General Software License Agreement of SmarAct GmbH

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Preamble

SmarAct GmbH (hereinafter referred to as SmarAct) is manufacturer and supplier of products for

- Metrology,
- Positioning technology, with a focus on micro- and nanopositioning,
- and control systems.

In summary, these hardware products are referred to as SmarAct products.

SmarAct products can be operated independently or as part of third-party products.

SmarAct also provides customers with software products, e.g. in the form of firmware and user programs compatible with SmarAct products,

- which are either required to operate the SmarAct products,
- or are helpful to take advantage of SmarAct products.

Unless expressly agreed otherwise in writing, the following General Terms and Conditions apply to all software that SmarAct makes available to the customer.

§ 1 Subject of Contract

(1) These General Terms and Conditions apply to
 a) the delivery of software for use in connection with SmarAct products,
 b) and to the granting of rights of use to the customer.
(2) These General Terms and Conditions do not apply to the SmarAct products (i.e. the hardware of the SmarAct products), but exclusively to the software.
(3) The software is provided by SmarAct in machine-readable form, either
 a) on a data carrier
 b) or for downloading.
 Unless SmarAct and the customer have agreed otherwise in writing, the use and application are subject to the following General Terms and Conditions.
(4) The software is not intended for the use or control of critical applications, such as nuclear power plants, aircraft, flight control, life support equipment, medical products in accordance with § 3 of the German Act on Medical Devices (Medizinproduktegesetz), etc. A fault in the software can lead to death, bodily injury or serious damage to property and the environment.
(5) SmarAct does not owe any installation or configuration services unless otherwise agreed in writing.

§ 2 Rights of Use

(1) These general terms and conditions are valid until their termination. The rights granted to the customer under these General Terms and Conditions shall automatically terminate without notice from SmarAct if the customer breaches one or more provisions of these General Terms and Conditions. Upon termination, the Customer shall cease using the Software and destroy all copies of the Software in its possession.

(2) SmarAct grants to the Customer a non-exclusive territorially unrestricted right to use the Software for an unlimited period of time on the basis of the following provisions, unless stated otherwise herein.
(3) The customer is entitled to use the software to the extent necessary for the contractually agreed or contractually intended use of the software in accordance with these General Terms and Conditions.
(4) If, for reasons of data security or to ensure a timely reactivation of the computer system after a total failure, the regular backup of the entire database, including the computer programs used, is necessary, the user may make backup copies in the absolutely necessary number.
(5) The software is in any case used by the customer exclusively for and in connection with the operation of SmarAct products. However, the customer is entitled to use the software together with third-party software or to combine the software with third-party software products to the extent this is necessary for the operation of his or her third-party systems containing the SmarAct products.
(6) The customer may reproduce the software insofar as the respective reproduction is necessary for the use of the program. The necessary duplications include in particular the installation of the program from the original data carrier to the memory of the hardware used as well as the loading of the program into the random access memory (RAM).
(7) However, in the event that the use of the Software is limited to a specific license key, the use of the affected Software is limited to the particular device for which the Software was activated by the Customer.
(8) The customer is also entitled to create application-specific, executable software products with the software and to transfer these software products to third parties, in connection with the use or operation of SmarAct products. These third parties shall not be granted any rights of use beyond those granted to the Customer under these Terms and Conditions.
(9) The customer must contractually ensure that this third party is bound by the contractual obligations arising from these General Terms and Conditions with regard to the software products.
(10) The customer may permanently sell or give away the software for free, including any existing documentation, user manuals and other accompanying material, to third parties,
 a. provided that the acquiring third party declares its agreement with the continued validity of the present contractual conditions vis-à-vis him or her.
 b. Beyond the rights of use granted to the customer under these terms and conditions, no rights of use shall be granted to such third party.
 c. In the event of transfer, the customer must hand over to the new user all copies of the program including any existing backup copies or destroy the copies that have not been handed over.

d. Furthermore, the customer must contractually ensure that this third party uses the software in accordance with these General Terms and Conditions and in particular exclusively for the purpose of operating the SmarAct products.

e. The customer may not transfer the software to third parties if there are reasonable grounds to suspect that the third party will violate the terms of the contract, in particular by making unauthorized copies.

(11) The customer is also entitled to create application-specific, loadable and executable software products with the software and to transfer these software products to third parties only for use for and in connection with the operation of SmarAct products.

a. Beyond the rights of use granted to the Customer under these Conditions, no rights of use shall be granted to these third parties.

b. In addition, the customer must contractually ensure that this third party is bound by the contractual obligations arising from these General Terms and Conditions with regard to the software products.

(12) The user is obliged to take appropriate precautions to prevent unauthorized access by third parties to the program and the documentation.

(13) The customer may temporarily transfer the software, including any existing documentation, user manuals and other accompanying materials, to third parties, provided this is not done by way of rental for commercial purposes or leasing. The third party must declare his or her agreement with the continued validity of these contractual conditions to the customer and the customer must hand over all copies of the program including any existing backup copies or destroy any copies that have not been handed over. For the period of the transfer of the software to the third party, the transferring customer is not entitled to use the program himself or herself.

(14) The subleasing of the software for commercial purposes is prohibited.

(15) The customer is entitled to transfer the right of use granted here to a third party, provided that the third party receiving the right of use agrees to the provisions of the rights of use from these General Terms and Conditions for and in relation to the SmarAct products. In addition, the Customer must immediately delete all remaining copies of the Software after the transfer.

a. No rights of use beyond those granted to the Customer under these Terms shall be granted to any such third party.

b. In addition, the customer must contractually ensure that this third party uses the software in accordance with these general terms and conditions and in particular exclusively for the purpose of operating the SmarAct products.

c. § 2 (15) also applies if a third party who integrates a SmarAct product into another product on behalf of the customer is dependent on temporary use of the software for this purpose.

(16) The customer does not grant any sublicenses to the software, unless otherwise specified in these General Terms and Conditions.

(17) The customer is not entitled to modify, extend, reverse engineer, decompile or disassemble the software delivered in machine-readable form (program code),

a. unless this is necessary for the contractual use of the software or the removal of defects within the scope of justified defect claims according to §3,

b. or expressly permitted by law, in particular in accordance with §§ 69a of the German Copyright Act (UrhG).

A legitimation is only given if SmarAct does not provide the customer with the necessary information in the case of a justified demand or does not remedy a defect within a reasonable period after written request by the customer.

(18) The removal of copy protection or similar protective mechanisms by the customer is only permitted if this protective mechanism impairs or prevents the undisturbed use of the program. The customer shall bear the burden of proof for the impairment or prevention of undisturbed usability by the protective mechanism.

(19) Copyright notices, serial numbers and other features serving to identify the program may not be removed or changed under any circumstances. The same applies to the suppression of the screen display of corresponding features.

(20) If upon an agreement the Software or parts of the Software are provided together with the source code of SmarAct, the Customer is entitled to modify the Software on the basis of the source code, with the restriction that this modified source code may also be used exclusively for the operation of the SmarAct Products and/or third party systems containing the SmarAct Products, in accordance with these General Terms and Conditions. The customer must always include a summary of the changes to the source code and the date of the change with each such change. SmarAct is generally not liable for any claims arising from such changes to the source code, as defined in §3 (3).

(21) The software provided to Customer by SmarAct may include third party software (including freeware and open source software components) or work with such third party software, or work together with or with the software products of such third party software providers.

a. SmarAct informs the customer about the used third-party software in the form of a list and provides the customer with the corresponding license conditions of the third-party software, if this is desired by the respective licensor.

b. Third Party Software listed in the Third Party List is subject to the License Terms of the Third Party.

c. In the event of a violation of the license conditions of third parties, the respective licensor may also be entitled to assert claims and rights in his own name.

(22) These General Terms and Conditions shall also apply if SmarAct has provided the customer with new software,

including any existing documentation, user manuals and other accompanying materials, in connection with
   a. the rectification of defects
   b. or maintenance
   c. or changes (patches, bugfixes, manual changes, etc.)
   d. or a new edition (updates, upgrades),
to replace the originally provided software.

§ 3 Claims for Defects

(1) A defect exists if the software does not have the contractually agreed quality or does not fulfil the contractually agreed purpose.

(2) The statute of limitations for claims of defects is 12 months, calculated from the date of delivery of the software, whereby this time limitation does not apply in the event of fraudulent or grossly negligent actions by SmarAct, its representatives or vicarious agents.
During the 12-month period, defects of the delivered software (material defects and defects of title), including any documentation, manuals and other documents supplied with the software, shall be remedied within a reasonable period of time after notification by the customer and confirmation of the existence of a defect by SmarAct.

(3) If the customer changes the software or has it changed by third parties, claims for material defects or defects of title shall lapse unless the customer proves that the defect was not caused by the changes.

(4) After handing over the software to the customer, the customer must immediately check the software and associated documents for completeness and any defects.
   a. SmarAct must be informed immediately of any objections. A notification of defects must be made together with meaningful documentation.
   b. Claims of the customer regarding subsequent performance or replacement delivery are excluded with regard to such defects of quality which would have been recognizable in a proper inspection but of which SmarAct was not informed.

(5) A detected defect, confirmed by SmarAct can be
   a. either repair or replacement by SmarAct, depending on SmarAct's choice. The customer can demand a repair or replacement of the software within a reasonable period of time if another form of subsequent performance is unreasonable.
   b. Alternatively, depending on SmarAct's choice, SmarAct can also remedy the defect by providing updates or written instructions for use.

(6) SmarAct has equivalent measures at its disposal in the event of alleged material defects:
   a. Should a third party assert claims against the customer based on the claim that the software or the naming of the software infringes their intellectual property rights, the customer must inform SmarAct immediately and the customer will entrust SmarAct with the defense against the asserted claims as far as possible and will provide all reasonable assistance in this respect.
   b. SmarAct may remedy a defect in title by giving the customer the option, at its sole discretion, to use either an alternative, undisputed software or a legally undisputed modification to the software.

(7) SmarAct has a reasonable period of time in which to render subsequent performance. A failure of the subsequent improvement or replacement delivery is only to be assumed,
   a. if the customer has given SmarAct sufficient opportunity to remedy the defect or make a replacement delivery without the desired result having been achieved,
   b. if the repair or replacement is impossible,
   c. if it is refused or unreasonably delayed by the supplier,
   d. if there are reasonable doubts as to the prospects of success,
   e. or if an unreasonableness for other reasons exists.

(8) In the event of fraudulent acts by SmarAct, its legal representatives or vicarious agents, the lawful rights of the customer shall remain unaffected. Provisions pursuant to §3 and §4 shall remain unaffected by this clause 8.

§ 4 Liability

(1) The claims for damages of the customer, or claims for compensation of futile expenses, are based on the present clause §4, regardless of the legal nature of the claim.

(2) SmarAct shall have unlimited liability for damages resulting from injury to life, limb or health resulting from a negligent breach of duty or an intentional or negligent breach of duty by SmarAct, a legal representative or vicarious agent of SmarAct.

(3) SmarAct is not liable for any minor negligent breach of minor contractual obligations. SmarAct shall only be liable for minor negligence if an obligation is breached whose compliance is of particular importance for achieving the purpose of the contract (cardinal obligation). In the event of a breach of the cardinal obligation, liability is limited to such damage as is typically to be expected within the scope of the software transfer. The same applies to minor negligent breaches of duty by legal representatives, executive employees or vicarious agents of SmarAct.

(4) For open source or freeware software components, or open source or freeware software products, the customer hereby accepts the conditions of the corresponding license. These license terms will be made available to the customer upon request. If there is a conflict between these General Terms and Conditions and the respective License Terms, the License Terms shall take precedence over these General Terms and Conditions. SmarAct does not charge the customer a license fee for the use of open source or freeware software components, or open

source or freeware software products. However, SmarAct's liability for intent and gross negligence remains unaffected.

(5) Liability for loss of data shall be limited to the typical cost of recovery that would have been incurred if backup copies had been made regularly and in accordance with the risks involved. The customer is responsible for backing up his data on a regular basis.

(6) Notwithstanding the foregoing, contributory negligence on the part of the Customer shall reduce the amount of claims for damages, in particular if they are caused by insufficient cooperation, organizational errors, inadequate data protection or the breach of other contractual obligations.

(7) The liability according to the product liability law remains unaffected (§ 14 ProdHG).

§ 5 Retention of Title

(1) SmarAct retains ownership of the software delivered to the customer until full payment of all claims arising from this contractual relationship existing at the time of delivery or arising at a later date.

(2) If the customer is in arrears with payments and in the event of a significant breach of the customer's duty of care or custody, the assertion of the retention of title by SmarAct shall not be deemed a withdrawal from the contract, unless SmarAct expressly informs the customer of this.

(3) If SmarAct asserts the retention of title, the customer's right to further use the software expires. All program copies made by the customer must be handed over to SmarAct or deleted.

§ 6 Obligation for Written Form

All agreements, which contain changes, additions or concretizations of these contract conditions, as well as special guarantees and agreements are to be put down in writing. If they are declared by SmarAct representatives or assistants, they are only binding if SmarAct has given its written consent.

§ 7 Place of performance

Place of performance for deliveries is the registered office of SmarAct.

§ 8 Choice of Law

With regard to all legal relationships arising from this contractual relationship, the parties agree that the laws of the Federal Republic of Germany shall apply. The UN Convention on the International Sale of Goods (CISG) is excluded.

§ 9 Place of Jurisdiction

If the user is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the District Court of Oldenburg shall be agreed as the place of jurisdiction for all disputes arising within the context of the contractual relationship. However, SmarAct is entitled to make claims at the registered office of the customer.

§ 10 Severability Clause

Should individual provisions of this contract be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, this shall not affect the validity of the remainder of the contract. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come as close as possible to the economic objective pursued by the parties to the contract with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete.