

**GENERAL TERMS AND CONDITIONS FOR THE LICENSING OF SOFTWARE BY  
ENDRESS+HAUSER COMPANIES IN GERMANY****1. SUBJECT OF THESE TERMS AND CONDITIONS**

1.1 The subject of these Terms and Conditions is the licensing of the Endress+Hauser software more closely described in principal contract, including the documentation belonging to the software, for definite or indefinite periods of time. (The software and any relevant documentation are henceforth referred to as “the Software”).<sup>1</sup>

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 either 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 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 3.3.

**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 Should the right to use be granted for a fixed period, the following Terms and Conditions apply:

3.2.1 Unless the customer has been granted a multiple-user license according to Clause 3.4, he may use the licensed Software only on one computer or device at any one time for each license he possesses (“single-user license”). Should a device provide more than one work station at which independent instances of the Software can be used, a single-user license covers the use at only one work station.

3.2.2 The customer may copy the Software only once for archival purposes (“backup copy”). Otherwise, the customer may copy the Software only for use with a multiple-user license according to Clause 3.4. Transfer, rental, or leasing of the Software to third parties is not permitted.

3.3 Should the rights of use be granted for an indefinite time period, the following Terms and Conditions apply:

3.3.1 The customer is granted the right to transfer his rights of use to a third party. This right may be revoked for significant reasons. 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 these Terms and Conditions and ensure that the third party must fulfill at least the obligations in these Terms and Conditions concerning the Software. Should the rights of use be transferred to a third party, the customer may not retain any copies whatsoever (including backup copies) of the Software.

3.3.2 The customer may not grant sublicenses.

3.3.3 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.

3.4. 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. The same condition applies to the use of the Software in networks, even in those cases in which no copying of the Software occurs. In the previously mentioned cases (hereinafter referred to as “Multiple-User License(s)”), the provisions in Clauses 3.4.1 to 3.4.3 (below) apply additionally and have priority over those in Clauses 3.1 to 3.3.

3.4.1 Our express written confirmation of the number of permitted copies the customer may make of the licensed Software and of the number of the

<sup>1</sup> These terms and conditions are not applicable to any transactions between affiliated companies of the Endress+Hauser Group

devices upon, and/or work stations at, which the Software may be used is a requirement for a Multiple-User License. For Multiple-User Licenses, Clause 3.3.1 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.

3.4.2 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.

#### **4. ASSUMPTION OF RISK**

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).

#### **5. PRICE, PAYMENT**

5.1 Unless there are agreements to the contrary, the prices are payment for the basic use of the Software in the single-user version without statutory value-added tax or any necessary postage, packaging expenses, data media, or data transfer.

5.2 Payments must be made to our designated account without any deductions or fees 30 days net. Payments are valid only to the extent that we can freely dispose of them at a bank. We accept checks and bills of exchange only on account. Discount and fees are borne by the customer. They are due at once.

5.3 Should payment be delayed, we will charge interest at 8% above the basis interest rate or of 10%, whichever is greater.

5.4 The customer may offset claims only with undisputed or legally binding counterclaims. He is not entitled to hold back or to reduce payments for disputed complaints about the Software.

#### **6. EVALUATION LICENSE**

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

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

6.2 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.

6.3. 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.

6.4. 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.

6.5. 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 7 and 8 apply.

#### **7. DEFECTS**

7.1. For Software that has been licensed for an indefinite period of time, the following conditions apply:

7.1.1 The statutory period of limitations for claims due to material defects in the Software is 12 months. The period of limitations begins at the time the customer assumes risk.

7.1.2 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.

7.1.3. 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.

7.1.4 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 in writing that the licensed Software is compatible with the customer's data processing environment, we assume no liability for this compatibility.

7.1.5 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.

7.1.6 Should rectification be unsuccessful before a reasonable deadline set by the customer expires, the customer may, without endangering any possible 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.

7.2. For Software that has been licensed for a fixed period, Clauses 7.1.2 through 7.1.6 apply as appropriate. Clause 7.1.6 applies in that the right to cancel the contract without notice replaces the right to rescind the contract.

#### **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 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 Germany. This provision also applies when the customer uses the Software outside 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 changes, 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.

8.2. Notices concerning ownership of intellectual property or other rights on the data carrier, in the Software, or in the documentation may not be removed.

8.3 Should any other defects of title exist, the Terms and Conditions in Paragraph 7 apply as appropriate.

## **9. 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 usability 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.

## **10. LIABILITY**

10.1 Claims for damages of any sort against us are excluded when we, our lawful representatives, or our vicarious agents have acted with ordinary negligence. This exclusion of liability does not apply should there be bodily injury, nor should a contractual guarantee have been assumed, nor should material contractual obligations have been violated in a way that endangers the fulfillment of the contract. In such cases, our liability is limited to the extent of the guarantee or, by ordinarily negligent violation of material contractual obligations, to customary and foreseeable damages. Claims arising from product liability law are not affected by this clause.

10.2 Should data be lost, we are liable only for the customary expenses for 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.

10.3 Exception for claims arising from liability for defects, claims arising from product liability law, and claims due to death, bodily injury, or damages to health, claims for damages expire one year after the customer learns about, or should, without gross negligence, have learned about, the damage and our liability for this damage.

## **11. RESERVATION**

If we are responsible for obtaining licences, particularly but not limited to the export/shipment/import of Software, our deliveries (performance of contract) are subject to the reservation that there are no impediments opposing to such licence due to national or international regulations, particularly export control regulations, embargo or other sanctions. The customer shall provide us with all information and documents required for the export/shipment/import of goods. If a necessary licence is not granted, the contract shall with regard to the concerned delivery be deemed to be not concluded; to this extent claims for damages against us shall be excluded.

## **12. APPLICABLE LAW, JURISDICTION**

12.1 Exclusively German law applies to the legal relationship between the parties arising from, or in connection with, the main contract and these General Terms and Conditions for the Licensing of Software. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

12.2 The place of jurisdiction for all disputes arising from or in connection with the main contract or these General Terms and Conditions for the Licensing of Software is our place of business. However, we have the right to sue at the customer’s place of business.

12.3 Should individual provisions of these Terms and Conditions be or become completely or partially invalid or unworkable, the remaining conditions remain valid.