

Autodesk DesignKids 2009

License Agreement

IMPORTANT: BY OPENING THE SEALED SOFTWARE PACKET(S) OR INSTALLING THE SOFTWARE, INSTITUTION AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (“LICENSE AGREEMENT”). THESE ARE THE ONLY TERMS UPON WHICH THE AUTODESK, INC. (“AUTODESK”) SOFTWARE PRODUCTS ARE LICENSED. IF YOU DO NOT AGREE TO THESE TERMS, WITHIN THIRTY (30) DAYS OF PURCHASE, RETURN THE SOFTWARE, THE SOFTWARE PACKAGE(S), AND ALL OTHER ITEMS IN THE PACKAGE, WITH DATED PROOF OF PURCHASE, TO THE LOCATION WHERE YOU ACQUIRED IT FOR A FULL REFUND. YOU MAY NOT USE THE SOFTWARE AND MUST RETURN IT IF YOU DO NOT AGREE TO THIS LICENSE AGREEMENT. NO REFUND WILL BE GRANTED ONCE THE AUTHORIZATION CODE HAS BEEN ISSUED. THIS LICENSE AGREEMENT SUPERSEDES ANY END USER LICENSE AGREEMENT THAT MAY APPEAR WHEN INSTALLING THE SOFTWARE.

COPYING THE COMPUTER PROGRAM(S) OR DOCUMENTATION EXCEPT AS PERMITTED BY THIS LICENSE IS COPYRIGHT INFRINGEMENT UNDER THE LAWS OF YOUR COUNTRY. IF YOU COPY AUTODESK COMPUTER PROGRAM(S) WITHOUT PERMISSION OF AUTODESK, YOU ARE VIOLATING THE LAW. YOU MAY BE LIABLE TO AUTODESK FOR DAMAGES, AND YOU MAY BE SUBJECT TO CRIMINAL PENALTIES.

1. DEFINITIONS.

- 1.1 “ADK” means the Autodesk® DesignKids™ program which allows for educational institutions to purchase certain Autodesk® products through an ADK Package.
- 1.2 “ADK Package” means solution packages that contain certain Autodesk products, the composition of which may be changed from time to time by Autodesk in its sole discretion.
- 1.3 “Documentation” means the manuals, handbooks, brochures, folders, or other publications, in printed or digital form, that are included in or accompany the Software and which describe its qualities, characteristics, installation, use, or other aspects.
- 1.4 “Faculty” means only those who are employed personnel of the Institution during the Term of the license.
- 1.5 “Institution” means the educational institution that has licensed the Software as listed on the Order Form. Such Institution shall be a secondary school, exclusive of high school, that is recognized or accredited by the appropriate governmental agency in the Institution’s jurisdiction.
- 1.6 “Institution Site” means the Institution’s one (1) primary campus only. Institution Site does not include any computer labs, classrooms, or offices located on any of Institution’s remote or satellite campus sites, or Student personal computers. An Institution Site shall not mean multiple Institution campuses.
- 1.7 “Media” means any physical media that holds data, such as CD-ROMs and DVDs.
- 1.8 “Software” means the compilation of the Autodesk software programs included in the ADK package.
- 1.9 “Software Title” means the individual software programs included in the ADK package.
- 1.10 “Software Update or Upgrades” means updated (or future versions) of the Software that which may be commercially released by Autodesk for the Software, and does not include support services.

- 1.11 “User” means a permitted end user that Institution may authorize to use the Software as set forth in this Section 1.11. Institution may permit students or faculty to use the Software for educational instruction purposes only and not for commercial or for-profit purposes or for campus administration or facilities management.

2. AUTODESK SOFTWARE LICENSE.

UNLESS OTHERWISE SET FORTH IN THIS LICENSE AGREEMENT, THE TERMS AND CONDITIONS SET FORTH IN THIS LICENSE AGREEMENT APPLY TO ALL SOFTWARE LICENSES PURCHASED AS PART OF THE ADK PROGRAM.

- 2.1 In consideration of the license fees paid by Institution, Autodesk grants to Institution a nonexclusive, nontransferable license to reproduce and use the Software solely for the purposes of educational instruction, administration, not-for-profit adult education, or facilities management, and not for any commercial or for-profit purposes, including corporate training. Institution may not sell, license, or otherwise transfer the Software or any license granted under this License Agreement to any third parties, including, but not limited to, Students or Faculty; nor shall Institution allow any third party to use the Software, except for Users. Further, departments or divisions within Institution may not sell, license or otherwise transfer the Software to other departments or divisions within Institution for profit. Reproduction and use of the Software by Institution shall at all times be strictly in accordance with the terms of this License Agreement. Institution acknowledges that Student use of the Software on a Student personal computer is prohibited. Institution shall be responsible for enforcing the terms of this License Agreement and shall make the terms of this License Agreement available to Users.

- 2.2 Institution may reproduce copies of the Software and Documentation solely in accordance with the following terms and conditions:

2.2.1 Institution may reproduce for use only the Software bearing the unique serial number assigned by Autodesk to the Institution site.

2.2.2 Institution may install and operate the Software as set forth below.

The Institution has the right to either (a) install a maximum of ten (10) licenses of the Software included in Institution’s ADK package on a maximum of ten (10) individual computers that are located at the Institution Site OR (b) allow use of the Software over a secure, privately maintained internal local area network by installing and operating the Software only on a single server computer located on the Institution Site, or on an individual computer located on the Institution Site as a multiple-user installation. In either case, the maximum number of concurrent users of the Software is ten (10). Institution may also install the Software in a manner that allows use on both individual computers and over Institution’s network, but the total number of concurrent Users shall not exceed ten (10). For avoidance of doubt, the total number of concurrent Users applies to the ADK Package and does not apply to each Software Title with in the ADK Package. Additional ADK Licenses may be purchased by the Institution at the then-current price.

2.2.3 Institution may use the Software and Documentation only at one Institution Site.

2.2.4 Notwithstanding the restrictions set forth above, Institution may permit instructors of courses utilizing the Software to install one (1) copy of such Software on such instructor’s personal computer solely to facilitate classroom instruction and preparation.

2.2.5 Institution shall appoint an administrator who shall be solely responsible for making and administering copies of the Software and the Documentation. Institution is authorized to make a reasonable number of copies of the Documentation that it receives in electronic form on any master Media distributed with the Software as long as such copies are used in furtherance of or in

connection with Institution's authorized use of the Software as set forth in this License Agreement.

2.2.6 Institution may make and retain one (1) archival copy of the Software for the sole purpose of replacing the original copy provided by Autodesk in the event of damage to or destruction of the said original.

2.2.7 Autodesk reserves the right to audit Institution during normal business hours, upon twenty-four (24) hours notice, to determine whether Institution, or other parties, is in compliance with all terms and sections of this License Agreement.

2.3 Curriculum Media. Institution and Faculty who are Users shall have the right to use such Media for educational instruction purposes only and are permitted to distribute copies of the curriculum Media in the classroom for classroom use only.

2.4 Software Upgrades. Software Upgrades, when and if commercially available, may be purchased by Institution no more than once a year at the then-current fee. All Software Upgrades are subject to the terms of the license agreement that accompanies the Software Upgrades and this License Agreement, with this License Agreement controlling if there is a conflict, and any then current Autodesk upgrade policies.

3. TERM AND TERMINATION.

3.1 Term. The term of the license is perpetual, unless terminated as set forth herein. Purchases of any additional licenses of Software shall be at the then-current price.

3.2 Termination For Cause. In the event of a breach of this License Agreement, the non-defaulting party may terminate this License Agreement upon not less than thirty (30) days written notice to the other, provided such default is not cured within thirty (30) days after receipt of written notice of such default by the defaulting party. Failure by Institution to pay any amounts when due or to comply with Section 2 of this License Agreement shall be considered a material breach of this License Agreement.

3.3 Cancellation of the Program. Autodesk may modify, change, or discontinue the ADK program in any manner at any time during the term. In the event that Autodesk discontinues the ADK program, Autodesk may discontinue providing the Software Upgrade rights. The license to use the Software shall not terminate upon cancellation of the ADK program unless otherwise subject to termination as set forth herein.

3.4 Effect of Termination. Upon termination of this License Agreement for any reason, all rights of Institution and Users under this License Agreement, including, without limitation, the right to reproduce and use the Software and Documentation, including at all Institution Sites, shall terminate. Notwithstanding the foregoing, Institution shall immediately (a) delete all copies of the Software and the Documentation from its computers and (b) destroy all media containing copies of the Software and all Documentation in Institution's possession (this includes Users) and certify such deletion and destruction to Autodesk.

4. RESTRICTIONS.

Institution and User may neither do, nor permit another party to do, the following:

- (a) Copy the Software or Documentation except as permitted by this license;
- (b) Reverse engineer, decompile, or disassemble the Software except to the extent permitted by law where this is indispensable to obtain the information necessary to achieve interoperability of an independently created program with the Software or with another program and such information is not readily available from Autodesk or elsewhere. Institution may not decompile the Software if such information is available by licensing any Autodesk Software Developer's Kit through an authorized Autodesk partner or representative or through any Autodesk office;

- (c) Distribute, rent, loan, lease, sell, sublicense, or otherwise transfer all or part of the Software, Documentation, or any rights granted hereunder to any other person without the prior written consent of Autodesk or unless otherwise provided herein;
- (d) Remove, alter, or obscure any proprietary notices, labels, or marks from the Software or Documentation;
- (e) Modify, translate, adapt, arrange, or create derivative works based on the Software or Documentation for any purpose;
- (f) Utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy protection used by Autodesk in connection with the Software, or use the Software together with any hardware or software lock, activation or authorization code, serial number, or other copy protection device not supplied by Autodesk directly or through an authorized Autodesk representative or partner, unless authorized by Autodesk; provided, however, that to the extent the Software is used together with any device or product not supplied by Autodesk directly or through an authorized Autodesk representative or partner, Institution agrees that Autodesk shall not be responsible for the support or maintenance of any such use by Institution or Student, if applicable;
- (g) Use the Software or Documentation outside of the country in which it was purchased;
- (h) Export the Software or Documentation in violation of U.S. or other applicable export control laws;
- (i) Provide access to the Software or Documentation to any person or entity other than Users expressly authorized by Institution.

5. COPYRIGHT.

Title and copyrights to the Software, Documentation, and accompanying materials and any copies made by Institution remain with Autodesk. Unauthorized copying of the Software or Documentation, or failure to comply with the above restrictions, will result in automatic termination of this license.

6. LIMITED WARRANTY AND DISCLAIMERS.

6.1 Limited Warranty. Autodesk warrants that for a ninety (90) day period beginning on the date of delivery of the Software to Institution, as evidenced by Institution's receipt, the Software will provide the features and functions generally described in the Documentation and that the media on which the Software is furnished, if any, will be free from defects in materials and workmanship. Autodesk's entire liability and Institution's exclusive remedy under the limited warranty provided in this Section 6.1 will be, at Autodesk's option, to attempt to correct or work around errors, to replace the defective media on which the Software is furnished, if any, or to refund the license fees and terminate this License Agreement. Such refund is subject to the return of the defective media, if any, Documentation, with a copy of Institution's receipt to Institution's local Autodesk office or the Authorized Autodesk Representative from whom the Software was obtained within ninety (90) days from the date of delivery of the Software to Institution.

6.2 Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN SECTION 6.1 HEREOF, AUTODESK MAKES AND INSTITUTION RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FUNCTIONALITY IN THE DOCUMENTATION OR ANY COMMUNICATION WITH INSTITUTION CONSTITUTES TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, AUTODESK SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING AUTODESK DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

7. WARNINGS.

Functionality Limitations. COMPUTER-AIDED DESIGN SOFTWARE AND OTHER TECHNICAL SOFTWARE ARE TOOLS INTENDED TO BE USED BY TRAINED PROFESSIONALS ONLY. THEY ARE NOT SUBSTITUTES FOR PROFESSIONAL JUDGMENT. COMPUTER-AIDED DESIGN SOFTWARE AND OTHER TECHNICAL SOFTWARE ARE INTENDED TO ASSIST WITH PRODUCT DESIGN AND ARE NOT SUBSTITUTES FOR INDEPENDENT TESTING OF PRODUCT STRESS, SAFETY, AND UTILITY. DUE TO THE LARGE VARIETY OF POTENTIAL APPLICATIONS FOR THE SOFTWARE, THE SOFTWARE HAS NOT BEEN TESTED IN ALL SITUATIONS UNDER WHICH IT MAY BE USED. AUTODESK SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SOFTWARE. PERSONS USING THE SOFTWARE ARE RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF THE SOFTWARE. THIS RESPONSIBILITY INCLUDES, BUT IS NOT LIMITED TO, THE DETERMINATION OF APPROPRIATE USES FOR THE SOFTWARE AND THE SELECTION OF THE SOFTWARE AND OTHER PROGRAMS TO ACHIEVE INTENDED RESULTS. PERSONS USING THE SOFTWARE ARE ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY PROGRAM OUTPUT, INCLUDING ALL ITEMS DESIGNED BY USING THE SOFTWARE.

8. LIMITATION OF LIABILITY.

IN NO EVENT SHALL AUTODESK OR ITS LICENSORS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, DATA, OR COST OF COVER. IN ADDITION, IN NO EVENT SHALL THE LIABILITY OF AUTODESK OR ITS LICENSORS FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT EXCEED THE AMOUNT PAID OR PAYABLE BY INSTITUTION FOR THE SOFTWARE PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES. THIS LIMITATION WILL APPLY TO ANY DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, EVEN IF AUTODESK OR ANY AUTODESK RESELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE.

Autodesk shall have no responsibility or liability whatsoever arising from loss or theft of the Software or of any copy protection device with which the Software is supplied. Specifically, Autodesk shall not be obligated to replace any lost or stolen software or copy protection device. Institution is solely responsible for safeguarding the Software and any copy protection device from loss or theft and protecting Institution's investment through insurance or otherwise. The above limitation may not apply to Institution because some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages.

9. GENERAL.

Autodesk shall not be liable for any loss, damage, or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay, or other causes beyond Autodesk's reasonable control. Institution shall not assign or sublicense the License Agreement or any right or license hereunder without the prior written consent of Autodesk. No modification to this License Agreement, or any waiver of any rights, shall be effective unless agreed to in writing by both parties. The waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. All notices shall be in writing and mailed to the address set forth in the Order Form. Any notice is effective when delivered, and if delivery cannot be accomplished through no fault of addressor, when mailed. If any provision of these license conditions is found to be invalid or otherwise unenforceable, the further conditions of this license will remain fully effective and the parties will be bound by obligations which approximate, as closely as possible, the effect of the provision found invalid or unenforceable, without being themselves invalid or unenforceable. This License Agreement constitutes the entire and exclusive License Agreement between the parties hereto with respect to the subject matter hereof. This License Agreement and the license granted hereby shall terminate without further notice or action by Autodesk if Institution, the licensee, becomes bankrupt, makes an arrangement with Institution's creditors, or goes into liquidation. This License Agreement shall not be governed by the UN Convention on Contracts for the Sale of Goods. This License

Agreement shall be governed by the laws of the State of California, U.S.A., including its Uniform Commercial Code without reference to conflict-of-laws principles. This License Agreement, the Order Form, and any other documentation or materials supplied by Autodesk with the Software is the entire agreement between us and supersedes any other communications or advertising with respect to the Software and Documentation.

10. U.S. GOVERNMENT RESTRICTED RIGHTS.

The Software and Documentation are “Commercial Items,” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Software and Documentation are being provided to U.S. Government end users (1) only as a Commercial Item, and (2) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement. Manufacturer is Autodesk, Inc., 111 McInnis Parkway, San Rafael, California 94903, USA.

11. CANADIAN SALES. If Institution purchased this product in Canada, Institution agrees to the following: The parties hereto confirm that it is their wish that this License Agreement, as well as other documents relating hereto, including Notices, have been and shall be written in the English language only. Les parties ci-dessus confirment leur desir que cet accord ainsi que tous les documents, y compris tous avis qui s’y rattachent, soient rediges en langue anglaise.