

End User License Agreement

1. Definitions

“Authorized Reseller” means distributors appointed by the Licensor to distribute the Software Product.

“Demonstration License” means the License according to clause 4.

“Documentation” means any printed materials or electronic documentation accompanying the Software Product.

“Licensor” means Hottinger Baldwin Messtechnik GmbH, Im Tiefen See 45, 64293 Darmstadt, Germany.

“Paid Up License” means the license according to clause 3.1.

“Software Product” means the software product(s) owned by Licensor or a member of Licensor’s business group and provided to You by Licensor or any Authorizes Reseller.

“You” or “Your” means the end user licensee, its representative/agent authorized to bind the end user licensee, or both, .as a common sense interpretation of the relevant section dictates.

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This License shall continue for a period of 25 years from the Delivery Date unless terminated in accordance with any provision of clause 11 below or any other clause of this License Agreement.

- 3.2 As an end user licensee of the Software Product, You may, subject to the following conditions:

- (a) use and copy the Software Product only for use on any computer system that is detailed in the release notes of the respective Software Product and which is licensed, leased and/or controlled by You or any member of Your corporate group, which expression includes Your majority-owned subsidiaries, any parent company having a majority-owned interest in You, and such parent's majority-owned subsidiaries;
- (b) use the Software Product only on a single computer system;
- (c) load the Software Product into and use it only on computers which are under Your control; and
- (d) copy the Software Product only for back-up and archival purposes and make up to three copies of the Documentation, provided that the original and each copy is kept in Your possession.

4. Demonstration License

- 4.1 If the Licensor has provided You with the Software Product free of charge for evaluation purposes, this clause 4 shall apply to Your use of the Software Product.
- 4.2 You may use the Software Product on a computer solely for the purposes of evaluating the Software Product.
- 4.3 The Software Product is provided to You free of charge and on an “AS IS” basis, without any technical support or warranty of any kind including, without limitation, a warranty of satisfactory quality, fitness for purpose and non-infringement.
- 4.4 This License shall continue for a period of 30 days from the delivery date or for 25 attempts of using - depending on the Software Product – or unless terminated in accordance with any provision of clause 11 below or any other applicable clause of this License Agreement or until such License is converted into an Paid Up License, if earlier.

- 4.5 As part of the Licensor's testing and evaluation of the Software Product, You shall share with the Licensor the input and views received and any reports and analysis produced promptly upon receipt of such feedback.
- 4.6 Clauses 5, 6(a), 7(e), 9.1, 9.2 and 9.5 of this License Agreement shall not apply to a Demonstration License.

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The Software Product shall consist of one copy of the object code of the Software Product on machine-readable form only, on the disk, dongle or other media on which the Software Product is delivered as described in the quotation (the "Media"). Risk in the Media shall pass to You on delivery. If any part of the Media shall thereafter be lost, damaged or destroyed, You must contact either Licensor or the Authorized Reseller from whom You have purchased the Software Product who will arrange for a repair or replacement of such Media at a cost (if any) determined by Licensor or the Authorized Reseller (as applicable).

6. License Restrictions

You may not nor permit others to:

- (a) transfer the Software Product from one location to another, without the express written consent of the Licensor. It will be a condition of the grant of any such consent that the Software Product held on hard drives at the current location must be erased. There may be an administration charge in respect of such transfer to end user licensees who do not have a support and maintenance services agreement with the Licensor or Authorized Reseller;
- (b) sub-license, sell, assign, rent, pledge, lease, transfer or otherwise dispose of the Software Product, on a temporary or permanent basis, without the prior written consent of the Licensor,
- (c) translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Software Product except as permitted by law;
- (d) make copies of the Software Product, in whole or part, except for back-up or archival purposes as permitted in this License Agreement;
- (e) use any back-up copy of the Software Product for any purpose other than to replace the original copy in the event that it is destroyed or becomes defective;
- (f) copy the Documentation (except as provided by this License Agreement);
- (g) adapt, modify, delete or translate the Documentation in any way for any purpose whatsoever;
- (h) vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software Product.

7. Undertakings

You undertake:

- (a) to ensure that, prior to use of the Software Product by Your employees or agents, all such parties are notified of this license and the terms of this License Agreement and that any such use as aforesaid is in accordance with the terms of this License Agreement;
- (b) to use the Software Product only as described in the Documentation and subject to the restrictions as set out in clause 6 (License Restrictions above);
- (c) to reproduce and include Licensor's copyright notice (or such other party's copyright notice as specified on the Software Product) on all and any copies of the Software Product, including any partial copies of the Software Product as permitted to be made under the terms of this License Agreement;
- (d) to hold all drawings, specifications, data (including object and source codes), Software Product listings and all other information relating to the Software Product confidential and not at any time, during this License or after its expiry, disclose the same, whether directly or indirectly, to any third party without the Licensor's consent and
- (e) to effect and maintain adequate security measures to safeguard the Software Product from access or use by any unauthorized person and indemnify the Licensor for losses flowing from Your failure to do so.

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9. Limited Warranty

- 9.1 Subject to the limitations and exclusions of liability below and providing the Software Product is used in accordance with the Documentation and on an operating system or computer for which it was designed, the Licensor warrants that (a) the Media on which the Software Product is furnished will be free from defects in material and workmanship under normal use for a period of two years from the date of delivery (the "Warranty Period"); and that (b) during the Warranty Period, the Software Product will, when properly used, perform substantially in accordance with the functions described in the Documentation; and (c) that the Documentation correctly describes the operation of the Software Product in all material respects.
- 9.2 If, within the Warranty Period, You notify the Licensor in writing of any defect or fault in the Software Product in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from You having amended the Software Product or used it in contravention of the terms of this License Agreement, the Licensor will, at its sole option, i) repair or replace the Software Product, provided that You make available all information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault, or ii) terminate this License Agreement immediately by notice in writing to You and the Licensor will refund or if the Software Product has been purchased from an Authorized Reseller will procure that the Authorized Reseller shall refund; any of the fees paid as at the date of termination (less a reasonable sum in respect of Your use of the Software Product to the date of termination) on return of the Software Product and all copies thereof. The Licensor's obligation under this clause 9.2 is subject to the condition, that the Software Product has been regularly updated with the newest release provided by Licensor or the Authorized Reseller.
- 9.3 You acknowledge that the Software Product has not been developed to meet Your individual requirements and that it is therefore Your responsibility to ensure that the facilities and functions of the Software Product as described in the Documentation meet Your requirements.
- 9.4 You acknowledge that the Software Product may not be free of bugs or errors and You agree that the existence of any minor errors shall not constitute a breach of this License Agreement.
- 9.5 The Licensor shall not be liable under the said warranty above if the Software Product fails to operate in accordance with the said warranty as a result of any modification, variation or addition to the Software Product not performed by the Licensor or caused by any abuse, corruption or incorrect use of the Software Product, including use of the Software Product with equipment or other software which is incompatible.
- 9.6 All other conditions, warranties or other terms which might have effect or be implied or incorporated into this License Agreement or any collateral contract are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

10. Exclusion of Liability

- 10.1 Nothing in this License Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, for fraud or for fraudulent misrepresentation.
- 10.2 Subject to clause 10.1, Licensor's statutory liability for damages shall be limited as follows:
- (a) For damages caused by a slightly negligent breach of a material contractual obligation Licensor shall only be liable up to the amount of the typically foreseeable damage at the time of entering into this License

Agreement;

- (b) Licensor shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.
- 10.3 Subject to clause 10.1 and clause 10.2, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of third party rights subsisting in the European Union and USA.
- 10.4 Wherever Licensor's liability for damages is excluded or limited, this shall also apply with regard to the personal liability of Licensor's representatives, employees and vicarious agents.
- 10.5 This License Agreement sets out the full extent of Licensor's obligations and liabilities in respect of the supply of the Software Product and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this License Agreement. Any condition, warranty, representation or other term concerning the supply of the Software Product and Documentation which might otherwise be implied into, or incorporated in, this License Agreement, or any collateral contract, whether by statute or otherwise, is hereby excluded to the fullest extent permitted by law.

11. Term and Termination

- 11.1 This License Agreement is effective for the period referred to in clause 3.1 or until otherwise terminated in accordance with that clause. The Licensor may terminate this License Agreement immediately by written notice to You if:
- (a) You fail to comply with any provisions of this License Agreement;
 - (b) You commit a material or persistent breach of this License Agreement which You fail to remedy (if remediable) within 14 days after the service on You of written notice requiring You to do so; or
 - (c) Your financial situation has materially deteriorated or if You have repeatedly failed to pay on the due date.
- 11.2 In the event of termination in accordance with clause 11.1 You must immediately pay to the Licensor any sums due to the Licensor under the License Agreement and (at the Licensor's sole option) You must return, destroy or delete all copies of the Software Product from all storage media in Your control and, in the case of destruction, certify that You have done so.

12. Export

You will comply with all applicable laws, rules, and regulations governing export of goods and information, including the laws of the countries in which the Software Product was created. In particular, You will not export or re-export, directly or indirectly, separately or as a part of a system, the Software Product or other information relating thereto to any country for which an export license or other approval is required, without first obtaining such license or other approval.

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14. General

- 14.1 You agree that Licensor shall have the right, after supplying undertakings as to confidentiality, to audit any computer system on which the Software Product is installed in order to verify compliance with this License Agreement.
- 14.2 You agree that the Licensor may use Your company name in Licensor's customer lists and other promotional materials describing Your company as a customer or user of Licensor's Software Product or services, as applicable, unless it receives written notice from You objecting to such use.
- 14.3 This License Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with German law to the exclusion of its conflicts of laws provisions.

The place of jurisdiction for any disputes arising from the contractual relationship shall be Darmstadt, Germany.

- 14.4 This License Agreement constitutes the complete and exclusive statement of the agreement between the Licensor and You with respect to the subject matter of this License and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications relating to that subject matter except for those expressly referred to in this License Agreement.
- 14.5 Any clause in this License Agreement that is found to be invalid or unenforceable shall be deemed deleted and the remainder of this License Agreement shall not be affected by that deletion.
- 14.6 Failure or neglect by either party to exercise any of its rights or remedies under this License Agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this License Agreement nor prejudice that party's right to take subsequent action.
- 14.7 This License Agreement is personal to You and You may not assign, transfer, sub-contract or otherwise part with this License or any right or obligation under it without the Licensor's prior written consent.