

## GENERAL CONDITIONS FOR THE LICENSING OF SOFTWARE

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

#### 1. SUBJECT

1.1 These General Conditions for the Licensing of Software (hereinafter "Conditions") supplement our General Terms and Conditions of Delivery and Services (hereinafter "GTC") for the purpose of licensing software (hereinafter "Software") for a definite or indefinite period of time, provided as a single item or as part of Endress+Hauser devices (hereinafter "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 – if it is to our advantage - have priority over the rights of use in these Conditions. Should we provide the customer with open source software, the rights applying to such software are additionally valid and – if it is to our advantage - have priority over the rights of use in these Conditions. The customer will be informed about those rights of use applying to the external or open source software, or such divergent rights of use will be published on-line.

1.3 For the purpose of these Conditions, firmware shall not be considered as "Software".

1.4 Insofar as these Conditions contain no provision, the GTC apply.

1.5 These Conditions do not compel 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 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 ("single-user license"). In particular, but not exclusively, this right of use includes neither copyrights (e.g., copying, distribution, modification and adaptation) nor the right to transfer the right of use, nor the right to grant sublicenses, except for divergent provisions in these Conditions or a separate agreement between us and the customer. 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. The proof of defect rests with the customer.

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 and exclusively for archival purposes (“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, except for Clause 3.5.1.

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

3.5.1 In the event of an important reason the customer is granted the revocable right to transfer his rights of use to a third party under the following conditions: The Software may not be resold for commercial purposes. However, the customer may transfer the rights of use of the Software 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 must not grant sublicenses.

3.5.3 Should the customer transfer the Software to a third party according to Clause 3.5.1, 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 2 is valid.

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 2 does not apply to standalone Software.

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

Clause 6. 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).

#### **5. EVALUATION LICENSE**

Should we offer an “evaluation” license the following provisions apply:

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

5.2 The customer obtains a simple, non-exclusive right to test the goods (Hardware and Software) free of charge for the agreed-upon period of time; without an express agreement, for 90 days from the date of delivery. 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.

5.3. The customer uses the Software solely at his own risk. During the evaluation period, we assume no warranty, neither for material defects nor for defects in title and are – as far as legally possible – not liable for possible damages.

5.4. 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.

5.5. 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 a license key specific for his

installation in binary form. 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, Clauses 6. and 7. apply.

## **6. DEFECTS AND WARRANTY**

6.1. Clauses 9. and 10. of the GTC are supplemented as follows:

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 be given without delay and in writing. E-mail or 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.

## **7. INTELLECTUAL PROPERTY RIGHTS**

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 "intellectual property rights"). 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 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.

## **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.