

GENERAL TERMS AND CONDITIONS FOR THE LICENSING OF SOFTWARE AS PART OF A DELIVERY

SUPPLEMENT TO AND MODIFICATION OF THE "GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICES OF ENDRESS+HAUSER COMPANIES IN GERMANY" ("GTC")

1. SUBJECT OF THESE TERMS AND CONDITIONS

1.1 These Terms and Conditions are used solely to supplement our General Terms and Conditions of Delivery and Services (hereinafter "GTC") for the purpose of licensing software (hereinafter "Software") provided for use as part of, or delivered with, Endress+Hauser devices (hereinafter "Hardware") and for the complete delivery in those cases in which a violation of contractual obligations or neglect of duty are caused by the Software. These Terms and Conditions apply to Software that is licensed for a definite period of time as well as to Software licensed for an indefinite period of time. Otherwise, with the exception of Paragraph 5 (Trial Purchase), solely the GTC is valid for Hardware.

1.2 To the extent that Software to which we possess only a derived right of use (external software) is licensed to the customer, the rights of use agreed upon between us and our licensor are additionally valid and have priority over the rights of use in these Terms and Conditions. Should we provide the customer with open source software, the rights of use applying to open source software are additionally valid and have priority over the rights of use in these Terms and Conditions. The customer will be informed about those rights of use applying to the external or open source software and having priority over the rights of use in these Terms and Conditions, or such divergent rights of use will be published on-line.

1.3 For the purpose of these terms and conditions, firmware is not "Software".

1.4 Insofar as these Terms and Conditions contain no provision, the GTC applies.

1.5 These Terms and Conditions do not obligate us to update or maintain the Software. These services require a separate agreement.

2. DELIVERY

2.1. We will deliver one copy of the Software as binary code on a data carrier or on-line to the customer.

2.2 A separate written agreement is required for the provision of documentation. Should documentation also be provided, the term "Software" in these Terms and Conditions also includes the documentation. In those cases in which we supply the Software on a data carrier, we still have the right to provide only an on-line version of the documentation.

2.3 The customer must install the Software himself, test that the Software functions correctly, and inform us without delay of any defects found.

2.4 Should a license key be necessary to use the Software, it will be supplied to the customer in binary form. The license key is specific to the customer and may be used for the purpose of using the licensed

Software solely by the customer. Transfer of the license key to third parties is allowed only under the conditions specified in Clause 3.5.

3. RIGHTS OF USE

3.1 The customer is granted the simple, non-exclusive right to use the Software. The right of use is limited to the period of time agreed upon in the principal contract. Should there be no such provision in the principal contract, there is no time limit on the right of use.

3.2 The customer may use the software only with the Hardware specified in the contract documents; should no hardware be mentioned in the contract documents, only with the Hardware delivered with and belonging to the Software. Use of the Software with another device requires our explicit written consent. In case the Software is used with a device more powerful than the one with which the Software was delivered we are entitled to appropriate additional recompense. This condition does not apply to those cases in which, and for the time during which, the customer, because of a defect in the original device, temporarily uses the Software on a replacement device to the extent agreed upon.

3.3 Unless the customer has obtained a Multiple-User License in accordance with Clause 3.6, the customer may use the licensed Software only on one computer or device at one time for each license obtained, even if more than one device is mentioned in the contract documents ("single-user license"). Should a device provide more than one work station at which the Software can be used independently, a single-user license covers the use at only one work station.

3.4 The customer may copy the Software only once for archival purposes only ("backup copy"). Otherwise, the customer may copy the Software only for use with a Multiple-User License according to Clause 3.6. Transfer, rental, or leasing of the Software to third parties is not permitted.

3.5 Should the rights of use be granted for an unlimited time period, the following terms and conditions apply:

3.5.1 The customer is granted the right to transfer his rights of use to a third party. This right may be revoked for cause. However, customers to which the Software was not provided for the purpose of further sale may transfer the rights of use to a third party only together with the device that was purchased from us together with the Software ("Bundle"). Should the rights of use be transferred to a third party, the customer must ensure that the third party is not granted rights of use more extensive than those granted to the customer in this contract, and ensure that the third party must fulfill at least the obligations

concerning the Software in the existing contract. Should the rights of use be transferred to a third party, the customer may retain no copies (including backup copies) of the Software.

3.5.2 The customer may not grant sublicenses.

3.5.3 Should the customer transfer the Software to a third party, the customer is responsible for the observation of any applicable export regulations and must indemnify us from obligations in this regard.

3.6. In order to use the Software on more than one device or at more than one work station simultaneously, the customer must always have a separately-agreed-upon right to use. Even though no copying of the Software occurs, the same condition applies to the use of the Software in networks. In the previously mentioned cases (hereinafter referred to as "Multiple-User License(s)"), the provisions in Clauses 3.6.1 and 3.6.2 apply additionally and have priority over those in Clauses 3.1 to 3.5.

3.6.1 Our express written confirmation of the number of copies the customer may make of the licensed Software and of the number of the devices upon, and/or work stations at, which the Software may be used is required for a Multiple-User License. For Multiple-User Licenses, Clause 3.5.1 Sentence 3 is valid only under the condition that the customer may transfer the Multiple-User License to a third party only when customer transfers the Multiple-User License in its entirety and with all devices on which the Software may be used.

3.6.2 The customer must observe the conditions concerning copying the Software that we send him with the Multiple-User License. The customer must keep written records concerning the location of all copies and show them to us upon request.

3.7. Should the customer be provided with Software that can be used independently of any particular Hardware or device, e.g., on a computer or a personal computer, (hereinafter "standalone Software"), the provisions in Clauses 3.7.1 and 3.7.2 apply additionally and have priority over those in Clauses 3.1 to 3.6.

3.7.1 Clause 3.2 does not apply.

3.7.2. Clause 3.5.1, Sentence 3 does not apply to standalone Software.

4. ASSUMPTION OF RISK

Clause 5 of the GTC is supplemented as follows:

When Software is transferred via electronic means of communication, the customer assumes risk as soon as the Software leaves our sphere of influence (e.g., when downloading or e-mailing).

5. TRIAL PURCHASE / EVALUATION LICENSE

Should we offer a "trial purchase" the following provisions apply:

5.1. A trial purchase always requires an express written agreement.

5.2 The customer has the right to test the goods (Hardware and Software) without obligation for the agreed-upon period of time; without an express agreement, for 90 days from the date of delivery. We grant him the right of return for this period of time.

5.3. After this trial period, the purchase contract shall be deemed to have been accepted. Lack of response will be considered to be acceptance of the goods. With acceptance, the customer assumes risk.

5.4 Should the customer invoke his right of return, the purchase contract is moot. The customer must then return the goods in their original packaging, including interior packaging, at his own expense. Installed Software must be completely deleted. The customer may keep no copies of the Software (including backups). The license key may no longer be used and must be destroyed. Clause 3.4 applies as appropriate.

5.5. Should the customer's goods deteriorate during the test period, compensation may be claimed. Should the deterioration be due solely to correct testing of the goods by the customer, this clause does not apply.

Should we offer an evaluation license of the Software, the following terms apply:

5.6. An evaluation license always requires an express written agreement.

5.7. The customer obtains a simple, non-exclusive right to use the Software without charge for the period of time agreed upon; should no period of time have been agreed upon, for 90 days after delivery of the Software. Within this period of time, the customer may test the Software for functional capability before making a decision about purchasing the Software. The functional capability of the evaluation version of the Software can be limited when compared to that of the full version. Clause 3.4 shall apply accordingly.

5.8. The customer uses the Software solely at his own risk. During the evaluation period, we assume no liability for material defects or violation of third party intellectual property rights.

5.9. After the evaluation period has expired, the right of use expires automatically. The Software may no longer be used without a license key. Installed Software must be completely deleted. The customer may not keep any copies (including back-up copies) of the Software.

5.10. In order to continue to use the Software after the evaluation period has expired, the customer must legally purchase it. He will then be provided with license key specific for his installation. With this license key, the Software can be activated as agreed upon in the license obtained. With the delivery of this key, the customer assumes risk. With the assumption of risk, Paragraphs 6 and 7 apply.

6. DEFECTS

6.1. For Software that has been licensed for an indefinite period of time, the following provisions apply in addition to those in Paragraph 10 GTC.

6.1.1 The statutory period of limitation for claims due to material defects is 12 months. The period of limitation begins at the time the customer assumes risk.

6.1.2 Defects are only those deviations from specification that are reproducible and are proven by the customer. Problems due to the customer's hard-

and software environment, improper operation, faulty data from external sources, disturbances in computer networks, or other causes arising from the customer's area of responsibility are not defects.

6.1.3. Notice of defects must occur without delay and in writing. E-mail and fax also fulfill this requirement. The customer must describe the defect and the corresponding data processing environment as exactly as possible.

6.1.4 In particular, should the customer, without our permission, change the Software himself or have a third party change the Software for him, claims due to defects do not exist unless the customer can prove that the defect was not caused by this change. Unless we have expressly assured so in writing, we assume no liability for the compatibility of the licensed Software with the customer's data processing environment.

6.1.5 Should the Software contain a defect, we have the choices of, within a reasonable period of time, delivering replacement software, correcting the defect, or making available a workaround providing equivalent functional capability.

6.1.6 Should rectification be unsuccessful before a reasonable deadline set by the customer expires, the customer may, without endangering any claims for damages, after a second reasonable deadline has expired without remedy, withdraw from the contract in its entirety or reduce the remuneration. The right to rescind the contract does not apply when the defect is minor.

6.2. For Software that has been licensed for a fixed period, Clauses 6.1.2 through 6.1.6 apply as appropriate. Clause 6.1.6 applies in that the right to cancel the contract without notice replaces the right to rescind the contract.

7. INTELLECTUAL PROPERTY RIGHTS

Supplementary to and modifying Paragraph 10 GTC, the following terms and conditions apply:

7.1 To the extent of our knowledge, the Software violates no third party intellectual property rights. However, we assume no liability for the Software being free of third party industrial property rights or copyrights (Hereinafter referred to jointly as "intellectual property rights"), except for intellectual property rights valid in the Federal Republic of Germany. This provision also applies when the customer uses the Software outside of the Federal Republic of Germany, and whether or not we have been informed of this fact by the customer beforehand. Should the use of the Software violate third party intellectual property rights, we have the choice between, to the extent that the customer can be reasonably expected to accept such measures, changing the Software so that it no longer violates these intellectual property rights, or of obtaining permission for the customer to use the Software according to these Terms and Conditions without restrictions and without further expense.

7.2. Notices concerning ownership of intellectual property or other rights on the data carrier, in the

Software, or in the documentation may not be removed.

7.3 Should any other defects of title exist, the terms and conditions in Paragraph 6 apply as appropriate.

8. CUSTOMER'S OBLIGATIONS

The customer must take reasonable precautions against the partial or complete malfunction of the Software. Before the customer uses the Software operationally, he must thoroughly test the suitability of the Software for the purpose for which he intends to use it. In addition, he must save his data on appropriate data carriers according to the current state of the art. He must ensure that current data can be restored with acceptable effort from data stored in machine-readable form.

9. LIABILITY

Supplementary to Paragraph 11 GTC the following terms and conditions apply:

Should data be lost, we are liable only for the customary expenses of data restoration, i.e. those expenses that would have arisen should the customer have properly backed up his data. We are not liable for damages occurring because the customer temporarily or permanently discontinues using the Software.