

# General Terms of license for computer software utilization

(Solely the German version is legally binding; this version is just a translation.)

## 1. Conclusion of the contract

- 1.1 This License Agreement ("Agreement") shall be entered into by the Licensee by placing an order for, opening the sealed packaging of the data carrier, or using the data carrier, of the Software or down-loading thereof from the homepage of the ABB Automation Products GmbH (herein: the Licensor). The Licensee shall not be entitled to use the software prior to entering into the Agreement. In these terms and conditions, the expression "Software" shall – in so far as documentation is also supplied – also include such documentation. The terms for the using of the Software shall apply – to the extent described below – for the granting of both remunerated and free rights of use for the software to the licensee.
- 1.2 The licensee's general terms and conditions shall apply only in so far as the licensor has expressly agreed to them in writing.
- 1.3 Support services by the licensor during installation of the software on the licensee's systems shall be agreed separately. An acceptance test shall only be carried out if this has been agreed in writing.

## 2. Scope of the license

- 2.1 The licensor grants the licensee the non-exclusive, non-transferable right to use the software.  
Use of the software for purposes other than those agreed between the parties is not permitted.
- 2.2 The licensee may make only one (1) back-up copy. No copies may be made of the provided documentation.
- 2.3 Processing the software, in particular through changes, translations or combining with other programs, shall be permitted only with the licensor's written consent.
- 2.4 The licensor's copyright notices in and on the software may not be removed and must – Clauses 2.2 and 2.3 notwithstanding – also be transferred to copies and processed versions.
- 2.5 Passing on the software or granting rights of use thereto to third parties shall permit only with the licensor's prior written consent.
- 2.6 The software has not been developed for specific use in nuclear, aerospace, mass-transit, medical or military applications. Without prejudice to the other terms and conditions of the license, the licensor shall not be liable for claims, damage or losses arising from such use.

## 3. Reservation of rights

- 3.1 All rights to the software, copies and processed versions, in particular property rights and copyrights, accrue to the licensor.
- 3.2 Upon the licensor's request, the licensee shall draw the attention of third parties to the rights of use granted to him by the licensor in compliance with the instructions issued by the licensor for showing such notices.

## 4. Material defects

For software provided to the licensee against payment the licensor shall be liable for material defects as follows:

- 4.1 The licensor warrants that the software has no faults in materials that destroy or impair suitability for the contractually envisaged use. The licensee is aware that given the state of the art it is not possible to write software completely free of faults. Descriptions of the software do not constitute any guarantee within the meaning of § 443 ff. of the German Civil Code (in particular no guarantee of characteristics).  
  
Clause 4.2 notwithstanding, the licensor shall rectify all reproducible faults in the software for which the licensor is responsible when reported by the licensee within a reasonable period. The licensee shall report material defects to the licensor in writing without undue delay. The licensee shall describe the material defect in as much detail as possible. The licensor can opt to rectify the problem by debugging, providing new software build or showing how to avoid the effects of the fault. The licensee shall accept a new software build unless this causes him unreasonable modification and switching problems.
- 4.2 Claims for material defects shall be time barred after 12 months. The period commences with the delivery or the down-load of the software as the case may be. The above provisions shall not apply in so far as the law stipulates longer periods pursuant to § 438 Subs. 1 No. 2 (buildings and items for buildings), 479 Subs. 1 (recourse claims) and § 634a Subs. 1 No. 2 (construction faults) of the German Civil Code, and also in cases of injury of life, body or health, and intent or grossly negligent breach of duty by the licensor and willful non-disclosure ("*arglistigem Verschweigen*") of a defect. The statutory provisions concerning suspension of the statute of limitations and recommencing of limitation periods shall remain unaffected.
- 4.3 The licensor shall first be given an opportunity to render subsequent performance within a reasonable period. If the subsequent performance fails, the licensee can rescind the contract or reduce the remuneration - without prejudice to any claims for damages pursuant to Clause 6 (liability). Rectification shall only be deemed as having failed if despite a grace period declared in writing the licensor does not succeed in remedying the fault in the software such that the licensee can largely use the software as contractually agreed, also if a second attempt at rectification is permitted.
- 4.4 The licensee shall have no claim with respect to expenses incurred in the course supplementary performance, including costs of travel and transport, labor and material, to the extent that expenses are increased because the subject matter of the perform-

ance was subsequently brought to another location than the licensee's branch office, unless doing so complies with its intended use.

- 4.5 Otherwise, Clause 6 (liability) shall apply to claims for damages. Claims or rights of the licensee against the licensor or his agents for a fault in materials going beyond or not included in this Clause 4 shall be excluded.
- 4.6 Services going beyond the duties of subsequent performance (e.g. maintenance) shall be the subject matter of contracts to be concluded separately.
- 4.7 For software provided to the licensee free of charge, the licensor shall be liable for material defects only with respect to deceit. In so far as the licensor is liable for material defects at all, the above provisions for remunerated software shall apply *mutatis mutandis*.

## 5. Industrial property rights and copyrights; defects in title

For software provided to the licensee against payment the licensor shall be liable for defects in title as follows:

- 5.1 Unless agreed otherwise, the licensor shall be liable for the software being free from industrial property rights and copyrights held by third parties (hereinafter referred to collectively as property rights) only in the Federal Republic of Germany. In so far as a third party raises justified claims against the licensee for breach of property rights relating to performances rendered by the licensor and used as contractually agreed, the licensor shall be liable to the licensee within the period stipulated in Clause 4.2 as follows:
  - a) The licensor can opt to procure a right of use for the performances in question at his expense, amend the same so that they no longer breach the property right, or replace the same. If the licensor is unable to do so on reasonable terms and conditions, the licensee shall be entitled to the statutory rescission or price reduction rights.
  - b) The licensor's duty to render damages or compensation shall be governed by Clause 6.
  - c) The licensor's aforementioned obligations shall only arise in so far as the licensee notifies the licensor in writing about the claims raised by the third party without undue delay, does not acknowledge any infringement and reserves to the licensor all defense actions and settlement negotiations. If the licensee ceases use of the performance in order to reduce damages or losses or other material reasons, he promises to notify the third party that such suspension of use may not be interpreted as any acknowledgement of infringement of the third party's rights.
- 5.2 The licensee's claims shall be excluded in so far as he is answerable for the infringement; the infringement is due to the licensee's specific stipulations, an application not foreseeable by the licensor or the licensee change the performance or used the same together with products not supplied by the licensor.
- 5.3 In the event of other defects in title, the provisions of Clause 4 (material defects) shall apply *mutatis mutandis*.
- 5.4 All other claims of the licensee against the licensor or his agents due to defects in title going beyond or not included in this Clause 5 shall be excluded. The licensor's obligation to render damages or compensation shall be governed by Clause 6 (liability).
- 5.5 For software provided to the licensee free of charge, the licensor shall be liable for defects in title only with respect to deceit ("*Arglist*"). In so far as the licensor is liable for defects in title at all, the above provisions for remunerated software shall apply *mutatis mutandis*.

## 6. Liability

- 6.1 Licensor shall be liable – irrespective of the legal grounds – only in cases of intent, gross negligence and injury of life, body or health and also for the infringement of cardinal contractual duties. Claims for damages or compensation under the infringement of cardinal contractual duties shall, however, be limited to typical losses foreseeable under such contracts, unless there is liability for intention, gross negligence or body and health. The above provisions do not imply a change in the burden of proof to the detriment of the licensor.
- 6.2 For software provided to the licensee free of charge, liability pursuant to Clause 6.1 for damage to property shall be limited to EUR 25,000.00 for any one occurrence. The licensor's total liability for all damage, losses or costs in conjunction with the use of free software, irrespective of the legal grounds, shall be limited to EUR 50,000.
- 6.3 Under no circumstances shall the licensor be liable for the loss of revenues, loss of use, loss of production, capital expenses or costs relating to production or for any indirect or consequential damage or losses.
- 6.4 In the case of remunerated software, the licensor shall only be liable for the restoration of data if the licensee has ensured that these data can be reconstructed from machine-readable data material with reasonable effort and expense.
- 6.5 Should third parties raise claims for damages, compensation or otherwise – regardless of the reason therefore – against the licensor in conjunction with the use of the software by the licensee (or by third parties who have received the software from the licensee), the licensee shall hold the licensor free and harmless.

## 7. Confidentiality

- 7.1 The licensee promises to keep confidential all the licensor's information and documents of which he and his employees become aware (in particular the software) vis-à-vis third parties and not to make the same accessible to third parties in any way whatsoever.
- 7.2 The above provisions shall apply *mutatis mutandis* for the licensee and his employees.

**8. Termination of the contract**

- 8.1 The licensor can terminate the contract with immediate effect, if
- the licensee does not fulfill his contractual obligations or if there is a not immaterial, non-rectifiable fault;
  - insolvency or comparable proceedings over the licensee's assets are applied for.
- 8.2 The licensee may no longer use the software after the end of the contract. He shall return to the licensor at his expense all the materials received, such as program media and documentation, including all copies and changed versions, within 2 weeks from the end of the contract or, in so far as the licensor consents or demands in advance, destroy them and confirm such destruction in writing within the stated period. The software including all copies and changed versions shall be deleted without undue delay after the end of the contract.

**9. Final provisions**

- 9.1 Changes or additions to the terms and conditions of the license must be in writing.
- 9.2 The licensee shall register the contract in his country and/or obtain permission from the pertinent authorities at his expense; the licensee shall regularly inform the licensor about the status of the proceedings. The licensee shall be liable for all and any damage or losses arising from failing to comply with regulations.
- 9.3 The contract shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The venue for all disputes arising directly or indirectly out of the contract shall be the Licensor's place of business. However, the licensor may also bring an action at the licensee's place of business.
- 9.4 Should individual provisions of the contract be void, this shall have no effect on the validity of the remaining parts of the contract. The void provisions shall be replaced by ones that come closest to the envisaged commercial intention.