

Enduser Licence Agreement Software Licence Agreement

Important note:

By installing, copying or using this software product in any other way, you consent to the following terms. If you do not agree with these terms, please do not install this software product but return the software and all accompanying material (including printed material and packing) within 30 days against reimbursement of payment. If you purchase or have purchased the software product by means of download, instead of returning the software, the download should be discontinued and all data which have already been downloaded should be deleted.

Phoenix Contact do not accept any general terms of contract of the customer (in the following called the licensee). The inclusion of such general terms and conditions is opposed expressly.

Preamble

This software licence agreement (in the following called EULA) is an agreement between the licensee (as a registered user in his own name or as a registered representative in the name of a company) and the licensor. The provisions specified hereinafter shall regulate the permitted use of the software regardless of whether it is provided on a data carrier or for download from a computer network. The EULA shall further regulate the providing of software pre-releases for testing purposes.

Definitions

licensor:	Phoenix Contact GmbH & Co. KG, Flachsmarktstraße 8, 32825 Blomberg, Germany
software:	The term „software“ shall include the computer software, the related media, printed material, application documentation, electronic guidebooks and online guidebooks. The term „software“ shall also include the updates and upgrades that go with the original version.
EDP system:	The term EDP system denotes a single computer or computer workstation, as well as programmable parts of equipment, in particular PC plug-in cards.
network:	In the following, a network is understood to be the linking of EDP systems within the licensee's company.
update:	Software with the same or improved operability, but with the intent of removing defects. A change of the version name is indicated as follows: e. g. from 2.01 to 2.02 (corresponding with a removal of defects); it is decisive for the classification as an update.
upgrade:	Software of a higher level or expanded operability, if necessary the version name will be changed as follows: e. g. from 2.10 to 2.20 (higher level) or from 2.0 to 3.0 (expanded operability); it is decisive for the classification as an upgrade.

2. Subject matter of the contract

- The licensor provides the licensee with the software specified in the offer of contract for permanent use subject to the following provisions on a data carrier or by making the software available for download on the Internet. If the user documentation is available as an electronic version online or offline, the delivery of a printed version of the user documentation (user manual) is not due.
- The licensee will be provided with software pre-releases in accordance with clause 10 of this EULA.
- The creation, maintenance or leasing of software is not due and shall be subject of separate agreements.

3. Extent of the licence

- The licensor grants the licensee the non-exclusive right to permanently use the software subject to the following conditions:
- If the licensee has acquired the licence for a single workstation, he is not entitled to use the software on more than one EDP system at the same time. The licensee is entitled to use the software on all his available hardware. If, however, he changes the hardware, he is obligated to delete the software which has been installed on the hardware used before.
- The use of the software on more than one EDP system at the same time is only permitted if the licensee acquires or has acquired copying licences or the necessary number of single workstation licences as provided in clause 4 of the EULA.
- If the licensee has acquired a network licence, he is entitled to install the software on a network server and to use it on as many workstations at the same time as the number of licences which he has acquired from the licensor for this purpose.
- If the licensee holds a company licence subject to separate negotiations, he is entitled to make any number of copies of the software given to him and to simultaneously use these on any number of workstations within the division of the enterprise or within the enterprise specified in the offer of contract, except as otherwise provided in writing. The use is restricted to this division of the enterprise or to this enterprise. This shall also apply if the enterprise is part of an association of enterprises.
- If the licensee has only acquired updates or upgrades to an existing original version, he is only entitled to use these updates or upgrades for the original software if he owns it and uses it and is the holder of a licence valid for the original software.
- The right to use the software includes the right to duplicate the software if it is necessary. A necessary duplication is the installation of software from the data carrier or from a download medium – e. g. the Internet – on the hard disk, in the mass storage, the loading of the software into the working storage or cache. If the licensee has acquired further copying licences according to clause 4 of the EULA, he is also entitled to duplicate the software on portable storage media (CD-ROM or others).
- The licensee is entitled to sell the original software to third parties in accordance with the terms of this clause.

A permissible resale to third parties is subject to the condition that the licensee informs the licensor which third party will acquire the software and the licence before reselling it.

The resale is only permissible if the original data carriers, including all copies of the software, the manuals and all written and electronic accompanying material, the licence certificates or licence documents for the licences to these products, are handed over to the third party. The software can only be resold subject to a complete transfer of the licence. A transfer of a part of the licence is not admissible.
- The licensee is in no way entitled to let, lease or grant the software to any third parties. He is further not entitled to manipulate the software or make any other changes in the software.
- The licensee is only entitled to duplicate or disassemble the codes or the code form without the consent of the licensor if the duplication or disassembling is absolutely necessary – without impairing the normal evaluation or injuring the licensor's lawful interests in an unacceptable way – to obtain the required information to achieve the interoperability of an independently created computer program with other programs. However, this shall only apply subject to the following provisos:
 - the operations are carried out by the licensee or another person entitled to use a duplicate of

the program or by a person authorized to do this on his behalf,

- the information required for the achievement of interoperability is not made easily accessible for the persons named in the above paragraph,
- the operations are restricted to those parts of the original program which are necessary for the achievement of interoperability,
- the information obtained during an admissible decompilation shall not be used for any purposes other than the achievement of an interoperability of the independently created program,
- it shall not be passed on to any third parties, unless this is necessary for the interoperability of the independently created program,
- this information shall also not be used for the development or creation of a program with a largely similar form of expression, or for any other operations which infringe the copyright.

- If the licensee has not acquired any copying licences, he is permitted to make a backup copy, which has to be marked clearly. The serial number, the fact that it is a backup copy, the date of acquisition and the date of the creation of the backup copy have to be indicated.

4. Copying licence

- The licensee can acquire copying licences from the licensor, which will entitle him to make copies of the software on portable data carriers. The extent to which the right to make copies is granted shall be determined according to number 3.2, 3.3, 3.7 – 3.10 of this EULA.
- The licensee is entitled to produce as many copies of the software as the number of copying licences he has acquired. The licensee undertakes to mark these copies with the serial numbers or licence code numbers which have been given to him. The number of serial number stickers or licence code number stickers given to the licensee corresponds to the number of copying licences acquired. If the licensee has only been provided with one serial number or licence code number, he is entitled to produce the number of copies which have been confirmed in the copying licence handed over to him in writing or which have been agreed upon in the licence certificate. In this case the licensee undertakes to mark all copies with this serial number or licence code number.
- The copying licence does not entitle the licensee to make further copies of the copies produced or to sell the copies which have been produced. The licensee undertakes to inform the licensor about the copies he has produced and to give him written evidence of them.

5. Academic software

- If the software is expressly marked out for academic purposes, the licensor grants the licensee the right to use this software only for these specified academic purposes. The use of the software is only admissible within the limits of a qualified group of users. If the licensee has any doubts as to the classification as part of a qualified group of users, he has to contact the licensor immediately.
- The use of the software for purposes other than those specified in 5.1 is not admissible; in particular a resale of the software and a consequent transfer of rights for other purposes than the specified academic purposes is not admissible.
- An alienation of software the licence of which is restricted to academic purposes for profit is not permitted.

6. Infringement of licences

- In the event of a violation of the provisions of clauses 3 to 5 by the licensee, by his legal representatives or vicarious agents, the licensee shall pay to the licensor a contractual penalty of € 5,000 for each act of infringement, without prejudice to any claims for damages.
- In the event of an infringement of his licences, the licensor is entitled to rescind the contract, without prejudice to any claims for damages. In this case, the licensee undertakes to return to the licensor all software including all accompanying material. If any backup copies have been

made or any copies have been produced under copying licences, these have to be destroyed. Any software installed on hardware has to be deleted. Written evidence of the destruction and deletion has to be given to the licensor on first demand.

7. Royalties

If the contracting parties have agreed on royalties, the following shall apply:

The royalties are due for immediate payment. In case of default, the licensee shall pay the statutory default interest. The right to assert any further claims for damages shall be reserved.

8. Impossibility of performance

If the obligation owed by the licensor cannot be fulfilled due to any circumstances which are unforeseeable or beyond his control, he is entitled to desist from fulfilling the obligation. The licensor undertakes to inform the licensee about the impossibility of performance without delay. If the licensee has already paid any purchase price in full or in part at this time, the licensor undertakes to immediately refund the payment made to the licensee.

9. Warranty claims

9.1 If the licensee is a merchant and this is a commercial transaction for both parties to the agreement, the licensee undertakes to inspect the software immediately after it has been delivered by the licensor or after its download, as far as this is possible in the ordinary course of business and, if there is any defect, to immediately give notice to the licensor.

If the licensee fails to give notice of the defect, the product is considered as approved, unless there is a defect which could not be recognized during the inspection.

If such a defect appears, the notice has to be made immediately after the defect has been discovered; otherwise the product is considered to be approved even considering this defect.

To maintain the rights of the licensee, it is sufficient to send off the notice in time. The foregoing provisions shall not apply if and in as far as the licensor has concealed a defect fraudulently.

9.2 There is a defect in the software if it does not have the stipulated qualities on passing of the risk, or if it is not fit for the contractually agreed use.

9.3 There is no defect if the licensee himself, or through any third parties, has intervened in the software without the prior written consent of the licensor and the defect has appeared after the intervention. The licensee is allowed to provide evidence of the fact that the defect of the software was not caused by the intervention. There further is no defect if the software is used on hardware or on an operating system which does not meet the requirements which have been laid down in the offer of contract or in the product specifications.

9.4 If there is any defect, the licensor is entitled to choose the option of remedying the defect or delivering a substitute for the software (subsequent performance).

9.5 The licensor can make subsequent performance conditional on the fact that a part of the agreed royalties which is adequate in proportion to the extent and gravity of the defect of the software has already been paid by the licensee.

9.6 Subsequent performance is considered to have failed after the third unsuccessful attempt. If subsequent performance fails, the licensee is entitled to withdraw from the agreement. If there is any fault attributable to the licensor, the licensee is entitled to claim damages from him or demand compensation for futile expenses. A reduction of the purchase price shall be excluded.

9.7 The limitation period for any warranty claims shall be one year. It begins to run on delivery of the software to the licensee.

9.8 The licensor shall not assume any liability. The licensor's employees are not entitled to make any promises of guarantee. The licensee can only plead a promise of guarantee by the licensor if it has been confirmed in writing by the licensor himself or his legal representative.

10. Software pre-releases

10.1 The licensor and the licensee can agree on the provision of software pre-releases. Software pre-releases can be identified in particular by their being marked „alpha“, „beta“, „release candidate“ or by similar labels. The provision of software pre-releases shall be finally regulated in the following, unless any individual arrangements or other agreements have been made:

10.2 The software pre-release is given to the licensee for test purposes only. It is not intended for use in the going concern and shall not be used on any EDP systems or networks which are part of the going concern. With the software pre-release, the licensee acquires the right to use this software as provided in number 3.2, 3.7 – 3.10 of this EULA for the period of time it is given to him, but subject to the reservation of sentence 2 of this paragraph.

10.3 The licensee undertakes to notify the licensor in writing of all error messages, usability faults etc. in describing how the fault developed and when and where it appeared.

10.4 The licensor is not liable for any damages which are caused by a violation of the above provisions by the licensee, his legal representative or his vicarious agent.

11. Liability

11.1 The licensor is liable for intentional breach of duty or gross negligence on the part of his legal representatives or other vicarious agents, regardless of the legal ground, and according to the statutory regulations as provided in the Product Liability Act.

11.2 The licensor is further liable for slight negligence if a duty is neglected the compliance with which is of particular importance for the attainment of the purpose of the agreement (cardinal obligation), being only liable for any typical, foreseeable damage which is to be expected. Any further liability for slight negligence shall be excluded.

11.3 The liability for damages according to number 11.2, sentence 1, shall be restricted to the amount of the contract sum.

11.4 The licensor shall only be liable for the loss of data and/or programs to the amount of the expenses which occur if the licensee carries out regular and application-adequate data security measures, making sure that lost data can be retrieved at a justifiable cost.

11.5 The provision under number 10.4 of the EULA shall remain unaffected.

12. Proprietary rights of third parties

12.1 The licensor declares that the software which is subject matter of the agreement, including the plans and documentations, is free of any third party rights.

12.2 In the event of an impairment of the use of the software in accordance with the terms of the agreement due to proprietary rights of any third parties, the licensee is entitled to warranty claims according to clause 9 of this EULA.

12.3 The licensor shall indemnify the licensee against all claims by third parties which are asserted against him due to an impairment of third party proprietary rights with respect to the software which is subject matter of the agreement. The release from liability shall also include the costs necessary for the licensee's legal procedure.

13. Export

The export of software including all data and documents can be subject to an export permit, e. g. due to its classification or its purpose of use. In this case, the licensee undertakes to obtain the required export permits on his own responsibility and to effect deliveries only in accordance with this permit.

14. Setoff/retention

The licensee is only entitled to set off claims against the licensor if his counterclaims have been recognized by declaratory judgment or are undisputed. The assertion of any rights of retention by the licensee based on any claims other than those under this agreement shall be excluded.

15. Terms of business of the licensee or third parties

Any general terms and conditions of business of the licensee or third parties shall not become subject matter of the contract; this shall also apply if the licensor does not expressly oppose them. An inclusion of the terms of business of the licensee or third parties inferred from any acts of the parties shall be excluded, in particular the licensee's terms of business shall not become subject matter of this agreement by the acceptance of deliveries of goods and provisions of services or by payment.

16. Final provisions

16.1 Any amendments and supplements to this agreement must be made in writing. This shall also apply to a termination, modification or a renunciation of this requirement of writing.

16.2 This agreement shall be governed by the law of the Federal Republic of Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) being excluded.

16.3 For all disputes between the parties arising out of this agreement or in connection with it, the licensor's seat is agreed to be the place of performance and jurisdiction, if this is admissible. The licensor is further entitled to file an action at his seat.

as per April 2002