

Design App License Agreement

Mostardesign Type Foundry

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Version:

IMPORTANT: PLEASE READ CAREFULLY AND MAKE SURE YOU UNDERSTAND THIS EULA BEFORE ACCEPTING ITS TERMS. MOSTARDESIGN TYPE FOUNDRY WILL ONLY GRANT YOU A LICENSE TO USE THE FONT (AS DEFINED BELOW) IF YOU ACCEPT THE ENTIRE PROVISIONS OF THIS EULA AND ITS TERMS AND CONDITIONS.

1. Purpose

By downloading and/or installing font software ("Font") offered by Mostardesign Type Foundry, you ("Licensee") agree to be bound by the following terms and conditions of this End User Licensing Agreement ("EULA").

For purposes of this EULA, Licensee shall mean any physical person or legal entity willing to be granted a license for the use of the Font. In case of a group of physical persons or legal entities, each of the corresponding persons or entities has to subscribe to a specific license.

The purpose of this EULA is to set out the terms and conditions of use of the Font licensed by Mostardesign Type Foundry to Licensee, as well as the rights and obligations of the Mostardesign Type Foundry and Licensee in that regard.

This EULA shall prevail over any other general or special terms and conditions not expressly agreed by Mostardesign Type Foundry. This EULA forms a contractual whole together with the quotation or invoice validated by Licensee ("Invoice"). In the case of any inconsistency between this EULA and the Invoice, the Invoice shall prevail.

2. Acceptance of this EULA

The validation and payment of the Invoice for the use of the Font as provided for herein, entail full and complete acceptance of this EULA.

This acceptance can only be full and complete. Any qualified acceptance of this EULA is considered as null and void. If Licensee does not accept to be bound by this EULA, Licensee must not subscribe for the desktop use of the Font.

3. Scope of the license

3.1 Rights Granted

Subject to receipt of the amount set out in the Invoice, Mostardesign Type Foundry hereby grants Licensee with a worldwide, non-exclusive and non-transferable license, for the term set out in article "Term", to use the Font for the sole purposes of installing, accessing uploading, and using the same as follows:

- a. To upload the Font a third party hosted software solution (e.g. CANVA, PLAYPLAY, GENIALY), to which access is granted to the Licensee on a 'Software as a Service' basis ("**Design App**") where:
 - a access to the Font via the SaaS Web App is limited **only** to your employees and individuals within the Licensee's direct control (and as further set out in section 3.3 and 3.1(c) , for the individual's use in accordance with this EULA, and the Licensee undertakes to ensure, whether by act or omission, no third party other than those authorised by this EULA is able to access the Design App and make use of the Font;
 - b the terms and conditions of the applicable Design App respect the intellectual property rights of Mostardesign Type Foundry, as more particularly set out in section 4 of this EULA, and the third party operator, or any other party, does not, by any means, accrue any rights to the Font beyond those set out (for the purpose of making the same available to the Licensee for the purposes expressly set out herein);
 - c the Licensee is solely responsible for determining the compatibility of the Font with the Design App; and
 - d use of the Design App is for your own business purposes only, and not for provision of outputs, service provision, and purposes of any third party (whether paid for or not).
- b. Use the Font via the Design App to create and distribute rendered content, media, audio, video, and multimedia files graphics, logos, and artwork (in such formats as the Design App(s) is able to output) for display on any surface including computerscreens, television screens, paper, physical products, or any other surface. The created graphics may be a fixed size (e.g. JPG, PNG, etc.) or a static vector (e.g. SVG, EPS, etc. made with a "create outlines" tool).
- c. Embed or link the Font in accordance with the rules described in Section "Document Embedding," below.

3.2 Requirements and Restrictions

a. Products

Licensee may not use the Font to create alphabet or letterform products for resale where the product consists of individual letterforms, including rubber stamps, die-cut products, stencil products, or adhesive sticker alphabet products where the likeness of the Font can be reproduced and the end-user of said products can create their own typesetting. An extended license may be available for an additional fee and the granting of specific end-user license agreements.

Licensee may create typographic products using the Font if the product consists of commonly recognized words or phrases, for example, a rubber stamp that has the words "Great!" or a sticker that says "Thank You." b. Dingbats

Licensee may NOT use illustrations or images in the Font OTHER THAN letterforms, numbers, punctuation marks, diacritics, etc., in a manner where the illustration or image becomes the primary aspect of a product for resale. For example, a dingbat image in the font can not be the sole design element on a coffee cup, t-shirt, greeting card, etc., intended for resale. An extended license may be available for an additional fee and the granting of specific end-user license agreements.

b. Design of Applications

The Licensee is not permitted to utilise the Font for the design of an application which is functionally as described as a 'Design App'. This Design App is for the purposes set out in section 3.1 only. Please contact Mostardesign Type Foundry in respect of an 'Application Licence' or 'OEM Licence' as required.

c. Users and Deployment

The Font may be uploaded to the number of Design Apps only that are specified in the Invoice. Use is limited to the Licensee's employees and individuals in its control, via the Design App except for temporary use by subcontractors as described in Section "Provision to subcontractors" of this EULA.

Access to the Font via the Design App is only permitted, in the aggregate, by no more than the number of users specified in the Invoice. A "User" is a single person (notwithstanding that multiple 'persons' may use single logins to the Design Apps) who *may* access the Design App where the Font is included (notwithstanding, they may not access the same). All Users must belong to the same company or household purchasing the font except for temporary use by subcontractors as described in Section "Provision to subcontractors" of this EULA.

The Licensee shall maintain full, complete, accurate records of all Users who have the ability to access the Design App permitted by this EULA, and make such records available to Mostardesign Type Foundry on demand. Where there is any shortfall between the number of Users authorised, and the number of Users reported, the Licensee shall pay on demand to the Mostardesign Type Foundry the amount due for the number of Users reported, at Mostardesign Type Foundry's then current price list.

d. Embedding (including within PDF, Microsoft Word® & Microsoft Powerpoint®)

Any outputs from the Design App which incorporate any element or output of the Font, and which embed the Font, must be 'read-only', and the Licensee undertakes to employ technical measures to ensure the same, to obfuscate the Font and embed the Font in such manner that reasonably prohibits any third party from extracting the Font files for their own use.

Documents embedding the Font and created for in-house use or sent to third parties working on behalf of the Licensee as described in Section 3 "Provision to subcontractors" may be editable.

e. Other restrictions

Licensee (and each User) shall refrain from:

- Proceeding to any form of commercial use of the Font or its marketing to any third-party;
- Assigning, providing, lending, renting the Font, granting sublicenses or any other right of use, to any third party, other than Users and, where applicable, Subcontractors pursuant to the above provisions, all or part of the Font;
- Compiling, decompiling, disassembling, translating, analyzing, reverse engineering the Font or attempting to do so (or authorising any third party to do the same), except to the extent permitted by law;
- Using the Font to develop a competing product;
- More generally, proceeding to any act of use or exploitation of the Font not included in the rights granted within this EULA.

3.3 Provision to subcontractors

The Licensee may temporarily provide the Font to a graphic designer, printer, agent, or independent contractor who is working on behalf of the Licensee ("Subcontractors").

The Subcontractors must:

- a. Agree in writing to use the Font exclusively for Licensee's work, according to the terms of this EULA.
- b. Retain no copies of the Font upon completion of the work.

3.4 Other Usage

Licenses for other uses than those granted through this EULA may be available for an additional fee and the granting of specific end-user license agreements. For the avoidance of doubt, the styling of web pages, including by CSS, (even where able to do so via the Design App – for example, Canva) is **not** permitted by this EULA, and a separate web font licence is required for the same.

License by another person to which Licensee may be linked with or another entity of the group to which Licensee may belong shall be subject to a separate agreement.

3.5 Modifications of the Font files

Licensee may not modify the Font files, or create derivative fonts based on the Font without prior written consent from Mostardesign Type Foundry or the owning Foundry EXCEPT THAT Licensee may generate files necessary for embedding or linking in accordance with this EULA.

4. Copyright

The Font, as well as the systems, software, structures, infrastructures, databases, codes and contents of any nature whatsoever (text, images, graphics, logos, trademarks, etc.) used by Mostardesign Type Foundry for operating the Font, are protected by all intellectual property rights in force.

Licensee is solely granted a license to use the Font pursuant to the provisions and the restrictions set forth herein and the Licensee accrues (whether by use or otherwise) no other legal or beneficial rights in the same.

Therefore, any dismantling, decompilation, deciphering, extracting, reusing, copying and, more generally, any reproduction, representation, publishing or use of all or part of any of the items comprised in the Font, without Mostardesign Type Foundry's prior express consent, is strictly prohibited and may lead to prosecution.

For the avoidance of doubt, the Licensee must **not** amend or remove any metadata included within the Font.

5. Term

This EULA enters into force on the earlier of downloading of the Font or validation and payment of the Invoice. Licensee is granted a license for the rights set forth in Section "Scope of the License", for an unlimited term.

On termination, whether for "Termination for breach" in accordance with section 7 or otherwise, the Licensee undertakes immediately and irretrievably delete the Font from its systems, cease all and any use of any outputs created using the Font (and delete the same), and immediately and irretrievably remove the Font from any Design App to which the Font has been uploaded (and ensure that no User can access or make use of the same).

6. Financial conditions

The fees for the Design App use of the Font, as provided for herein, are indicated in the Invoice. These fees must be paid at the date of the subscription of this EULA, prior to the installation and use of the Font.

Mostardesign Type Foundry will not charge additional fees post purchase, annually or otherwise other than the fees set out in the Invoice.

Any payment delay of all or part of the fees at their due term, shall automatically entail, without prejudice to the provisions set out in Section "Termination for breach", and from the day following the payment date indicated in the Invoice, the invoicing by Mostardesign Type Foundry of a late payment interest, payable for the mere fact of expiry of the contractual term, at the rate of 3 (three) times the legal interest rate, calculated on the total of all due amount that were not paid on time, as well as a lump sum of 40 (forty) euros for costs recovery. This rate shall be calculated based on periods of one calendar month. Any month started shall be counted as a whole month.

7. Termination for breach

In the event of breach by Licensee of any of its obligations herein, this EULA may be fully terminated 30 (thirty) days after Licensee has received notice from Mostardesign Type Foundry by registered letter with acknowledgement of receipt, and this having received no response, stating Mostardesign Type Foundry's intention to apply this clause, and this without prejudice of any damages that could be claimed to.

8. Obligations and responsibility of the parties

8.1 Obligations and warranties of Licensee

Licensee undertakes, in its use of the Font, to comply with this EULA, as well as with the laws and regulations in force and not to violate public order or infringe the rights of any third party. It undertakes to ensure the Users comply with the obligations set out herein.

Licensee is solely responsible of its use of the Font and for any act or omission of the provider of the Design App which would constitute a breach of this EULA.

Licensee undertakes to defend, indemnify and hold Mostardesign Type Foundry harmless from and against any claims, demands, actions and/or grievances whatsoever, that Mostardesign Type Foundry could incur as a result of a breach by Licensee of any one of its obligations or guarantees herein, and any claim, allegation, or demand made by any operator of any Design App to which the Font is used in conjunction with, as well as to fully indemnify Mostardesign Type Foundry for any fees, expenses, indemnities and/or charges that Mostardesign Type Foundry could incur as a result of such a breach.

8.2 Obligations and responsibility of Mostardesign Type Foundry

Mostardesign Type Foundry undertakes to provide Licensee with all documents, data and information and more generally, all items reasonably necessary for the appropriate performance of this EULA, including the Font and more generally, all the elements that are required to an optimal use of the Font pursuant to the provisions set forth herein.

Mostardesign Type Foundry shall use all the necessary means to ensure a proper use of the Font, in accordance with its documentation of use. It is Licensee's responsibility to notify Mostardesign Type Foundry with any malfunction of the Font, in attempting to provide as much information as possible. If Mostardesign Type Foundry finds out that the notified malfunction does not originate from the Font (which may include a fault of the Design App, or incompatibility with the Design App), it shall inform so Licensee without delay and have no further liability. Otherwise, Mostardesign Type Foundry shall implement the necessary means to correct the malfunction within a time limit it shall assess, depending of the nature of the malfunction.

The Font is provided "as is". Mostardesign Type Foundry makes no warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose.

Besides, Mostardesign Type Foundry should not be held responsible in case of momentary difficulty or impossibility to use the Font because of circumstances being outside the Mostardesign Type Foundry's control, force majeure, or any disruption in the telecommunications network.

In any event:

- (i) Mostardesign Type Foundry shall not be liable for any direct, indirect, consequential, or incidental damages (including damages from loss of business profits, business interruption, loss of business information, and the like) arising out of the use of or inability to use the Font even if Mostardesign Type Foundry has been advised of the possibility of such damages;
- (ii) In case Licensee is a professional client, Mostardesign Type Foundry's responsibility shall be limited to the fees paid by Licensee in return for the desktop use of the Font, as set out in Section "Financial conditions". Even so, Mostardesign Type Foundry shall be held liable only in case Licensee issue a claim by registered letter with acknowledgement of receipt within one month of the event giving rise to the alleged damage.

9. Miscellaneous

9.1 Relations between the parties

It is expressly agreed that neither party may invoke any of the provisions of this EULA in order to claim in any way that they have the status of an agent, representative or employee of the other party, or to commit the other party vis-à-vis third parties.

No legal structure of any kind is formed herein between the parties, with each of them remaining entirely independent and maintaining their own responsibilities and customers.

9.2 Partial non-validity and amendments

The nullity or inapplicability of any of the provisions of this EULA shall not entail the nullity of the other provisions, which shall retain their force and scope. The parties shall come together to decide in good faith on the amendments necessary to place each of them in an economic situation comparable to that which would have resulted from the application of the clause subject to nullity.

Any modification or amendment to this EULA must be subject to a written addendum between the parties.

9.3 Non-waiver

If one of the parties does not enforce any of their rights or does not demand the execution of any of the obligations or responsibilities of the other party under this EULA, this shall not in itself be regarded as a waiver by such party of their rights, obligations and responsibilities under this EULA.

10. Governing Law

This EULA is governed by the laws of France.

In case Licensee is a professional client, in the event of any dispute that may arise in connection with its interpretation, its validity or its enforcement, the parties shall attempt to settle amicably this dispute. Should the Parties fail to reach to an amicable settlement within a period of 2 (two) months after the date of the first notice sent by one party to the other party, this dispute shall be subject to the exclusive jurisdiction of the courts of Perigueux (France), save conflicting mandatory rules of practice.