

§ 1 Scope of these General Terms and Conditions for Software License

(1) MOOG GmbH, Hanns-Klemm-Straße 28, 71034 Böblingen ("Licensor") has agreed with the user of the Licensed Product ("Licensee") to grant Licensee a license to use and exploit the Moog software („Licensed Product“) subject to the terms and conditions of these General Terms and Conditions for Software License („Terms and Conditions“).

(2) The Licensed Product comprises the object code of the software and, if agreed upon, of any documentation.

§ 2 Grant of Rights

(1) Licensor hereby grants to Licensee, if the Parties did not agree otherwise, the non-exclusive, non-transferable right to use, copy, revise and decompile the Licensed Product without limitation in time and territory for Licensee's business purposes subject to the terms of these Terms and Conditions.

(2) If the Licensed Product is integrated in a product of the Licensor (e.g. valve) that is supposed to be sold by Licensee to an end-user as agreed between the Parties ("Contractual Product"), the Licensor grants, in deviation of paragraph 1, Licensee a right to sublicense the Licensed Product subject to the terms of these Terms and Conditions. In the case of sublicensing, Licensee will remain fully responsible towards Licensor for compliance with and any breach of these Terms and Conditions by the end-user.

(3) The right to use and exploit is limited to the agreed purpose of use („Purpose of Use“). If the Licensed Product is integrated in a Contractual Product, the Purpose of Use is the designated operation of the Contractual Product.

(4) The right to copy the Licensed Product granted to Licensee herein is limited to (i) the installation of the Licensed Product on a computer system which is in Licensee's immediate possession and (ii) to fulfill the Purpose of Use and (iii) a copy thereof which is required for the loading, display, running, transfer or storage of the Licensed Product as well as to the right for an authorized person to make a copy for security backup purposes, as stated in Section 69 d para. (2) German Copyright Act (Urhebergesetz – "UrhG").

(5) If the Licensed Product is integrated to the Contractual Product, the following applies in deviation of paragraph 4: The right to copy the Licensed Product granted to Licensee herein is limited to a copy thereof which is required for the loading, display, running, transfer or storage of the Licensed Product for the purpose of operating the Contractual Product.

(6) The right to decompile the Licensed Product granted to Licensee herein is only granted under the terms of Section 69 e para. (1) nos. 1 to 3 UrhG and within the limits of Section 69 e para. (2) nos. 1 to 3 UrhG.

(7) Notwithstanding the provisions of subsections 1 - 5, Licensee shall, for any Licensed Product, if and as far as it includes Open Source Software, receive licenses in accordance with the license terms applicable to such software. Both Parties agree to comply with such license terms. The Open Source Software that is part of the Licensed Product as well as the terms and conditions of such Open Source Software will be conveyed to the Licensee upon request, or made available, if this is necessary according to the applicable license terms.

(8) Further rights to use and exploit the Licensed Products are not granted to Licensee.

(9) Licensee undertakes to allow Licensor or an agent of Licensor to audit whether Licensee's use of the Licensed Product is consistent with the rights granted to Licensee herein upon request by Licensor and provided there is a legitimate interest therein and to give full co-operation to Licensor or its agent carrying out such audit.

§ 3 Delivery and Installation of Licensed Product

(1) Licensor shall deliver the necessary number of copies of the Licensed Product for the exercise of the rights to use and exploit granted to Licensee herein either together with the Contractual Product as integral part of the Contractual Product or, if the Licensed Product is not integrated in the Contractual Product, in machine readable form (at Licensor's option) either stored on a type of data storage media in common use at the time or transferred by remote data transfer.

(2) Licensee shall receive any agreed software documentation as electronic document (at Licensor's option) either stored on a type of data storage or transferred by remote data transfer in English or German.

(3) The Parties agree Licensor's registered office as the place of performance for the delivery of the Licensed Product. Licensee shall bear all costs and risks related to such delivery. Upon transfer of the Licensed Product, the risk of transportation (particularly the risk of accidental loss or destruction) of the copies of the Licensed Product passes to Licensee.

(4) Licensee is responsible for providing the system environment in accordance with the system requirements for the Licensed Product.

(5) The Licensed Product shall be installed by Licensee, if the Licensed Product is not already integrated in the Contractual Product at the time of delivery. In this case, Licensee must notify Licensor, upon request of Licensor, of the respective installation locations of the copies of the Licensed Product. This shall also apply to any later change of installation locations.

(6) All copies of the Licensed Product shall remain in the sole ownership of Licensor until the complete payment of the license fees.

§ 4 License Fees

(1) If the Licensed Product is delivered as integral part of the Contractual Product, the license fee is generally compensated with the payment of the Contractual Product. This does not apply, if the purchase order confirmation stipulates that the Licensed Product needs to be activated at a charge by means of a license key.

(2) If the Licensed Product is offered, at a charge, on a data medium or, at a charge, per remote data transmission, the license fee will be set out in the purchase order confirmation.

(3) If the Licensed Product is explicitly offered "free of charge" (e.g. configuration software that is offered free of charge per remote data transmission), the grant of rights for the Licensed Product under these Terms and Conditions shall be free of charge.

(4) The commercial payment terms of the General Terms and Conditions of Sale and Delivery of Licensor apply, if the Parties did not agree otherwise.

§ 5 Machinery Directive 2006/42/EC and necessary security measures

(1) Licensed Product does fulfill the requirements of the Machinery Directive 2006/42/EC, in particular with regard to the functional security, only then, if it is appropriately marked and is delivered with the appropriate additional documentation for the intended use, and is delivered with the necessary certificates.

(2) The Licensee carries the sole responsibility with regard to the fulfilment of the Directive mentioned in paragraph 1, in particular in cases in which the Licensed Product is used within the scope of the Machinery Directive.

(3) The Licensee carries the sole responsibility to secure the Licensed Product against third-party attacks, e.g. viruses, hacker attacks and the like.

(4) The Licensee has the obligation to secure its IT-infrastructure, in particular applications relevant to security, with suitable measures in a redundant way to prevent any data loss resulting out of the use of Licensed Product.

§ 6 Rights in Case of Defects, if Licensed Product is offered free of charge

(1) In case the Licensed Product is offered free of charge, the rights of the Licensee in case of defects shall be limited to the rights as set out in Section 523 and 524 BGB.

§ 7 Rights in Case of Defects, if Licensed Product is offered at a charge

(1) The Licensed Product provided by Licensor shall be substantially in accordance with the product description. Warranty rights in case of defects shall be excluded in case of minor or immaterial deviations from the agreed or assumed characteristics as well as in the case of just slight impairment of use.

(2) In respect of updates, upgrades and the delivery of new versions, Licensee's warranty rights in case of defects shall be limited to the new features of the update, upgrade or new version compared to the previous version release.

(3) The Licensor may remedy any product defects by methods and means of its own choice. Remedies also include any reasonable workarounds made available by Licensor to Licensee. The Licensor may also demand that Licensee shall install "bug fixes" in any software components made available to Licensee. Licensor may at its reasonable discretion determine the time for remedying any product defects.

(4) If Licensor's final attempt to remedy a product defect has failed, Licensee may demand a reduction in the price of the defective software or rescind the agreement. Whether the final attempt to remedy a product defect has failed shall be determined in consideration of the complexity of the problem and surrounding circumstances, it being agreed and understood that two failed attempts shall not be sufficient to constitute a "failed attempt" by Licensor. Any right of Licensee to remedy product defects independently or with the assistance of third parties is hereby excluded. Licensee shall have no claims for damages against Licensor except as provided in Section 7 below.

(5) Licensee shall provide Licensor with written notice of any product defects promptly upon discovery, enclosing therewith a detailed description of the defects. Any obligations of Licensee to provide notice of product defects under applicable commercial law shall remain unaffected hereby.

(6) Any claims based upon product defects are time-barred twelve (12) months after making available the Licensed Product, unless Licensor has fraudulently concealed a product defect. The statutory limitation period for any damage claims by Licensee due to product defects remains unaffected.

(7) Any claims for damages are subject to the limitations set forth under Section 7.

(8) If the defect is caused by the defective products of a supplier and the supplier does not act as an assistant in performance of Licensor, rather Licensor is merely passing on a third party product to Licensee, then Licensee's rights in case of defects shall at first hand be limited to the assignment of Licensor's rights in case of defects against its supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which Licensor is responsible. If Licensee is unable to assert his rights in case of defects against the supplier out of court,

Licensor's subsidiary liability for Licensee's rights in case of defects shall remain unaffected.

(9) Amendments or additions to the services or items delivered which Licensee carries out itself or through third parties, shall cause Licensee's rights in case of defects to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.

(10) Licensor may refuse to remedy defects or deliver replacements, until Licensee has paid the agreed fees to Licensor, less an amount which corresponds to the economic value of the defect.

(11) Product descriptions shall not be deemed guaranteed unless separately agreed in writing.

§ 8 Rights in Case of Defects in Title, if Licensed Product is offered at a charge

(1) The Licensor warrants that the Licensed Product shall not infringe any third-party rights, if used as agreed and in accordance herewith. Licensor shall not be liable under this warranty unless Licensee provides Licensor with prompt written notice of any third-party claims and allows Licensor to defend such claims and entertain settlement negotiations, if and as far as legally possible. The Licensee shall, to a reasonable extent and at no cost to Licensor, assist Licensor with the defense of any third-party claims, in particular by making available all necessary information. Any obligations of Licensee to provide notice of product defects under applicable commercial law shall remain unaffected hereby.

(2) Rights within the meaning of this Section shall only refer to rights held by third parties in the Federal Republic of Germany.

(3) If third-party rights impair the agreed use of Licensed Product by Licensee, Licensor may, at its sole option, either modify the Licensed Product such that it no longer infringes the third-party rights, or, in the alternative, acquire the legal rights necessary for use of the Licensed Product. Any right of Licensee to modify the Licensed Product independently or with the assistance of third parties is hereby excluded.

(4) Licensee shall have no claims for damages against Licensor, except as provided in Section 7.

(5) Licensee shall have no claims based upon any defects in title, if Licensed Product has been modified by Licensee or any third parties, unless Licensee can show that the infringement did not result from modification of the Licensed Product. Licensee further shall have no claims based upon any defects in title, if infringement results from any combination of the Licensed Product of Licensor with products or services of any third parties other than subcontractors of Licensor.

(6) Any claims of Licensee based upon defects in title to the Licensed Product are time-barred 12 months after the Licensed Product was made available to Licensee, unless Licensee has fraudulently concealed a defect in title; the statutory limitation period for damage claims resulting out of defects in title remains applicable.

§ 9 Liability

(1) Licensor is subject to unlimited liability for any damages caused by grossly negligent or willful misconduct of Licensor or its legal representatives or agents, or resulting from any wrongful harm to life, limb or health.

(2) Licensor assumes liability for any damages caused by ordinary negligence if, and solely to the extent, Licensor breaches any material obligation under the agreement jeopardizing achievement of the purpose of the agreement and if Licensee placed particular reliance upon performance of such obligation. In such cases, Licensor's liability shall be limited to damages reasonably foreseeable at the time the agreement was signed. Sentence 1 does not apply, if the grant of rights with regard to the Licensed Product is free of charge; in such case liability for ordinary negligence is excluded.

(3) The foregoing limitations of liability shall also inure to the benefit of the Licensor's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or torts.

(4) Any liability of Licensor for damages under the German Product Liability Act shall remain unaffected hereby.

(5) Any liability of the Licensor for lost data shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Licensee to back-up data on a regular basis according to the state of the art shall remain unaffected thereby.

(6) Unless provided otherwise in these Terms and Conditions, any and all claims of Licensee against Licensor shall be subject to a limitation period of one year from the date of accrual and the date on which Licensee discovered or, absent recklessness on the part of Licensee, would have discovered the circumstances giving rise to the claim, except for claims defined in subsections (1), (2), or (4).

§ 10 Export Control

(1) The Licensee shall, in relation to the Licensed Product, comply with all export control laws and regulations of the European Union, the United States of America and any other countries which are relevant for Licensee.

(2) The Licensee shall not sub-contract or assign the benefit of the Licensed Product, export, sell or otherwise transfer the Licensed Product to any entity based in any state that appears on restricted lists published by the states listed in paragraph 1. The same applies to individuals that are listed on any restricted list.

§ 11 Consequences of a contractual breach by Licensee

(1) Upon breach of contract by Licensee, in particular if Licensee oversteps its license rights granted under this agreement, in case of default of payment or breach of the export control clause, Licensor shall be entitled to terminate this agreement for cause without notice, and require at Licensee's expense the return of all copies of the Licensed Product in which Licensor has retained ownership, or if applicable, to demand the assignment of Licensee's right of return against third parties.

(2) In such case, upon Licensor's request, Licensee shall confirm in writing that no copies of the Licensed Product of copies thereof were retained and that all installations of the Licensed Product have been irrevocably deleted from Licensee's or third party's systems. Before the unconditional transfer of ownership, Licensee shall only dispose of rights in the Licensed Product with the written consent of Licensor.

§ 12 Final Provisions

(1) Amendments or additions to these Terms and Conditions must be made in writing to be effective. This shall also apply to amendments of this written form requirement.

(2) These Terms and Conditions shall be governed by the laws of the Federal Republic of Germany except for the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980).

(3) The courts for Licensor's registered office shall have exclusive jurisdiction over all disputes under and in connection with these Terms and Conditions, provided that Licensee is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, Licensee has no place of business or ordinary residence in the Federal Republic of Germany.

(4) Should any provision of these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining terms. The Parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in these Terms and Conditions.

(5) In case of conflict between the German and the English version of these Terms and Conditions, the German version shall prevail.