

# SPECIAL TERMS AND CONDITIONS OF PAESSLER AG FOR THE TEMPORARY ONLINE USE OF STANDARD SOFTWARE

## **Sec. 1. Scope**

(1) The Special Terms and Conditions set out below shall apply to the contracts of Paessler AG (hereinafter referred to as “we”) with customers for the temporary use of standard software. These Terms and Conditions apply for all customers except for US American customers.

(2) To the extent the Special Terms and Conditions for the temporary use of standard software set forth herein do not otherwise provide, our General Terms and Conditions shall have supplemental application. We shall send these to customers upon request, by email or fax, or shall provide the most recent version to customers for downloading from our website.

(3) Secs. 4, 6, 8 (4) and (6), and 9 to 12 of our General Terms and Conditions shall not apply.

## **Sec. 2. Our services**

(1) Throughout the term of the contract, we shall provide services in connection with our provision of the licensed software for the customer’s use, as well as supplemental services (e.g. provision of remote probes) in line with sec. 3 to sec. 10.

(2) During the trial phase (sec. 17 (2)), our services are provided free of charge; following conversion to “subscription” (sec. 17 (3)), our services are provided for a fee.

## **Sec. 3. Scope of our services**

(1) We have a duty to perform the agreed services. The scope of our services is governed by the description of services in effect as of the date that we forward our offer to the customer (in particular: as stated in the user documentation, <http://www.paessler.com/support/manuals>).

(2) Where, during the term of our contract, we make modifications to the licensed software and remote probes in order to perform contractual duties or based on a statutory or contract right (e.g. by providing new versions), the modified software shall be deemed to replace the licensed software, and the modified remote probes shall be deemed to replace the remote probes. The customer is not entitled to demand that we provide them with a previous software version.

(3) Our software, i.e. the licensed software and the remote probes (including user documentation) is subject to legal protection, including, in particular, copyright protection.

(4) The customer may only use our software within the scope of what is permitted under the contract and, unless otherwise agreed in the contract, within the scope of what is permitted by law.

## **Sec. 4. User documentation**

The user documentation constitutes part of the licensed software and the remote probes. We provide it to the customer solely in electronic form (in English) and in a format of our choice.

## **Sec. 5. Provision of use**

(1) The customer is authorized to use the licensed software, subject to the agreed availability thereof, on a geographically unlimited basis until this contract ends. On the basis of this contract, the customer is neither granted a copyright nor an exclusive right of use to the licensed software. The customer’s right to use the licensed software is non-transferable and may not be sublicensed. However, the customer is authorized to use the licensed software to perform services for third parties.

(2) We shall provide the licensed software on a server of one of our subcontractors for the customer’s use until this contract comes to an end, subject to the agreed levels of availability. The customer’s right to use the licensed software shall include the right to access the licensed software via a data connection in order to achieve the purpose of the parties’ contract, and to run the software and to operate it in order to enter, process, and extract data in line with this contract, to download the accompanying user documentation from the server for its use in line with these terms and conditions, and to duplicate the same to a reasonable extent (e.g. to print out such user documentation or to store it temporarily or permanently on a data medium, e.g. on the hard drive of the customer’s computer or other end device), where necessary in order to use the licensed software for the purposes envisaged under the contract. The customer is not granted access to the source code of the licensed software. The customer may neither process nor in any

other way modify the licensed software. Sec. 5 (2) shall not apply with respect to remote probes.

(3) We shall furnish the customer with “remote probes” for downloading, as additional software products. We grant the customer a non-exclusive right of use to the respective remote probe, which right is unlimited in geographical scope and limited in temporal scope to the term of the contract, as follows

1. to install the remote probes on the computer/computers for which they are destined in line with the intended use thereof,
2. to load the remote probes into the working memory of the computer and to display and launch them,
3. to create backup copies to the necessary extent and to create backups of the respective data media/medium on which the remote probe(s) is (are) installed (image).

Remote probes may be installed on an unlimited number of computers throughout the world.

It is the customer’s responsibility to safeguard/backup the installation files necessary for reinstallation and the corresponding license key if applicable.

The customer must label any backup copies on portable data media as such and place an appropriate notice thereon.

The customer may only make changes to the remote probes within the meaning of sec. 69c (2) of the German Copyright Act ([German acronym:] UrhG) to the extent permitted by law. We must point out that even minor alterations may lead to substantial, unforeseeable disruptions in the operation of the software and other computer programs, and may give rise to incorrect output of the data processing. The customer is prohibited from modifying or removing copyright notices on the remote probe or any data media we may provide. Under no circumstances is the customer granted any right of use beyond their statutory rights that would entitle them to edit, translate or modify the remote probes.

The customer is only authorized to decompile the remote probes within the meaning of sec. 69e of the German Copyright Act (UrhG) to the extent permitted by law. Prior to any decompilation, the customer shall request, in writing and setting a reasonable deadline, that we provide such information and documents as are necessary to secure interoperability. The customer shall only be entitled, within the limits of what is provided under sec. 69e UrhG, to proceed to decompile the remote probes where such deadline expires to no avail. Prior to engaging third parties (e.g. in line with sec. 69e (1) (1), sub-sec. (2) (2) UrhG), the customer shall procure for us a written undertaking by the third party in which that third party undertakes to us directly that it shall comply with these terms and conditions.

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The customer shall only be entitled to disseminate the remote probes (including by contract-leasing) or to display them publicly (on a wired or wireless basis), including publishing them such that the remote probes are accessible to members of the public at locations and times of their choosing, to the extent expressly agreed with us or permitted by law.

#### **Sec. 6. Availability of licensed software**

(1) The servers on which the licensed software is provided for the customer’s use are operated on a 24 hour/day and 7 day/week (24/7) basis.

(2) We have engaged an entity from the Amazon Group of companies as a subcontractor to provide the licensed software for downloading. The minimum availability thereof shall be governed by the “Amazon EC2 Service Level Agreement”, subject to the provisos (i) that Amazon Web Services, Inc. is deemed replaced by ourselves and the user is deemed replaced by the customer, (ii) that any request for credit must be directed to us and not to Amazon Web Services, Inc., and (iii) that in their request, the customer is not required to provide any details regarding the IDs of EC2 instances in question or regarding the IDs of EBS volumes in question and (iv) that the customer is likewise not required to produce any request logs documenting the errors and the outage claimed. The “Amazon EC2 Service Level Agreement” may be downloaded online at <https://aws.amazon.com/ec2/sla/>. We will also send this document to customers upon request, by email or fax.

(3) We may suspend availability on a temporary basis in order to perform maintenance on the licensed software (e.g. for updates (provision of new program versions)) or restrict availability for such purposes, in each case in line with the provisos set forth below:

1. to the extent that, for technical reasons, we are able to plan maintenance services on a periodically recurring basis or are otherwise able to plan them with respect to preventive maintenance, we shall perform them within a time window which may be adjusted via the licensed software. The customer may select the time window for maintenance by means of the licensed software. The default setting of the time window is such that any such maintenance services will (to the extent possible and reasonable) be performed during periods in which disruptions or restrictions will typically have a lower level (on average) of adverse impacts on the total pool of customers.

2. Where we are unable to plan the maintenance work, we shall also be entitled to perform maintenance work at times other than those specified in sub-para. 1 where necessary in order to maintain the operations of our IT systems or to ensure IT security. We shall endeavor to

avoid unplanned maintenance work by undertaking planned maintenance work to a reasonable extent.

3. We shall restore availability within a time that is reasonable with regards to handling the cause of the maintenance.

(4) The provisions set forth in sub-para. 3 shall remain unaffected by the provisions set forth in sub-para. 2.

(5) Where the customer is able to select the time window for maintenance by means of the licensed software, it shall be the responsibility of the customer to facilitate such maintenance work in line with the contract.

(6) It shall be the customer's responsibility to provide us with timely notice of any action planned by the customer or with their knowledge which may have impacts on the quality of the services we furnish, and in particular where such action may give rise to any system usage peaks.

#### **Sec. 7. Access to administrator's module and PRTG installation**

(1) The licensed software is administered by means of an administrator module and the PRTG user interface. Access to these is provided by means of a web portal. Access via the web portal requires the inputting of credentials.

(2) The customer is responsible for ensuring (by undertaking appropriate technical and organizational measures within their scope of responsibility) that only authorized persons are given access to the credentials and for specifying the authorizations for further users. The customer shall ensure that credentials provided are not disclosed to unauthorized third parties or any improper use is made of them.

#### **Sec. 8. Provision of new versions**

During the term of the contract, as a part of our standard release stream, we shall provide the customer with the most recent version of the licensed software and remote probes in each case for their use. The customer is responsible for enabling us to install new program versions of the remote probes.

#### **Sec. 9. Ongoing development**

(1) We have an obligation to perform further development of the respective software (of the licensed software and the remote probes) to a reasonable extent and to provide new versions as part of our standard release stream.

(2) For purposes of our performance of further development work, we are authorized to modify, supplement and develop the licensed software and remote probes (including user interfaces and dialog screens, and user documentation) in our free discretion throughout the term of the contract, provided that the essential functional scope for the contractual use of the software in question remains substantially unaffected and

the modifications are reasonable for the customer for a contractual and typical use of the software. This authorization to modify the software shall also include the authority to remove functionalities that are not important or are no longer important in connection with the customer's contractually compliant use of the software, to the extent reasonable to the customer. Following any notification of changes to the respective software, the customer is responsible for verifying that the changes are reasonable for the customer for a contractual and typical use of the software. If this should not be the case, the customer must promptly inform us of this.

(3) Maintenance is at all times undertaken within our software's lifecycle and in line with our release strategy. If we plan to discontinue maintenance for our software, we will provide at least 12 calendar months' advance notice of the discontinuation date.

#### **Sec. 10. Support**

(1) Throughout the term of our contract, we shall provide the customer with support services in response to technical inquiries regarding the respective software, i.e. regarding the current program version of the licensed software and the remote probes, on the basis of the law governing contracts for works and services (secs. 611 ff. of the German Civil Code ([German acronym:] BGB), to the extent agreed herein (hereinafter "Support").

(2) For this purpose, we operate a Support ticket system which is set up to respond to customer inquiries. Support is provided solely via that Support ticket system. The customer may open Support tickets either via the licensed software or on our website.

(3) Our Support services are available during our normal business hours, i.e. on all weekdays (e.g. calendar days with the exception of Saturdays and Sundays and with the exception of statutory public holidays in the German Federal State of Bavaria and with the exception of December 24<sup>th</sup> and December 31<sup>st</sup> of any year) from 9:00 a.m. to 5:00 p.m. (CET or CEST). We are authorized to freely plan and coordinate the activities required to enable us to perform our Support services. Sec. 6 (3) shall apply *mutatis mutandis* to the availability of our Support ticket system.

(4) Our Support includes providing Support to customers on specific questions regarding functionalities, operation, and potential problems with the licensed software and remote probes (e.g. malfunctions of the software which may be caused by users) where the customer is not able to solve the issue by using the information in the error message, the user documentation or general IT knowledge.

(5) We do not have a duty to provide Support

a) if the customer does not use the means of communication specified by us in sub-para. 2 for communicating their inquiry or

b) if the customer does not furnish us with all information in a reasonably succinct and documented fashion and in the form we require in order to process the inquiry.

(6) The customer's rights and duties with respect to defects of the respective software shall remain unaffected by our Support. Processing of reports of errors of the respective software is not the subject matter of our Support where such work is covered by one of our warranty obligations.

(7) Provision of extended Support services (with availability outside the hours referred to above) or service levels (e.g. reaction and error elimination times) shall require a separate agreement of the parties.

#### **Sec. 11. Compensation**

(1) During the trial phase (sec. 17 (2)), our services are performed free of charge. Following conversion to "subscription" (sec. 17 (3)), the customer shall be required to pay the agreed compensation.

(2) We shall invoice customers for our services for the respective contract period except where we have otherwise agreed. The compensation is payable in advance, except where we have otherwise agreed.

(3) The provisions in sec. 7 of our General Terms and Conditions shall apply in supplementation thereof.

#### **Sec. 12. Customer's duties of cooperation**

(1) The customer shall maintain IT infrastructure (hardware and software) in place that is appropriate for the use of the software agreed under the contract, and shall ensure that there is a suitable data connection to the server on which we provide the software for the customer's use. This constitutes a necessary prerequisite to the customer's contractual use of the software, including the remote probes.

(2) We provide the information on the technical minimum requirements online for downloading, and will also provide them in another form upon request. We may modify the technical minimum requirements in our reasonable discretion and following timely prior notice on our website. The customer is responsible for informing themselves regarding the respective technical minimum requirements. The customer shall bear the costs necessary for procuring and maintaining the IT infrastructure needed to use the services or to avail themselves of telecommunication services or other service providers other than us. We are not responsible either for establishing or for maintaining data connections at any point beyond the delivery point of the server operated by

a service provider under contract with us to the customer's data connection.

#### **Sec. 13. Customer's rights with respect to software defects**

(1) The customer is entitled to assert rights for a defect of the respective software (i.e. the licensed software or the remote probes) in line with the provisions of applicable law, except where the parties have otherwise agreed.

(2) In the event of any substantive defect of the respective software, we shall be obliged and entitled, at our election, which we shall make within a reasonable time, initially to remediate (e.g. eliminate the defect) or to supply a replacement (i.e. provide a new version of the program which is free of defects). Elimination of defects may also consist of indicating to the customer contractual and reasonable options for avoiding the impacts of the defect.

(3) In the event of any legal defect with respect to the software, we shall be entitled and obliged, at our option, which we shall make within a reasonable time, initially to undertake supplemental performance by procuring a legally sound means of using the respective software or by providing replacement software or modified software of equivalent value.

(4) Our liability for damages and our liability to pay compensation for unavailing expenditures is limited under sec. 15 and sec. 16 hereof.

(5) Where we perform services involving identifying or eliminating defects following the report of a substantive defect by the customer without being obliged to do so, the customer shall have a duty to compensate us for the losses or expenditures we incur as a result of our services in identifying or eliminating the defect, except where the obligor has not breached any of its obligations in reporting the defect or is not responsible for the breach of duty.

#### **Sec. 14. Intellectual Property rights of third-parties**

The customer shall notify us promptly in writing wherever third parties assert IP rights (e.g. copyright or patent rights) to the respective software. The customer shall support us to a reasonable extent in defending against such claims.

#### **Sec. 15. Our liability during the trial phase**

During the trial phase (sec. 17 (2)), we shall only be liable in cases of intentional acts and gross negligence.

#### **Sec. 16. Our liability following conversion to "subscription"**

Following conversion to "subscription" (sec. 17 (3)), § 16 of our General Terms and Conditions shall apply, with the proviso that additionally a liability independent of fault according to § 536a para. 1 Var. (1) of the German Civil

Code (BGB) is excluded because of defects already existing at the time of conclusion of the contract.

**Sec. 17. Commencement and termination of contract**

(1) This contract shall enter into force at such time as it is concluded.

(2) The customer may test the software and remote probes free of charge during the trial phase. The contract shall end at such time as the customer switches to "subscription" in line with sub-para. 3 or upon expiration of the trial phase, without the need for any declaration by either party.

(3) During the trial phase, we are deemed to irrevocably offer to the customer that, by making a declaration to us, which the customer must provide via our administration module (e.g. "subscribe now"), the customer may switch the contract to a paid subscription contract (switch to "subscription").

(4) The rental contract shall begin to run on the calendar date on which the customer provides their declaration ("subscribe now"). When providing such declaration, the customer may select a contract term (e.g. one month or twelve months).

(5) Upon expiration of the agreed contract term, the subscription contract shall be automatically extended, without the need for any declaration by either of the parties, for a contract term equal to the previous contract term in each case except where one of the parties gives timely and formally proper notice of termination to the other party.

(6) The notice period for termination is one calendar day to the end of the respective contract term. To be valid, notice of termination must be given in writing. Compliance with the written form requirement by the customer is satisfied where the customer clicks on "cancel subscription" in the administration module.

(7) For purposes of our compliance with the written form requirement, an electronic message which we display to the customer via the licensed software and which comports with the text form requirement shall be deemed sufficient. Our notice shall be deemed to have been received by a person authorized to receive it on behalf of the customer if it is stored within the software in such a way that it may be displayed to the customer within the licensed software.

(8) The parties' right of extraordinary termination shall remain unaffected hereby. A declaration of extraordinary termination may only be validly given in written form. Sub-para. 7 shall apply *mutatis mutandis*.

(9) Upon expiration of the contract, the customer is no longer entitled to use the licensed software or the remote

probes. Following termination, we are not obliged to store the customer's configuration files.