

RMDesigner User License Agreement

This User License Agreement (ULA) is a legal agreement between the user (whether an individual, firm, corporation, or other single entity) and Elk Products, Inc. (us). By installing, copying, or otherwise using RMDesigner (the software), the user (you) agree to be bound by the terms of this ULA. If you do not agree to the terms of this ULA, Elk Products, Inc. is unwilling to license the software to you. In such event, you may not use, copy, or install the software.

1. License

a. Software Use - It shall be hereby understood that this software is licensed, not sold. Elk Products, Inc. retains all rights of ownership to the software, its components, the media containing it, and all accompanying materials. Subject to the terms and conditions set forth in this agreement, Elk Products, Inc. hereby grants you a non-exclusive, non-transferable license to use the software. The software shall not be used for any purpose other than in connection with your installation and servicing of control systems manufactured by Elk Products, Inc. You shall comply in all respects with any instructions or other materials furnished by us to you with respect to the software.

b. Back-up Copies - You are granted the right to make as many back-up copies of the software you deem necessary for the sole purpose of restoring the software should the original media become lost or damaged. The originals and all copies remain the property of Elk Products, Inc., irrespective of the ownership of the media on which the software and related materials are contained.

c. Software Installation – This software requires a license key and may only be installed on one computer per key.

d. Network Use – This software cannot be installed on a network for use on multiple computers

e. Technical Support Limitations – Elk Products provides only limited technical support for the RMDesigner software. Telephone support is restricted to issues or questions related only to the actual installation of the software onto a single computer. Operational support, including but not limited to: setting up RM Designs, manipulation or creation of graphics, etc. is not available by telephone. Elk's Website contains on-line video tutorials as well as an email link where some questions may be addressed. Telephone technical support is not provided for questions related to operational issues. Elk encourages users to seek knowledge in creation or manipulation or graphic designs on their own or through an education facility, prior to use of this software. It shall be understood that Elk Products does not provide graphics training and shall not be responsible for such instruction or support. In all cases, only the designated Responsible Individual assigned by the ULA is entitled to any provided support from Elk. The ULA holder may reassign the Responsible Individual only by written notification to Elk.

2. Confidentiality

You hereby shall expressly understand that the software constitutes valuable proprietary products and trade secrets of Elk Products, Inc., embodying substantial creative efforts and confidential information, ideas, and expressions. During the term of this agreement and thereafter, you will not disclose, describe, or provide copies of the software or any part of it to any third party without the express written consent of Elk Products, Inc. You may not rent, lease, or lend the software to any third party without the express written consent of Elk Products, Inc. You shall take appropriate action to see that each of your employees, agents, independent contractors, and other parties that have access to the software comply with the requirements set forth in this Section. Your obligations under this paragraph shall survive the termination of this agreement, regardless of the reason for any termination.

3. Limited Warranty

Elk Products, Inc. warrants that the software will perform substantially in accordance with the accompanying written materials and/or on-line help for a period of ninety (90) days from the date of receipt. We also warrant the media containing the software and accompanying materials to be free from manufacturing defects for a period of ninety (90) days from the date of receipt. Any implied warranties on the software, media, and accompanying materials are limited to ninety (90) days. Some jurisdictions do not allow limitations on the duration of implied warranties, so the above limitation may not apply to you.

Elk Products, Inc. agrees to replace any defective software, media, or materials for any defective software, media, or materials which is reported to us in writing or by telephone. We may require the defective media and all accompanying materials be returned to us before issuing the replacement or refund. Elk Products, Inc. shall have no obligation whatsoever to replace the software if any defects in the software shall have been caused by or related to (i) any malfunction of your computer equipment, (ii) your own negligence or fault, (iii) accident, abuse, or misapplication of the software, (iv) your failure to comply with any instructions or other materials furnished by us to you with respect to the software, or (v) changes or modifications made to the software made by you or others (except changes made by Elk Products, Inc.).

To the maximum extent permitted by applicable law, Elk Products, Inc. disclaims all other warranties, whether express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose with regard to the software and accompanying materials. This warranty gives you specific legal rights. You may have others which vary from jurisdiction to jurisdiction.

4. Consequential Damages

To the maximum extent permitted by applicable law, in no event shall Elk Products, Inc. be liable for any damages whatsoever (including without limitation, special, indirect, incidental, or consequential damages for personal injury, loss of business profits, business interruption, or loss of business information) arising out of the use, misuse, or inability to use the software, even if we have been advised of the possibility of such damages. In any case, our liability under any provision of this agreement shall be limited to the amount actually paid by you for the software. Because some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, the above limitation may not apply to you.

5. Modifications and Reverse Engineering

You may not modify, enhance, or alter the software, in whole or in part. You may not reverse engineer, decompile, or disassemble the software, in whole or in part. The software is licensed as a single product. Its component parts may not be separated for use on more than one computer nor disseminated to third parties.

6. Upgrades

In the event Elk Products, Inc. modifies or enhances the software during a period of twenty-four (24) months following the date you received the software, we shall provide an upgrade of the software at no additional charge to you. You must have a valid license to use the software in order to obtain, install, and use an upgrade. An upgrade replaces and/or supplements the software you already have. You may use the resulting upgraded product only in accordance with the terms of this ULA.

7. Transfer, Assignment, and Subcontracting

Neither this ULA, the rights hereunder, nor the license granted herein to the software may be assigned or transferred by you to a third party without Elk Products, Inc.'s prior written consent.

8. Export Restrictions

You agree that neither you, your employees, agents, or independent contractors intend to or will, directly or indirectly, export or transmit the software, media, accompanying materials, or technical information regarding the software to any country to which export or transmission is restricted by applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or other such governmental entity as may have jurisdiction over such export or transmission.

9. Copyright

The software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The software is licensed, not sold. All title and copyrights in and to the software and accompanying materials are owned by Elk Products, Inc. All rights not specifically granted under this ULA are reserved by Elk Products, Inc.

10. Term and Termination

Except where otherwise stated in this ULA, this agreement and the license granted herein shall continue in effect until terminated as provided herein. Elk Products, Inc. may terminate this agreement and the license granted herein immediately if you breach any provision of this agreement. You may terminate this agreement and the license granted herein at any time upon prior written notice to us. This agreement and the license granted herein shall automatically terminate in the event that (i) You terminate or suspend your business, (ii) you are liquidated or dissolved, (iii) you petition for relief under bankruptcy laws or any involuntary petition for bankruptcy is filed against you, or there is any assignment or other similar arrangement by you for benefit of your creditors.

In the event this agreement is terminated, you shall uninstall or permanently remove all copies of the software and related materials from your computers. You shall also destroy or return all originals and copies of the software and its component parts, media, and accompanying materials to Elk Products, Inc.

11. Amendments

No amendment, change, or modification of this agreement shall be effective or enforceable unless it is in writing and has been executed by each party to this agreement.

12. Invalidity

Should any clause, provision, or portion of this agreement be ruled invalid, void, illegal, or otherwise unenforceable by any court, magistrate, referee, arbitrator, or by any other process or any other proceeding, it shall be deemed to be stricken and the remainder of this agreement shall continue to be in effect and fully enforceable.

13. Binding Effect and Controlling Law

This ULA shall be binding upon the parties hereto and their respective successors and assigns, and shall be governed and construed under the laws of the State of North Carolina.

I hereby agree to the terms and conditions of this User License Agreement, and designate the following individual within my company or organization as the Responsible Individual entitled to contact Elk for any provided help or assistance.

Name of Responsible Individual for Support Issues: _____

Signed: _____ Date: _____

Title: _____