editions) operating systems. Application within the terms of this contract is not achieved without the use of one of these operating systems. Control of the program through a network management is not possible.

O&O DEFRAG WORKSTATION EDITION:

The software requires the Windows 2000 Professional, Windows XP (all Editions) or Windows Vista (all

Editions) operating systems. Application within the terms of this contract is not achieved without the use of one of these operating systems. The O&O Defrag Workstation Edition may be used on computers with or without the user interface. You are entitled to control this program over the separately obtainable network manager.

O&O DEFRAG SERVER EDITION:

The software requires the Windows 2000 (all Editions), Windows Server 2003 (all Editions), Windows XP (all Editions), Windows Vista (all Editions) or Windows Server 2008 (all Editions) operating systems.

Application within the terms of this contract is not achieved without the use of one of these operating systems. The O&O Defrag Server Edition may be used on computers with or without the user interface.

You are entitled to control this program over the separately obtainable network manager.

3. RIGHTS OF USE, INCLUDING TEST VERSIONS AND UNAUTHORIZED TRANSFER AND APPLICATION

- (1) O&O grants you, upon payment of the agreed one-time fee, a permanent, spatially unlimited and non-exclusive right to use the software.
- (2) Test versions – if you have installed a test version of one of our products taken from the O&O Website <http://www.oo-software.com/>, the right of use will be, according to the program, for a limited time only and/or technically restricted.
- (3) One copy of the software is entitled to be used on a maximum of one (1) output device /workstation simultaneously.
- (4) If you want to use the software on more than one output device/workstation, the rights of use must be extended accordingly. To find out which O&O products are also available as volume licenses, please consult (<http://www.oo-software.com/>). The separate price list concerning O&O Volume Licenses will apply to extending the rights of use without redelivery. A subsequent extension of the rights of use without redelivery does not result in further warranty.
- (5) Any use beyond that agreed upon in the contract is one in violation of the contract. In such a case, you are required to report this use that exceeds the rights of use to the supplier without any delay. The parties will then try to bring about an agreement for extending the rights of use. For the duration of the excessive usage, i.e., until the conclusion of such an agreement or the cessation of the excessive usage, you are required to pay compensation for this excessive usage according to the amount indicated in our price lists. The amount of compensation will be calculated on the basis of a four year, straight-line depreciation. If we are not informed of the excessive usage, a contract penalty in the amount three times the price of the usage indicated in the price list will be due O&O.
- (6) You are entitled to create a backup copy of the software and to conduct ordinary data backups. The creation of more copies than the amount needed for the backing up of any future usage (including the backup copies and data backups) is not allowed.
- (7) Copyrights and other trademarks within the software may not be altered or removed. They must be transferred onto every copy of the software.
- (8) Unauthorized transfer – only when you have purchased the software with an accompanying disk are you permitted to transfer it and then, only under the following conditions: a resale of the software is only permitted when it involves an entire software copy, i.e., by surrendering your own usage of the purchased copy, you are entitled to transfer these rights of use of the disk onto a third party according to the terms of the agreement existing between you and O&O. When making such a transfer, you are required to hand over to the third party all materials related to the

software that are covered in the contract and to delete the software from any storage volumes (e.g., hard disks) remaining in your possession.

- (9) Unauthorized rental and service – The purchase of this contract does not entitle you to any public transfer or rental of the software. You are also not entitled to include the software as part of your providing services for and in the presence of any third parties. You may purchase an appropriate license from O&O for doing this.

4. PAYMENT

- (1) The prices are given with the corresponding sales taxes included, unless otherwise indicated.
- (2) Test versions – Downloads of test versions offered by O&O are provided free of charge, unless otherwise indicated.
- (3) If you receive updates of your programs as part of a Maintenance Agreement, the terms of payment in these contracts will apply to these Maintenance Agreements.
- (4) O&O is entitled to forward any data it has received onto third parties requiring it for purposes of collection.
- (5) Until payment is made in full, O&O retains possession of all rights, particularly those concerning copyrighted rights of use, on the materials included in this contract. O&O is specifically entitled to cancel a contract, for example, when your payment is delayed, it prohibits the further using of the software and demands the surrendering of all copies or this being impossible, to demand their deletion. Should a third party have access to the object of purchase before payment is completed for the contractual software, you are required to inform this third party about the object being the property of O&O and to inform O&O, in writing, about the third party's access.

5. MATERIAL DEFECT AND DEFECT OF TITLE

- (1) The software package or download you receive is free of any material defect or defect of title.
- (2) A material defect exists when the software is unable to be used as described in the documentation appearing on the website and included in delivery or available for downloading. O&O is constantly checking to make sure that other sources are not misrepresenting the functions and properties of the software as described in the documentation. You can therefore assume that any descriptions beyond those found in the software documentation have not originated with O&O and are also unknown to it. Please inform O&O if you learn of any software descriptions that include functions and properties not mentioned in the documentation.
- (3) A defect of title exists when, after delivery of the software, the rights needed for using it as stipulated in the contract have not been effectively granted.
- (4) Any claims concerning defects of material and/or title related to the software have a limitation period of two years subsequent to delivery of the program or transmission of the serial number needed for downloading. If you are not a private individual, the warranty period is shortened to one year.
If O&O has fraudulently concealed a material defect, a three year limitation period will cover claims related to this defect.
Payment for compensation that you might have been entitled to as a result of cancelation or an abatement can be refused upon expiration of the limitation period.
- (5) You are required to inform O&O, in writing if possible, of any defects that arise immediately upon their discovery. While doing so you should also describe, as well as possible, how the defect is communicated, the effect it has on the program, and under which circumstances it occurs.
- (6) Should defects be reported to O&O within the limitation period, it will undertake a cure free of charge.
- (7) As part of the cure, the corrected software will be redelivered as agreed. An on-site analysis and

correction of the error on your system will not take place.

If you have already entered your own data into the software, the software gives you the option of saving this data separately and then, after re-installing the software, restoring it with little effort. Correcting the software containing your own information would cost O&O undue time and expense. Such a correction can only be demanded in exceptional cases when a defect in the software has prevented the applied information from being saved separately and it is unable to be restored, and when such a correction is still acceptable for O&O.

O&O assumes the ensuing expenses for the cure, in particular the costs for transport, labor, and material. You are personally responsible for installation. O&O specifically does not assume on-site installation as part of its obligation with regard to defects of material or title.

Should a change of the program be required as part of the cure, O&O will make the necessary changes in the documentation without any charges.

- (8) After the unsuccessful expiration of a deadline you set for cure, you can cancel the contract or reduce the purchase price and demand compensation instead of service or the replacement of any futile expenditures.
- (9) A deadline is not required when
 - a. O&O refuses both kinds of cure, even if it is entitled to do so as a result of the arising expenses or
 - b. the cure is impossible or
 - c. the cure is unacceptable to you or
 - d. the cure is unsuccessful.

A subsequent improvement is considered a failure after the second unsuccessful attempt unless there is something particular about the type of software or the defect itself or the surrounding circumstances that would indicate otherwise.

- (10) You are not entitled to cancel the contract if the defect is negligible, nor may you, in this event, demand compensation instead of full service.
- (11) In the event of cancellation, compensation is due for any uses made. The compensation for use will be based on a four year, straight-line depreciation of the purchase price.
- (12) As a result of the abatement, the purchase price will be reduced by the amount which is calculated for deducting the defect from the value of the software. The standard used will be its value at the time the contract was concluded. The amount, when necessary, is to be calculated by estimation. As a result of this reduction, any amount larger than that paid for the reduced purchase price will be refunded.
- (13) If it turns out that a reported problem did not arise as a result of a defect in the software, O&O is entitled to invoice you, according to the amount charged in its price lists for such services, the expenses for analysis and correction of the problem if you can be accused of malice or gross negligence.
- (14) The seller's warranty is canceled when changes are made on the software without expressed written consent or when the software is not used as intended or used in an improper software environment, unless you can prove that these facts had nothing to do with the problems that occurred.

6. LIMITATION OF COMPENSATION

- (1) O&O is liable for compensation for every legal ground to the extent described in the following provisions.

- (2) The extent of liability of O&O for damages caused by malice or gross negligence arising from O&O itself or one of its vicarious or legal agents is unlimited.
- (3) There is no limit to the extent of liability of O&O or any of its legal or vicarious agents for damages involving injury to life, physical well-being or health, or for simple breach of duty.
- (4) There is unlimited liability for damages caused by serious organizational fault on the part of O&O as well as for damages arising from a missing guaranteed characteristic.
- (5) For the breach of an essential contractual duty, O&O is liable for damages normally foreseen in a contract when none of the instances in provisions (2) – (4) applies.
- (6) Any further liability for compensation is excluded, specifically excluded is liability without fault.
- (7) Liability as defined by the product liability law remains untouched.
- (8) If damage can be traced to have arisen through a fault on the part of O&O as well as on the part of yourself, you must have your share of the fault evaluated.

You are responsible for making a standard backup of your data at least once a day. For data loss caused by O&O, O&O is only liable for the expense of duplicating the data on your backup copies that need to be created and for the restoration of data which would have also been lost during a standard backup procedure.

7. FINAL PROVISIONS

- (1) You may only balance claims from O&O with indisputable or legally valid claims.
- (2) Changes and amendments to this contract must be made in writing. This also applies to changes to this provision.
- (3) The contract is subject to German law. The uniform UN purchasing law (CISG) as well as the UNIDROIT Factoring Agreement of Ottawa do not apply.
- (4) Any general terms and conditions on your part will not be applied.

8. COMPETENCY

This license agreement is subject to the laws of the Federal Republic of Germany. In the event you are not a private individual or a resident of the Federal Republic of Germany, we agree that the district court in Berlin will be the competent court for litigation arising from this contract.

If you have any questions concerning the O&O Software License Agreement or wish to speak with O&O, please get in touch with us.

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