

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

## FORCES Pro – Academic Software Licensing Agreement

### IMPORTANT NOTICE:

READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE OR ITS DOCUMENTATION.

THIS LICENSE AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN YOU (THE "LICENSEE") AND EMBOTECH GMBH CONCERNING THE SOFTWARE AND ITS DOCUMENTATION.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE OR DOCUMENTATION, YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO DO SO, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE OR DOCUMENTATION.

### 1. Definitions

- I. "**AGREEMENT**" means this license agreement including any and all annexes thereto.
- II. "**SOFTWARE**" or "**FORCES**" is the software "FORCES Pro" which belongs to EMBOTECH, and to which this AGREEMENT refers.
- III. "**GENERATED CODE**" is code generated by the LICENSEE using the SOFTWARE, either in compiled code or source code format.
- IV. "**NODE**" is a single physical hardware system accessed by a single user.
- V. "**LICENSE OPTIONS**" means the specific rights, restrictions, and obligations under which LICENSEE may install and use SOFTWARE under this AGREEMENT, including those associated with the number of NODEs on which the SOFTWARE can be used, the characteristics of the GENERATED CODE, or the level of support that the LICENSEE is entitled to receive. The LICENSE OPTIONS shall be set out in the annex to this AGREEMENT.
- VI. "**EFFECTIVE DATE**" shall mean the date on which payment for the SOFTWARE was received by EMBOTECH.
- VII. "**ACADEMIC INTERNAL OPERATIONS**" are the installation and use of the SOFTWARE by faculty and academic staff or students for the purpose of performing software administration, teaching, and noncommercial, academic research as LICENSEE's employees. Any other use is prohibited.
- VIII. "**RELEVANT ENTITY**" is a degree-granting, state recognized educational institution.

### 2. License Grant

EMBOTECH hereby grants a single, non-exclusive, world-wide, non-perpetual academic license to use SOFTWARE to the LICENSEE subject to all the terms and conditions of this AGREEMENT. The license to the SOFTWARE is granted to the LICENSEE for the duration of this AGREEMENT and such license shall terminate with the termination of this AGREEMENT.

In particular, LICENSEE is allowed to:

- install and use the SOFTWARE on a maximum number of NODEs, controlled by the

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

- LICENSEE, in accordance with the LICENSE OPTIONS acquired;
- access and print all available documentation for the SOFTWARE; and
  - make back-ups for the SOFTWARE;

### 3. License Restrictions and Obligations

The license granted to the LICENSEE covers the use of the SOFTWARE at prices offered only to degree-granting educational institutions for ACADEMIC INTERNAL OPERATIONS only. Research and development divisions and centers of universities, and other not-for-profit organizations do not qualify for academic licenses.

The license granted to the LICENSEE covers the academic use of the SOFTWARE solely on behalf of the LICENSEE by himself and by his employees and students. The license is subject to the restrictions set forth below. LICENSEE shall not:

- make the SOFTWARE available to any third parties, including by sublicense;
- modify, or create any derivative of the SOFTWARE;
- use the SOFTWARE to perform research for any institution that does not qualify for academic pricing, i.e. is not an ACADEMIC INTERNAL OPERATIONS use by a RELEVANT ENTITY;
- sell, transfer, or make available any GENERATED CODE to any institution that does not qualify for academic pricing, i.e. a division of a RELEVANT ENTITY using such GENERATED CODE for ACADEMIC INTERNAL OPERATIONS only;
- re-sale, rent, lease, or loan the SOFTWARE, or provide service bureau, processing center, or similar service use;
- disassemble, decompile, reverse engineer the SOFTWARE or otherwise attempt to gain access to its method of operation or source code (other than for GENERATED CODE if included in the LICENSE OPTIONS);
- publish data about the performance of the GENERATED CODE without written consent from EMBOTECH;
- create a server for use of the SOFTWARE by multiple users.

LICENSEE shall include the notice "FORCES Pro (C) 2014 – [INSERT YEAR FORCES Pro WAS USED] EMBOTECH GMBH [[info@embotech.com](mailto:info@embotech.com)]" on any GENERATED CODE it distributes.

### 4. Non-competition

LICENSEE agrees not to use the SOFTWARE or GENERATED CODE to make or distribute its own or a third party's application, a principal purpose of which, as reasonably determined by EMBOTECH, is to perform the same or similar functions as SOFTWARE licensed by EMBOTECH or which replaces any component of the SOFTWARE. LICENSEE shall not otherwise use the Programs to compete with the products or businesses of EMBOTECH, including by distributing Libraries.

### 5. Intellectual Property and other Rights

Ownership, intellectual property rights and all other rights in and to the SOFTWARE shall solely remain with EMBOTECH.

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

## 6. Acceptance and Returns

LICENSEE can test the SOFTWARE for satisfactory quality and fitness for a period of 30 days. The test period begins at the date the link to the SOFTWARE is made available by EMBOTECH to the LICENSEE. If the SOFTWARE is not satisfactory to the LICENSEE in terms of quality or performance, the LICENSEE is entitled to terminate this AGREEMENT within the testing period without adhering to a notice period. In this case EMBOTECH will reimburse any payments made by the LICENSEE to EMBOTECH for the license. The right to terminate this AGREEMENT due to non-satisfactory results as contemplated in this Article shall only be available before any GENERATED CODE is made available by the LICENSEE to a third party in accordance with this AGREEMENT, whereupon such right shall cease to exist. The right to terminate this AGREEMENT shall be the sole right of the LICENSEE in connection with unsatisfactory quality or performance of the SOFTWARE.

If the LICENSE OPTIONS enable the LICENSEE to create GENERATED CODE in source code format, the LICENSEE shall not be entitled to any refund.

## 7. Maintenance, support, upgrades and new releases

During the term of this AGREEMENT, EMBOTECH shall provide a maintenance service for the SOFTWARE which consists of: delivering subsequent releases of the SOFTWARE, if any, and exerting reasonable efforts to both (a) provide, within a reasonable time, workarounds for any material programming errors in the current release of the SOFTWARE that are directly attributable to EMBOTECH, and (b) correct such errors in the next available release, provided LICENSEE provides EMBOTECH with sufficient information to identify the errors. During the term of this AGREEMENT, LICENSEE shall also be entitled to receive technical support for the current release. Technical support means assistance by telephone and electronic mail with the installation and/or use of the SOFTWARE, including its interaction with supported hardware and operating systems.

Additional technical support may be provided by EMBOTECH to LICENSEE depending on the LICENSE OPTIONS or upon request. Such technical support may be invoiced by EMBOTECH at standard rates.

The SOFTWARE shall cease to be operational after the termination of this AGREEMENT should LICENSEE not renew the maintenance contract for the SOFTWARE. Any GENERATED CODE created using the SOFTWARE will remain operational after the termination of this AGREEMENT.

## 8. License Duration and Termination

This AGREEMENT shall be effective as of EFFECTIVE DATE and shall continue for one (1) year.

LICENSEE understands and agrees that the license will expire automatically immediately after its corresponding one (1) year period, unless LICENSEE renews its maintenance contract by remitting the then-current annual fee set forth in the LICENSE OPTIONS. LICENSEE understands that the SOFTWARE will stop operating should LICENSEE fail to provide the payment of the renewal fee.

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

LICENSEE understands and agrees that the maintenance service will terminate automatically upon expiration of the AGREEMENT.

EMBOTECH shall have the right to terminate this AGREEMENT at any time with thirty (30) days written notice should LICENSEE breach any of its material obligations, including failure to pay any license fees due, and have failed to cure such breach within thirty (30) days after written notification given by EMBOTECH. Such termination for cause may also be made during the initial period set out in Article 6.

LICENSEE may terminate this AGREEMENT at any time, for any reason. LICENSEE shall not be entitled to any refund if this AGREEMENT is terminated, except for fees paid for SOFTWARE for which the acceptance period set forth in Article 6 has not expired. Upon termination, LICENSEE shall promptly return all copies of the SOFTWARE in LICENSEE's possession or control, or promptly provide written certification of their destruction.

## 9. Confidentiality

LICENSEE herewith agrees that any confidential information concerning the SOFTWARE, which is received hereunder, shall be kept in strict confidence and shall not be disclosed to any third party nor be used other than in connection with this AGREEMENT during the term of this AGREEMENT, and for 3 (three) years beyond expiration or termination of this AGREEMENT.

## 10. Warranties

- a. EMBOTECH warrants that EMBOTECH, on its own behalf or through its Licensors, has the right to grant the license rights hereunder.
- b. EMBOTECH warrants to LICENSEE that to the best of EMBOTECH's knowledge the SOFTWARE does not infringe or violate any patent, trademark, trade secret or other property right of any third party.
- c. Except as specified in this Article, EMBOTECH MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND ANY GENERATED CODE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT OF THIRD-PARTY RIGHTS. EMBOTECH DOES NOT WARRANT THAT THE FUNCTIONS CONSTAINED IN THE SOFTWARE OR THE GENERATED CODE WILL MEET THE REQUIREMENTS OF THE LICENSEE, THAT THE OPERATION OF THE SOFTWARE OR THE GENERATED CODE WILL BE UNINTERRUPTED, ERROR FREE OR THAT THE SOFTWARE OR THE GENERATED CODE WILL BE FREE OF DEFECTS OR THAT DEFECTS IN THE SOFTWARE OR THE GENERATED CODE WILL BE CORRECTED. FURTHERMORE, EMBOTECH DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULT OF THE USE OF THE SOFTWARE OR THE GENERATED CODE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

## 11. Liability and Indemnity

- a. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE USE OF THE SOFTWARE AND OF ANY GENERATED CODE IS AT LICENSEE'S SOLE RISK.

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

- b. EMBOTECH SHALL NOT BE LIABLE TO ANY THIRD PARTY FOR ANY DIRECT OR INDIRECT DAMAGE CAUSED BY THE USE OF OR INABILITY TO USE THE SOFTWARE OR ANY GENERATED CODE. THUS, LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS EMBOTECH FROM ANY THIRD PARTY CLAIMS BASED ON THE USAGE OF OR INABILITY TO USE THE SOFTWARE OR ANY GENERATED CODE.
- c. NEITHER PARTY SHALL MAKE A CLAIM AGAINST, NOR BE LIABLE TO THE OTHER PARTY OR TO ANY AFFILIATE OF THE OTHER PARTY FOR ANY DAMAGE OCCURRING IN CONNECTION WITH THIS AGREEMENT AND/OR THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE USE OR INABILITY TO USE ANY GENERATED CODE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFITS, BUSINESS OPPORTUNITY, OR INJURY TO BUSINESS REPUTATION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TERMINATION THEREOF, UNDER ANY LAW, IN CONTRACT OR IN TORT, EXCEPT FOR DAMAGES CAUSED DUE TO INTENT OR GROSS NEGLIGENCE.

## **12. Survival of Articles**

Articles 9 (Confidentiality), 10 (Warranties) and 11 (Liability & Indemnity), shall survive the termination or expiration of this AGREEMENT for any reason in addition to those articles surviving by operation of law.

## **13. Amendments to Agreement**

The terms stipulated in this AGREEMENT may not be modified in any way without the mutual consent of the parties in writing.

## **14. Restrictions on Use of Names**

Neither party shall use the names or trademarks of the other, its related entities and its employees, or any adaptations thereof, in any advertising, promotional or sales literature, or in any securities reports required by the respective authorities, without the prior written consent of the party so affected.

## **15. Independent Contractor**

For the purpose of this AGREEMENT and all services to be provided hereunder, both parties shall be, and shall be deemed to be, independent contractors. Nothing in this AGREEMENT shall be construed to create a partnership, joint venture, employment or agency relationship between EMBOTECH and LICENSEE. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action, that will be binding on the other party.

## **16. No Transfer of Rights and Duties**

Rights and duties derived from this AGREEMENT shall not be transferred or assigned to third parties without the written acceptance of EMBOTECH. In particular, the SOFTWARE cannot be sold, licensed, rented out or otherwise made available to third parties by the LICENSEE other than in accordance with this AGREEMENT.

Embotech GmbH  
c/o Automatic Control Laboratory  
Physikstrasse 3, ETL K10.1  
CH-8092 Zürich

[info@embotech.com](mailto:info@embotech.com)  
Tel.: +41 44 632 6298  
Fax: +41 44 632 1211

#### **17. No Implied Grant of Rights**

The parties shall not infer from this AGREEMENT any other rights, including licenses, than those that are explicitly stated herein.

#### **18. Severability**

If any provisions of this AGREEMENT will become invalid or unenforceable, such invalidity or enforceability shall not affect the other provisions of AGREEMENT. These shall remain in full force and effect, provided that the basic intent of the parties is preserved. The parties will in good faith negotiate substitute provisions to replace invalid or unenforceable provisions which reflect the original intentions of the parties as closely as possible and maintain the economic balance between the parties.

#### **19. Governing Language**

In the event that a translation of this AGREEMENT is prepared and signed by the parties, this English language version shall be the official version and shall govern any conflict between the two.

#### **20. Applicable Law**

This AGREEMENT as well as any and all matters arising out of it shall exclusively be governed by and interpreted in accordance with the laws of Switzerland, excluding its principles of conflict of laws.

#### **21. Jurisdiction**

In case of any dispute, controversy or difference between the Parties hereto in connection with or out of this AGREEMENT, the parties hereto shall first attempt to settle it amicably. Should settlement not be achieved, the Courts of Zurich-City, Switzerland, shall have exclusive jurisdiction.