

## General Terms and Conditions Rental and Sale of Software

### 1 General Terms for Rental and Sale

#### 1.1 General

The "General Terms and Conditions for Rental and Sale of Measuring Systems and Software" govern the general conditions of rental and sale of own measurement systems and software products (referred to subsequently as a system) through the company Significant Software SARL (hereafter referred to as the supplier) to customers.

The General Terms and Conditions apply to the rental and sale of measurement systems and software products that are the property of the supplier.

The provisions of the respective user manuals must be adhered to in any case.

Customer-related provisions including prices, terms of payment, delivery dates, number of licenses, licensed modules, software versions, rental periods and special conditions are laid down in the project-related contracts concluded between the supplier and the customer.

#### 1.2 Copyright

The systems and the accompanying documentation are protected by copyright laws, international copyright treaties and other laws and agreements on intellectual property.

#### 1.3 Right of use

The customer acquires, through rental or purchase, a license to use the system; the system will remain the property of the supplier. The customer acquires a non-transferable and non-exclusive right to use the system as an end user. If the customer rents the system, the license is limited to the rental period.

#### 1.4 Licensing

For each license, the customer shall receive a hardware dongle with license file to which specific rental and purchase licenses are clearly tied. The customer is entitled to the use of these systems for the period stated in the respective project-related contract. Any processing, distribution and publication beyond that is not permitted. The customer has no right to operate the systems with a dongle other than the one activated by the supplier via the license file, nor to operate these systems beyond the agreed time frame.

The licenses are sold exclusively tied to a hardware dongle through a license file. The execution of the software purchased or rented by the customer from the supplier is possible in technical and legal sense only with a dongle and the associated license file provided by the supplier.

There are two ways of binding a license to a dongle:

1. The supplier provides the customer with a dongle and a license file. The license file enables the customer to use the software for the period of the respective rental or purchase license.
2. The supplier provides the customer with a dongle and sets up password-protected access to the online Dongle Manager for the customer. In this web application, the customer can create a license file for each purchased or rented license, which allows limited use of the software by means of a specific dongle. The time limit may coincide with the license period of the rental or purchase license, or end prior to it. In the second case, the customer has the option, after the license file has expired, to create a further license file

for the license granted, always in compliance with the license period of the rental or purchase license. The customer is not entitled to create multiple license files for a rental or purchase license which would allow the simultaneous use of the software by means of more than one dongle. For a full description of the functionality of the Dongle Manager online application see also [http://dongleman.axis3d.eu/DongleManager\\_Benutzerhandbuch.pdf](http://dongleman.axis3d.eu/DongleManager_Benutzerhandbuch.pdf)

Dongles that have become unusable due to damage must be returned to the supplier. For returned dongles, the customer shall receive, against compensation of costs, new dongles and the associated new license files for the hardware. However, the customer is not granted the right to continue using the dongles and license files used so far. In case the customer fails to comply with this regulation and operates licenses both on the originally activated dongles as well as on newly registered dongles, the customer shall be liable to pay a contractual penalty not subject to the court's right to reduce the penalty amounting to € 25,000.00 per violation. In addition, the supplier explicitly reserves the right to claim compensation for damage.

The customer is not entitled to compensation for non-returned dongles and the licenses tied to the respective license files, neither for the dongles nor for the licenses tied to them.

If the dongle binding of systems delivered is by-passed by the customer, for example, by resetting the system time of the hardware or by taking other technical measures to extend a license beyond the agreement contained in the respective offer, or by activating a supplied license on additional dongles, or by using systems without license delivered, the customer shall be liable to pay a contractual penalty not subject to the court's right to reduce the penalty amounting to € 25,000.00 per violation. In addition, the supplier explicitly reserves the right to claim compensation for damage.

## 1.5 Transfer

The customer will use the system exclusively for his own service projects. The customer is not entitled to sell, lend, rent, lease, or to make otherwise available to third parties, the systems, the user manual and other accompanying material, in whole or in part, unless other arrangements are made under the relevant project-related contract. If the customer violates these provisions, he shall be liable to pay a contractual penalty not subject to the court's right to reduce the penalty amounting to € 25,000.00 per violation. In addition, the supplier explicitly reserves the right to claim compensation for damage.

The customer is allowed to make a copy of the software for backup purposes only, to the extent necessary for the use of the software. The backup copy is to be identified as a copy of the licensed program and protected against access by third parties.

If due to legal provisions of the applicable law, a transfer of the license may not be ruled out, the customer is entitled to transfer all his rights under the license agreement only if he does not retain any copies and transfers the complete systems (including all components, the dongles, the media and printed materials, all upgrades). The recipient agrees to the terms of the license agreement and the general terms and conditions and enters into the contractual relationships as if they had been concluded by him. In this case, the customer shall communicate the name and full address of the new user within 3 days to the supplier in writing.

## 1.6 Limitations

The customer is not entitled to reverse engineer the systems, decompile, disassemble or otherwise attempt to access the source code of the software, to modify the software, translate it or to create products derived from the software.

If under the applicable law decompilation may not be ruled out, it is permitted only in the context of the statutory provisions, provided the customer has contacted the supplier in advance in writing requesting the information necessary for interoperability. The supplier reserves the right to impose reasonable conditions and to request payment for the use of the information thus provided.

## 1.7 Services

If the customer makes use of the services offered by the supplier in connection with the systems, each complementing of the systems and any additional software code that are provided as part of the services, is to be regarded as part of the systems and is subject to the applicable provisions and terms.

## 1.8 Definitions

**Error:** If the system does not function as designated or specified (e.g. hang-ups, crashes, incorrect results due to calculation errors, etc.), this is considered a programming error (colloquially, "bug"). If the design of a program (algorithm or logic flow) is already flawed in the specification, but the system behaves in conformity with this specification, this is considered a design flaw.

**Troubleshooting:** Is the improvement of an existing system to restore the system to its designated or specified behaviour. We distinguish between minor and major errors. Minor errors limit the designated use of a system, major errors limit the designated use greatly or make its use impossible.

To resolve errors reported by the customer, these errors must be described by the customer in a reproducible manner.

**Maintenance:** Is the improvement of existing functions or the correction of design flaws to restore the expected behaviour ("promised" functionality) if the specifications are faulty.

**Update:** Is the updated version (troubleshooting) of a system which corrects errors in accordance with the above definition.

**Upgrade:** Is an updated or new version of a system with a wider range of functions which were not included in the originally purchased version. With respect to the contract, this is an improvement, a system upgrade which is, therefore, subject to charge.

**Support:** Is the support of the end user in the use and handling of a system.

## 1.9 Warranty

The customer is required to inspect the system immediately after handover of the system to the customer.

The customer shall notify the supplier by registered letter or by fax about any defect immediately upon becoming aware of any such defect, at the latest within 3 days. The burden of proof that the defect already existed when the system was handed over, as well as the timeliness of the complaint, lies with the customer.

## 1.10 Liability

The supplier expressly excludes any liability for any direct or indirect damages and consequential damages including damages resulting from loss of data or business interruption and damage arising in connection with the use of the systems for whatever reason, up to the maximum permitted by applicable law.

The provisions of the respective user manuals must be adhered to in any case. In any case, the then remaining and not excludable liability is limited to that amount which the customer has paid the supplier for the systems.

## 1.11 Termination

Without prejudice to any other rights, the supplier is entitled to terminate the License Agreement for cause immediately, provided that the customer violates material terms and conditions of this contract. In such a case, the customer, irrespective of other claims for damages of the supplier, is obligated to return the systems including any dongles immediately and to destroy all copies of the software and all its components.

### 1.12 Contract modifications

Modifications and additions to this contract must be made in writing. This applies also to this provision concerning the written form.

### 1.13 Invalidity of individual contractual components

If any provision of this contract be or become invalid, the validity of the remaining provisions of this agreement shall remain unaffected. In this case, invalid provisions shall be replaced by provisions that come closest to the economic purpose of the original provisions.

### 1.14 Validity

The supplier's General Terms and Conditions for Rental and Purchase of Measuring Systems and Software shall apply exclusively. This Agreement shall be governed by the Law of the Federal Republic of Austria, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the Referral Standard of IPRG.

### 1.15 Jurisdiction

The sole court of jurisdiction shall be the court of substantive jurisdiction at the domicile of the supplier.

## 2 Special provisions for rental

### 2.1 Rental period

The rental begins on the date of takeover of the rental equipment by the lessee. For software-based systems, the rental starts with the delivery of the license file by the supplier to the customer or, when using the online Dongle Manager, with the date of download of the license file by the customer. If the supplier fails to deliver in time, for reasons of his own making, the lessee is entitled to withdraw from the contract, after having set a period of grace of 14 days. Any claims for damages of the customer shall be expressly excluded.

The rental period ends with the takeover of the rental equipment by the supplier at the return destination. For software-based systems, the rental ends with the date the system license expires as stated in the license file.

If the lessee intends to extend the rental length, he or she has to reach an agreement with the supplier in time.

### 2.2 Notice of termination

The arrangements for termination of the contract are covered in the rental contract. If no period of notice is explicitly stated therein for the lessee, the period of notice for the lessee shall be 1 month to the first of each month. Notice of termination shall be made in writing and sent by registered mail or fax.

For purely software-based systems, the rental always ends with the date the system license expires as stated in the license file, in which case early termination is not possible.

### 2.3 Rent and payment

The rent is specified in the rental contract. Unless otherwise agreed, the rent shall be paid within 30 days of the invoice date, at the latest by the 5th of the following month clear of any charges and deduction.

The obligation to pay rent ends only after timely notification of availability with the return of the rental equipment to the supplier.

Unless agreed otherwise in the rental contract regarding the extension of the rental period, a separate agreement must be concluded prior to the intended additional use of the rental equipment.

## 2.4 Other services

Separate agreements shall be concluded for any other services, such as the provision of operating personnel, accommodation, etc.

## 2.5 Downtime

Downtime is the time the system cannot be used at the site, for which it has been rented, due to circumstances neither the lessee nor his client may be held responsible for (e.g. floods, strikes, riots, war, official orders, holidays or the like). How to settle downtimes is governed by the respective rental contract. If no express provisions for the settlement of downtimes are made in the rental contract, downtimes shall not be taken into account in the settlement. Downtimes shall be reported immediately by the lessee in writing by registered letter or by fax, failing which a consideration is due.

## 3 Special purchase provisions

### 3.1 Purchase price and payment

The purchase price shall be determined as part of the purchase contract. Unless otherwise agreed, the purchase price shall be paid within 30 days after invoicing, at the latest by the 5th of the following month clear of any charges and deduction. Until full payment the goods remain the property of the supplier.

### 3.2 Other services

Separate agreements shall be concluded for any other services, such as the provision of operating personnel, accommodation, etc.

### 3.3 Takeover of the purchased item at delivery; notice of defects

The supplier shall deliver the object purchased, or have it ready for pick-up, in an operational state.

On delivery, a takeover record including status report shall be prepared prior to takeover of the purchased item and signed by both parties. Any apparent defects shall be recorded in the status report. Defects the buyer is not responsible for shall be remedied by the supplier or the supplier provides the buyer with a replacement system. Any claims for compensation of the customer are expressly excluded. Defects the buyer is responsible for shall be remedied by the supplier at the expense of the buyer.

A notice of defects is no longer possible after expiry of a period of 3 days from the date of takeover.

When taking over existing hidden defects, such defects have to be reported immediately after detection, at the latest within 3 days, by registered letter or fax.

### 3.4 Transport damage

The scheme for the reimbursement of damage incurred during transport is defined in the purchase contract. If the purchase contract does not contain any express provisions on the reimbursement of costs for damage during transport, the costs of transport damage shall be borne entirely by the buyer.

### 3.5 Buyer's obligations

The buyer agrees to use the purchased item only in his own sphere of activity. A transfer to third parties, for whatever reason, is not permitted without written consent of the supplier.

The buyer is not entitled, without the prior written consent of the supplier, to make changes to the purchased item, particularly additions and installations, nor to remove labels that were attached by the supplier.

The buyer expressly undertakes to comply with the license conditions of the software programs handed over together with the object of purchase and to install and use the system only within the contractually agreed scope of the license.

The warranty for the functional capability of pre-installed software shall expire from the date the buyer installs third-party software on the same PC. Costs arising from new installations due to such manipulations shall be borne by the buyer.

### **3.6 Liability**

The buyer agrees to indemnify the supplier and hold him harmless against all claims from third parties arising in connection with the object of purchase.

The supplier shall in no case be liable for any direct, indirect, consequential, or similar damages (including loss of profit or loss of data), or damages arising from the use of the system and the software included in the object of purchase or the improper use of the system or the related software, even if the supplier has been advised of the possibility of such damages.

If due to legal provisions, a limitation or exclusion of liability for incidental or consequential damages is not allowed, the supplier's liability shall in any case be limited to the purchase price paid by buyer.

### **3.7 Other provisions**

The buyer shall ensure that the labels and markings (owner sign, indication of origin, device number) attached to the object of purchase remain undamaged and unchanged.

Any fees charged in connection with the sales contract shall be borne the buyer.

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