



# ENERCALC Software License Agreement

**This license agreement applies to:  
Structural Engineering Library, STRUCTURE, RetainPro, EARTH and 3D**

1 Jan 2009, revised 18-Feb-2014 & 1-Jun-2015, 9-Jun-2017, 20-Jun-2019, 9-Jan 2020, 18-Mar-2021, 25-Aug-2022,  
12-Jan-2023

**Important: Please read this license carefully before using the software. By using the software, you are agreeing to be bound by the terms of this license. If you do not agree to the terms of this license, please do not use the software.**

## Copyright 1983 - 2023

The SOFTWARE (hereinafter "Software") was developed by and is owned by ENERCALC and is protected by United States Copyright Laws and International Treaty Provisions. Therefore, you must treat the Software in a legal manner like any other copyrighted material (e.g., a book, movie, musical recording, etc.). You may make backup copies of the installation programs of the Software. Law strictly prohibits unauthorized reproduction or resale of copyrighted materials.

**1. SOFTWARE LICENSE.** The Software accompanying this License regardless of the media on which it is distributed, are licensed to you ("Licensee") by ENERCALC. You own the medium on which the Software may be supplied to you, but ENERCALC and ENERCALC's Licensors (referred to collectively as "ENERCALC") retain title to the Software and related documentation. You may: (a) use the Software on any computer you wish providing you do not exceed the number of simultaneously active "seats" that you have purchased; and (b) make copies of the Software in machine-readable form for backup purposes only. You must reproduce on such copy the ENERCALC's copyright notice and any other proprietary legends that were on the original copy of the Software.

The Software is licensed, not sold. The Software was developed privately by ENERCALC and no ownership rights are granted with this license. All right, title and interest is and remains vested in ENERCALC. Licensee is specifically granted a license to the use of the Software up the limit of simultaneous "seats" they have purchased. See Section (5) for additional details on usage. As part of the license to use the Software, the Licensee acknowledges the reading, understanding and acceptance of all terms of this agreement. This license agreement embodies the full agreement between ENERCALC and the Licensee.

The license is granted only to Licensee and not designees of Licensee. License may be transferred to a new Licensee after application is made and approved by ENERCALC and according to its policies.

If Licensee does not agree with the terms of this agreement, ENERCALC will not license the Software to Licensee. In such event Licensee must delete any installations, destroy any copies of the Software and request a refund from ENERCALC, LLC within 30 days of initial license purchase to be allowed a full refund.

Licensee may not use the ENERCALC product names, logos or trademarks to market your SERVICES or IMPLEMENTATIONS related to the Software without the express prior consent of ENERCALC

Licensee shall be responsible for the payment of all taxes, duties, or levies that may now or hereafter be imposed by any authority upon this Agreement for the supply, use, or maintenance of the Software.

The Software may not be reviewed, compared or evaluated for publication in any manner in any publication or media without expressed written consent of ENERCALC. If the Software was purchased at a discounted price or given at no charge for educational or plan check review purposes it may not be used for any professional design purposes that result in income. The terms of this license agreement are binding in perpetuity.

If you are using an Evaluation copy of the Software you may not use the results for preparation of a structural design that results in income derived from a benefit received from use of the Software.

**2. DISCLAIMER.** Because Software may be used to design structures or components of structures that protect human life and other valuable physical items, it is CRITICALLY important that Licensee understand the intended use and capabilities of Software. Only experienced and licensed professional engineers should use this Software and the results thereof. Licensee shall be responsible for persons they allow to use the Software to accept all terms of this license.

The authors of this Software have tried, to the best of their ability, to correctly combine the principles of structural mechanics, provisions of required and widely used "building codes", and typical analysis processes into the Software program source code. Regardless of how thoroughly any Software is designed and tested, errors may and PROBABLY WILL OCCUR, and the Licensee (user, designer, engineer, engineer-of-record, etc.) should thoroughly review the results and must take responsibility for the use of the final values and statements prepared by the Software. This Software cannot possibly account for the multitude of issues influencing adequate, practical and sound structural design, therefore this Software should be considered only an aid to performing numerical calculations.

While ENERCALC has taken precautions to assure the correctness of the analytical solution and design techniques used in this Software, it cannot and does not guarantee its performance, nor can it or does it bear any responsibility for anything in connection with the user of the software. In no event will ENERCALC, its officers, owners, employees or consultants be liable to anyone for any unfavorable conditions occurring from the use of this Software. The Licensee acknowledges and accepts all of the above statements when choosing to use the Software.

**3. LICENSE RESTRICTIONS.** Except as expressly provided in this Agreement or as otherwise authorized in writing by ENERCALC, Licensee has NO RIGHT to: (1) use, print, copy, display, reverse assemble, reverse engineer, translate or decompile the Software or Documentation in whole or in part; (2) disclose, publish, release, sublicense or transfer to another person the Software or Documentation; (3) reproduce the Software or Documentation for the use or benefit of anyone other than Licensee or Licensees paid employees; (4) modify any Software or Documentation; (5) use the Software as a whole, or any of its comprising elements, as a basis for creation of another Software product; (6) rent, lease, or loan the Software; (7) use the Software to provide a paid service for the sole purpose of entering data into the Software and providing a data file or printed output; (8) make public the results of any benchmark or comparison tests run on the Software.

All rights to the Software and User Documentation not expressly granted to Licensee hereunder are retained by ENERCALC. All copyrights and other proprietary rights except as expressed elsewhere in the Software or User Documentation and legal title thereto shall remain in ENERCALC.

**4. LIMITED WARRANTY.** ENERCALC warrants that the Software will operate but does not warrant that the Software will operate error free or without interruption. The operation of the Software may change with changes in computer hardware, changes in operating systems and may be affected by other Software running on the same computer. ENERCALC, LLC's sole obligation and Licensee's exclusive remedy under this warranty will be to receive Software support from ENERCALC, LLC. via telephone, e-mail or fax. ENERCALC shall only be obligated to provide support for the most recent build of the Software. Except as stated herein the Software is provided without warranty, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose including all the warnings and statements in section (2).

4(a). Disclaimer of Warranty on Software. You expressly acknowledge and agree that use of the Software is at your sole risk. The Software and related documentation are provided "AS IS" and without warranty of any kind and ENERCALC EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ENERCALC DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE IS ASSUMED BY YOU. FURTHERMORE, ENERCALC DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ENERCALC OR ENERCALC's AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU (AND NOT ENERCALC OR ENERCALC's AUTHORIZED REPRESENTATIVE) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

**5. SIMULTANEOUS USAGE LIMITER.** If the Software is supplied with or must communicate with a computer program that manages simultaneous usage, typically called the ENERCALC License Manager or Internet Activation, then that license manager must be used.

**6. INSTALLATION AND SIMULTANEOUS USAGE LIMITATIONS.** The Software may be installed on any computer you wish to use and may be used via the ENERCALC cloud platform. You will "activate" the Software using a "Flex License" method. The purpose is to limit the number of simultaneously active Software installations and cloud users to the number of "seats" Licensee has purchased. This allows the license owner the flexibility to have the Software available on their multiple computers and "activate" it as needed.

**7. NETWORK COMMUNICATIONS.** Software may and probably will use network communications (i.e. the "Internet", local area network or wide area network using a communication protocol such as HTTP, FTP, etc.) to communicate with ENERCALC server(s) to transfer Software and documentation improvements, and potentially verify licensing status. ENERCALC represents that such usage will not provide ENERCALC with proprietary information regarding Licensee not directly related to this License nor shall such network communications place programs, data or documentation on user's computer not strictly related to the Software. ENERCALC wishes to assure Licensee that it does not and will not use the Software and network communications for any purpose other than strictly to provide support and maintenance of Software.

**8. PROTECTION OF LICENSED MATERIALS.** Licensee shall not provide duplicated printed documentation, printed electronic documentation or electronic program or documentation files to any person or entity other than employees of Licensee with a "need to know" without ENERCALC's written permission. All Software and Documentation in Licensee's possession including, without limitation, translations, compilations, back-up, and partial copies is the property of ENERCALC. Upon termination of this Agreement for any reason, Licensee shall immediately destroy all Software and Documentation, including all media, and destroy any Software that has been copied onto other magnetic storage devices. Upon ENERCALC's request, Licensee shall certify its compliance in writing with the foregoing to ENERCALC. Licensee shall take appropriate action, by instruction, agreement or otherwise, with any persons permitted access to the Software or Documentation, to enable Licensee to satisfy its obligations under this Agreement with respect to use, copying, protection, and security of the same.

**9. TERMINATION.** ENERCALC may terminate Licensee's right to use the Software PRODUCT if Licensee fails to comply with the terms and conditions of this agreement. In such event Licensee must delete any installations and destroy any copies of the Software. ENERCALC may terminate this agreement at any time by refunding fees received from Licensee if in ENERCALC's sole opinion Licensee is causing excessive communication, harassment, making threats or any other activity which disrupts or interferes with the ability of ENERCALC's activities or that ENERCALC considers undesirable. In such event Licensee must delete any installations and destroy any copies of the Software.

**10. NO EXTENSION OF PROFESSIONAL LICENSING.** If ENERCALC, LLC's owners, employees or consultants are licensed professional engineers there is no relationship between their professional licenses and the Software. Such licensed professionals have provided their labor to develop or advise on the Software and are not performing services in connection with their professional licenses or any legal requirements related to their licenses.

**11. CHOICE OF LAW.** By entering into this Agreement in accordance with Paragraph 1, above, Licensee has agreed to the exclusive jurisdiction of the State and Federal courts of the State of California, USA for resolution of any dispute you have relating to the Software or related goods and services provided by ENERCALC. All disputes therefore shall be resolved in accordance with the laws of the State of California, USA and all parties to this Agreement expressly agree to exclusive jurisdiction (both Personal and Subject Matter jurisdiction) within Orange County, in the State of California, USA. No choice of law rules of any jurisdiction apply. "ENERCALC" as applied to structural engineering software is a registered trademark of ENERCALC

**12. INDEMNIFICATION.** Licensee, at its expense, shall defend and indemnify, and save and hold ENERCALC harmless from and against any and all liabilities, claims, causes of action, suits, damages, including without limitation, suits for personal injury or death of third parties, and expenses, including reasonable attorneys' fees and expenses, for which ENERCALC becomes liable, or may incur or be compelled to pay by reason of Licensee's activities or breach of the terms of this Agreement, including but not limited to: (i) claims of infringement of any intellectual property right; or (ii) product liability suits by direct or indirect customers of Licensee.

**13. LIMITATION OF LIABILITY** UNDER NO CIRCUMSTANCES INCLUDING NEGLIGENCE, SHALL ENERCALC, OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE, MISUSE OR INABILITY TO USE THE SOFTWARE OR RELATED DOCUMENTATION, EVEN IF ENERCALC OR ENERCALC's AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. In no event shall ENERCALC's total liability to you for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise) exceed the amount paid by you for the Software.

**14. U.S. GOVERNMENT RESTRICTED RIGHTS.** This commercial computer Software and commercial computer Software documentation were developed exclusively at private expense by ENERCALC. U.S. Government rights to use, modify, release, reproduce, perform, display or disclose this computer Software and computer Software documentation are subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), or the Restricted Rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable.

**15. THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998.** This Software is digital media and protected under the provisions of the Digital Millennium Copyright Act.

**16. GENERAL.** (a) No action arising out of any claimed breach of this Agreement or transactions under this Agreement may be brought by Licensee more than two years after the cause of such action has arisen. (b) Licensee may not assign, sell, sublicense or otherwise transfer this Agreement, the license granted herein or the Software or User Documentation by operation of law or otherwise without the prior written consent of ENERCALC. Any attempt to do any of the foregoing without ENERCALC's consent is void. (c) Licensee acknowledges that the Software, User Documentation and other proprietary information and materials of ENERCALC are unique and that, if Licensee breaches this Agreement, ENERCALC may not have an adequate remedy at law and ENERCALC may enforce its rights hereunder by an action for damages and/or injunctive or other equitable relief without the necessity of proving actual damage or posting a bond therefor. (d) THE RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED, BUT SUCH RIGHTS AND OBLIGATIONS SHALL INSTEAD BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL (U.S.) LAWS. UCITA SHALL NOT APPLY TO THIS AGREEMENT. (e) THIS AGREEMENT SHALL BE TREATED AS THOUGH IT WERE EXECUTED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND WAS TO HAVE BEEN PERFORMED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA. ANY ACTION RELATING TO THIS AGREEMENT SHALL BE INSTITUTED AND PROSECUTED IN A COURT LOCATED IN ORANGE COUNTY, CALIFORNIA. LICENSEE SPECIFICALLY CONSENTS TO EXTRATERRITORIAL SERVICE OF PROCESS. (f) Except as prohibited elsewhere in this Agreement, this Agreement shall be binding upon and inure to the benefit of the personal and legal representatives, permitted successors, and permitted assigns of the parties hereto. (g) All notices, demands, consents or requests that may be or are required to be given by any party to another party shall be in writing. All notices, demands, consents or requests given by the parties hereto shall be sent either by U.S. certified mail, postage prepaid or by an overnight international delivery service, addressed to the respective parties. Notices, demands, consents or requests served as set forth herein shall be deemed sufficiently served or given at the time of receipt thereof. (h) The various rights, options, elections, powers, and remedies of a party or parties to this Agreement shall be construed as cumulative and no one of them exclusive of any others or of any other legal or equitable remedy that said party or parties might otherwise have in the event of breach or default in the terms hereof. The exercise of one right or remedy by a party or parties shall not in any way impair its rights to any other right or remedy until all obligations imposed on a party or parties have been fully performed. (i) No waiver by Licensee or ENERCALC of any breach, provision, or default by the other shall be deemed a waiver of any other breach, provision or default. (j) The parties hereto, and each of them, agree that the terms of this Agreement shall be given a neutral interpretation and any ambiguity or uncertainty herein should not be construed against any party hereto. (k) If any provision of this Agreement or portion thereof is held to be unenforceable or invalid by any court or competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it enforceable and valid while preserving its intent or, if such modification is not possible, by substituting therefor another provision that is enforceable and valid so as to materially effectuate the parties' intent.

**17. MANDATORY ARBITRATION.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules [including the Emergency Interim Relief Procedures], and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof according to the terms of this Agreement. When the end user of this contract is an instrumentality of the US Government equitable relief, award of attorney fees, costs or interest is only allowed against when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act.) Disputes will be resolved according to the Disputes clause, and binding arbitration will not be used.

**18. COMPLETE AGREEMENT.** This License constitutes the entire agreement between the parties with respect to the use of the Software and the related documentation, and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by a duly authorized representative of ENERCALC.