AGU Planungsgesellschaft für Automatisierungs-, Gebäude- und Umwelttechnik mbH

[QM System : DIN ISO 9001]

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Software License Contract

Sm@rtLine Data Cockpit (SDC) [®] ("SOFTWARE")

This SOFTWARE license agreement ("AGREEMENT") is between company "AGU Planungsgesellschaft mbH für Automatisierungs-, Gebäude- und Umwelttechnik mbH", Von Ketteler Straße 1, 51371 Leverkusen, Germany („AGU") or a partner company contracted and authorized by AGU, together referred to as "VENDOR" and the licensee ("LN"). VENDOR and LN are referred to together as "PARTIES".

1 SUBJECT AND SCOPE OF THE AGREEMENT

Subject to the terms of this Agreement, AGU will provide LN with software in exchange for payment. All other rights to the software remain entirely with the licensor AGU. The subject of the contract is the delivery of software in accordance with the scope of service described in the offer (hereinafter SOFTWARE). AGU would like the LN to be aware that, according to current technological standards, it is not possible to create SOFTWARE in such a way that it works flawlessly in all applications and combinations. Subject of the contract is therefore only a software that can be implemented according to the terms of the program description and the operating manual.

2 COPYRIGHT AND OWNERSHIP

The SOFTWARE is protected by copyright under the terms of the protection of computer programs and is the property of AGU. In particular, the copyright and property rights include the program code, the documentation, the appearance, the structure and organization of the program files, the program names, logos and other forms of presentation within the software. As the developer of the SOFTWARE, AGU is entitled to all rights resulting from copyright.

With the purchase of the SOFTWARE, you receive only the right to use the software on the terms that are formulated in the offer. An acquisition of rights of the software itself is not included. In particular, AGU reserves publishing, copying, editing and exploitation right to the SOFTWARE.

3   DUPLICATION

The SOFTWARE and the accompanying written material are protected by copyright. LN may make one copy of the SOFTWARE for backup purposes. LN is obliged to note the copyright notice of AGU on or within the copy. Copyright notices within the software as well as the serial number may not be removed.
LN shall not copy the SOFTWARE as well as the written material partially or completely in changed or original form or to copy or duplicate it mixed together with other software or with other software individually.

4   CONTRACT PERIOD

This Agreement shall run for an indefinite period. In case of discontinuation of the product, AGU will inform the LN within 12 months beforehand.

In case of the discontinuation of the software, AGU guarantees further service for 5 years.

5   EXTENT OF USE

Subject to the terms and conditions of this Agreement, VENDOR hereby grants, and LN hereby accepts, solely for its use, a royalty-free, non-exclusive, non-transferrable, fully paid up (subject to LN's payment of all applicable fees) right and license to use, copy, load, run, have run and display SOFTWARE, in object code form only. The LN is not entitled to assign sublicenses.

The LICENSE encompasses the use of the SOFTWARE as outlined in the user specifications.
The LN may transmit the SOFTWARE in physical form (i.e. saved on a data carrier) from a SYSTEM to another SYSTEM, provided that it is used or installed only on a single computer at any one time. The multiuser version may be also installed only once, but run simultaneously within a network / multistation system according to number of user licenses purchased.

6   SPECIAL RESTRICTIONS

The LN is prohibited

1.) from transferring or making accessible the SOFTWARE or the accompanying material to a third party without previous written approval of,

2.) from altering, translating, reverse engineering, decompiling, disassembling, developing products derived from the SOFTWARE or from reproducing or developing products derived from the written material,

3.) from transmitting the SOFTWARE from a SYSTEM via a network or a data transmission channel to another SYSTEM, except as permitted under 5 for the multiuser version.

7   COMPENSATION FOR BREACH OF CONTRACT

In no event shall either party be liable for indirect, incidental or consequential damages resulting from use of the SOFTWARE or any services rendered in connection with this Agreement, even if the PARTIES have been advised of the possibility of such damages.

8   WARRANTY

VENDOR represents and warrants that for a period of one (1) year from the date of installation at LN's facility, the Software will function as specified in the specifications, user manuals and other documentation pertaining to the Software.

(i)   VENDOR represents and warrants that during the term of the Agreement that:
VENDOR has the authority and right to enter into this Agreement and license the SOFTWARE under this Agreement;

(ii)   the LN will have no obligation to pay any third party any fees, royalties or other consideration for LN's use of any third party software embedded in the Software or LN's exercise of its rights under this Agreement;

(iii)   VENDOR will test each SOFTWARE version before delivery with a current anti-virus software.

The LN is obligated to minimalize occurring errors through appropriate safeguards and to set up a backup procedure which minimalizes damages.
To ensure the warranty rights, the LN is obligated to inform the VENDOR of every discovered error as soon as possible. The warranty period ends at the latest 12 months after the LN has received access to the SOFTWARE.

In the event that the LN notifies VENDOR of material failure or errors of the Software to conform to the warranties, VENDOR shall use diligent efforts to remedy any errors. After two failures to remedy an error, the LN is entitled to the legal warranty rights (cancellation or reduction), should VENDOR declare itself unable to remedy an error or to suggest a workaround. In order to protect LN's warranty rights, the LN shall notify VENDOR of every discovered error in a timely manner.

Except for the limited warranty herein above, VENDOR gives no warranty for the documentation of the SOFTWARE with regard to the suitability for any special purpose which deviates from or exceeds the documentation of the SOFTWARE. VENDOR further gives no warranty that the SOFTWARE functions perfectly and that all errors, which may appear are also correctable. Further no warranty is given that the SOFTWARE is operational on other configurations of a system which deviates from the description in the documentation of the SOFTWARE.

9   INDEMNIFICATION

VENDOR is not liable for damages, except if such damage is related to an intentional act, gross negligence or material breach of obligations on the part of AGU.

A liability for consequential damages resulting from defects which are not covered by the express warranty is excluded. AGU is only liable for damages or compensation for vain expenses, on any legal grounds whatsoever (e.g. from breaches of contractual obligations and tortuous acts), only to the following extent:

(iv)   The liability in the event of willful act is limited to a maximum damage of 2-fold value of the license sum.

(v)   In the event of gross negligence, AGU shall be liable for typical damage and damage foreseeable at the conclusion of the contract, however maximum damage of 1-fold value of the license sum.

(vi)   In the event of a negligent breach of a material obligation, without the fulfillment of which the proper implementation of the purpose of the contract is not possible (cardinal obligation) AGU shall be liable for damage foreseeable at the conclusion of the contract, however maximum damage of 1-fold value of the license sum.

(vii)   The right to contest the charge of contributory negligence remains open to AGU. The LN is particularly required to data backup and virus protection as per the current state of technology.

In cases of death, bodily injury and damage to the health of persons or to claims under the Product Liability Act the legal regulations apply.

10   REGULATIONS FOR UPDATES (UPDATES OR CHANGES)

AGU is entitled to produce updates of the Software at its discretion. AGU is not obligated to provide updated to the LN without a service contract. Updated versions will be made available on request and against payment of an update fee to registered LNs. For LNs with a service contract, the regulations of the service contract are valid for updates. Otherwise the conditions of the software maintenance contract apply.

11   REGISTERED RIGHT OF USE

The SOFTWARE has registered user rights in which the name and the address of the LN is registered upon order. Only the LN registered upon order is entitled to the use of the SOFTWARE. Should the address of the LN change, the LN is required to request a new registered user right from VENDOR. The LN's rights of use are defined in the quotation.

12 DATA PROTECTION AND PROTECTION OF THE LICENSED PROGRAMS

VENDOR and LN must ensure the fulfillment of the obligations stemming from this Agreement regarding the use, duplication, editing, the protection and the security of the programs with suitable measures regarding employees and other people to whom the access is allowed to the SOFTWARE. These liabilities also remain effective after termination of the Agreement.

13 DISPUTE SETTLEMENT

This Agreement falls under the jurisdiction of the laws of Germany with the exclusion of the UN-convention on Contracts for the International Sale of Goods. Court of law is Leverkusen, Germany.

All disputes arising out of or in connection with this Agreement, including those relating to termination or subsequent changes to this Agreement, shall be conclusively resolved in accordance with the Rules of Arbitration of the German Institution of Arbitration e. V. (DIS).

For disputes involving a total dispute value (including the litigation value of counterclaims) of less than € 1 million, the procedure will also be governed by the Supplementary Rules for Expedited Proceedings of DIS. In cases that are not governed by the Supplementary Rules for Expedited Proceedings, the court of arbitration shall consist of three arbitrators.

The place of arbitration is Leverkusen, Germany. The language of the arbitration is German.

14 GENERAL REGULATIONS

Additional agreements have not been made. Changes to this Agreement must be made in writing and signed by both parties. This is also valid for the abatement of the written form clause.

Should any provision of this Agreement be ineffective or unenforceable in whole or in parts, this shall not affect the effectiveness and enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced with a valid provision, which serves the economic purpose of the invalid or unenforceable clause as closely as possible