

# SPECIAL TERMS AND CONDITIONS ON LICENSING THE STANDARD SOFTWARE PRTG NETWORK MONITOR

## Sec. 1 Scope

(1) The following terms and conditions provide specific rules on the scope of the customer's right to use the standard software PRTG Network Monitor (hereinafter referred to as "Software"). These Terms and Conditions apply for all customers except for US American customers

## Sec. 2 Definitions

The following terms shall have the following meanings in these Terms of License:

1. User: User working with the Software.
2. System: Physical computers, virtual systems et al. devices such as security cameras, routers, etc.
3. Core Server: The central monitoring entity for a PRTG installation, providing storage and processing of monitoring data, dispatch of notifications, User administration, webserver etc.
4. Failover Node: A Core Server that is able to assume monitoring functions in a cluster where the Master Node cannot be reached.
5. Master or Master Node: A Core Server that permanently takes on the Master role in a Cluster.
6. Cluster: Combination of one Master Node and one or more Failover Nodes, which is created to increase the responsiveness of the System.
7. Remote Probes: Software that is installed in a network segment and that collects monitoring data and transmits them to the Core Server.
8. PRTG Added Services: PRTG Added Services is a hosted service to send push notifications to mobile devices via Goggle, Apple, or Microsoft communications infrastructures and monitor publicly available hosts or URLs on behalf of the customer.
9. PRTG Apps: apps for different platforms (e.g. PRTG for iOS or PRTG for Android).

## Sec. 3 Rights to the Software; licenses

(1) The Software, including the user documentation, is subject to legal protections, and, specifically, copyright protection.

(2) The contractually agreed quality of the Software results in particular from the PRTG Network Monitor user manual, which the customer can download in its most current version from <https://www.paessler.com/manuals/prtg>.

(3) The customer may only use the Software to the extent permitted by the contract and, unless otherwise agreed by contract, to the extent permitted by applicable law.

(4) Customers are only granted non-exclusive rights of use. Such rights of use are unlimited in their geographical scope and either (a) in the case of permanent provision of Software, unlimited in time, or (b) in the case of temporary provision of Software, limited to the agreed contractual period.

(5) The customer is authorized

1. to install the Software on the computer/computers for which it is destined,
2. to load the Software into the RAM of the computer, and to display and run it,
3. to create the requisite number of backup copies of the Software and to create backups of the data storage medium/media on which the Software is installed (image).

It shall be the customer's responsibility to secure the installation files required for new installation and the associated license keys.

(6) A backup copy on a moveable data storage medium must be labelled as such and must bear an appropriate copyright notice.

(7) The customer may only make changes to the Software within the meaning of sec. 69c no. 2 of the German Copyright Act ([German acronym:] UrhG) if this is permitted by law. Even minor changes can lead to considerable, unforeseeable disruptions in the operation of the Software and other computer programs and to incorrect results in data processing. The customer is prohibited from modifying or removing copyright or license notices in the Software or on any data storage media which we may provide to the customer. The customer is in no case granted any right of use to process, translate or modify the Software going beyond the customer's statutory rights.

(8) The customer is only authorized to decompile the Software within the meaning of sec. 69e of the German Copyright Act (UrhG) to the extent permitted by law. Prior to any decompilation of the Software, the customer must request Paessler AG in writing, within a reasonable time period, to provide the information and documentation required in order to create interoperability. Only after this period has expired to no avail the customer will be entitled to decompile the Software within the statutory limits. Prior to the involvement of third parties, the customer shall provide Paessler AG with a written declaration from the third party that the third party undertakes to comply with the terms and conditions directly vis-à-vis Paessler AG.

(9) The customer shall only be entitled to disseminate (which shall include rental) or to publicly display the Software whether on a wired or wireless basis, including providing public access in such manner as makes it accessible to members of the public from any location and at any time they may select, to the extent this has been expressly agreed or is permitted by law.

(10) In case of a temporary provision of Software, the customer shall, after expiration of the contract, return or destroy all data carriers, documentation, other materials and documents received as well as backup copies made, uninstall the Software and irreversibly delete any recognizable remaining Software from his IT systems.

#### **Sec. 4 License types**

(1) The following license types are differentiated:

1. "Commercial Edition" (sec. 5)
2. "Freeware", "Trial Edition" and "Special Edition" (sec. 6)

(2) Paessler AG's current licensing terms can be found here: <https://www.paessler.com/company/terms>.

(3) Contracts on the basis of which the customer was allowed to use Software of another license type in the past shall remain unaffected. The foregoing applies, in particular, to contracts for the "Site License", "Corporate Country License" and "Corporate 'n' Core Global License" license types. To such extent, the Terms of License governing licensing of those license types shall apply. The customer shall receive these Terms from Paessler AG upon request by email or fax.

#### **Sec. 5 Commercial Edition**

(1) Regarding licenses of the "Commercial Edition" license type, a distinction is made between individual Core Server licenses, multiple Core Server licenses ("XL ,n'/Unlimited License") and sensor-based licenses.

(2) Individual workstation licenses permit installation only on a single System. For Cluster functionality, sec. 7 (1) shall apply supplementary.

(3) In cases of provision of the Software as an "XL

,n'/Unlimited License", the Paessler AG will make an agreement with the customer as to how many computers (n) it is allowed to install the Software globally, so that the Software may be used by one or more Users at one or more locations. For Cluster functionality, sec. 7 (2) shall apply supplementary.

(4) If the Software is provided as a sensor-based license, the Customer may use the Software regardless of the number of systems within the agreed number of sensors from an unlimited number of Users at any location worldwide.

(5) Remote Probes may be installed on any number of computers worldwide for all license types listed under sub-sections (2) to (4).

(6) Where the customer exceeds the agreed scope of use, it must notify the Paessler AG promptly thereof; any further legal rights are deemed neither to be limited nor precluded thereby.

(7) In case of the permanent transfer of Software the customer is only authorized to provide the Software to third parties subject to the legal prerequisites. Prior to providing the Software to any third party, the customer must notify the Paessler AG of its provision of the Software to a third party, and the date and the recipient thereof, and must completely delete the installations in its possession. In case of the temporary provision of Software, the customer may not sell, give away, lend, sublet or lease the Software.

#### **Sec. 6 Freeware, Trial Edition & Special Edition**

(1) Regarding licenses of the "Freeware", "Trial Edition", and "Special Edition" license types, the Software will always be handed over to the customer by Paessler AG, free of charge and on the basis of the General Terms and Conditions of Paessler AG.

(2) Unless otherwise agreed, the law of gratuitous donation shall apply to any contract for any of the license types referred to in sub-section (1) hereof. Secs. 3 (2), 4, 6 (1), 7, and 11 (1) to (3) of the General Terms and Conditions of Paessler AG shall not apply.

(3) In cases of provision of the Software to the customer pursuant to the Freeware license type, the customer's authorization to use the Software is limited to use of the Software for a maximum of 100 sensors except where the parties have expressly agreed otherwise.

(4) In cases of the provision of Software to the customer pursuant to the Trial Edition license type, the authorization to use the Software shall be limited to a 30-calendar day period from the date the contract is made, after which period the Software may be used on a maximum of 100 sensors, except where the parties have expressly agreed otherwise.

(5) In cases of provision of the Software to the customer pursuant to the Special Edition license type, the scope of the authorization to use the Software will be specified in each individual case.

(6) In cases of provision of the Software to the customer pursuant to one of the license types referred to in sub-section (1) hereof, the following shall apply supplementary:

1. The customer may install and use the Software on as many of its computers as desired.
2. The customer may only provide the Software to third parties (e.g. including on a website or an FTP server for remote access including downloading)
  - a) if the customer provides the Software without having modified it,
  - b) if the customer provides the Software to the third party in question on a gratuitous basis, and
  - c) if the customer ensures that the respective third party undertakes to comply with the License Terms vis-à-vis Paessler AG

The customer may only provide the Software to third parties in exchange for compensation with the prior express consent of Paessler AG in written form, which is required in order to be deemed effective.

(7) In cases in which the Software is provided to the customer pursuant to one of the license types referred to in sub-section (1), Paessler AG shall not offer any contract for maintenance of the Software to the customer. If, in individual cases, maintenance services are nevertheless performed, the foregoing is done without any acknowledgment of a legal duty to do so. The customer's statutory claims in the event of defects of the Software remain unaffected thereby.

### **Sec. 7 Cluster functionality**

(1) Software of the "Commercial Edition" license type on the basis of an individual Core Server license that has been provided to the customer may be installed by the customer on one further System, in addition to the primary installation, as corresponding Failover Node. In order to install a three-fold or four-fold Cluster, the customer must purchase a further license key, and for installation of a five-fold Cluster, the customer must purchase a third license key. The Software may not be deployed beyond a five-fold Cluster.

(2) Software of the "Commercial Edition" license type on the basis of a multiple Core Server license ("XL ,n'/Unlimited License") that has been provided to the customer may be installed by the customer both as multiple individual Core Server installations and one or more Cluster installations, pursuant to the contract with the Paessler AG. In addition, the customer may install the

Software as a "Failover Node" which is linked with one of those 'n' installations on not more than one System beyond the contractual scope of the license. The customer must in each case acquire one additional individual Core Server license for each two additional Cluster Nodes outside the contractual scope of the license in question.

### **Sec. 8 PRTG Added Services**

(1) As an additional service for PRTG installations, the customer can use "PRTG Added Services", for which the following terms and conditions shall apply.

(2) Paessler AG provides these services on a gratuitous basis. It is possible that these services can only be used if an active maintenance contract exists for the PRTG license used.

(3) Paessler may provide the "PRTG Added Services" through third parties. These services include, for example, notifications (e.g. via push technology) and monitoring with specific "cloud" sensor types. For the best possible customer experience, Paessler AG may change or extend these services without prior notice. As soon as these functions are used in a PRTG interface (including our apps), or via the API, the PRTG Core Server will connect to external infrastructure that is owned by Paessler AG without any further query. In our Privacy Policy you will find a detailed list of added services and information about which data we store in the context of our service provision (<https://www.paessler.com/company/privacypolicy>).

(4) Upon use of the "PRTG Added Services", the customer is responsible for concluding a contract with a third-party service provider where necessary in order to be permitted to use its services and to procure the prerequisites to utilization of the "PRTG Added Services" in conformity with data protection law requirements, and for maintaining the same in force until the contract comes to an end.

(5) Upon use of the "PRTG Added Services", the customer is obliged to comply with Amazon's Acceptable Use Policy (AUP), which may be viewed at <https://aws.amazon.com/aup/>. Without limitation in respect of the AUP terms and conditions, the cloud infrastructure may be used, in particular, only for notifications to the customer's own devices and for monitoring the customer's own websites and infrastructure.

(6) In particular, the customer is prohibited from the following

1. use of the cloud infrastructure to send spam,
2. to send notifications to third parties without their prior express consent and
3. to monitor third-party or illegal websites.

(7) Paessler AG is authorized to temporarily or permanently discontinue the "PRTG Added Services"

service. Discontinuation will be previously announced, either on the internet website or via dialogs in the Software, for example.

(8) The liability of Paessler AG in the provision of the "PRTG Added Services" shall be limited to intentional acts and gross negligence.

(9) Uninterrupted availability of the "PRTG Added Services" is not guaranteed.

(10) If the customer concludes the contract for licensing the Software with Paessler AG, secs. 4, 6, 7, 9, 11 (1) to (3), and 12 of the General Terms and Conditions of Paessler AG shall not apply to the "PRTG Added Services".

### **Sec. 9 PRTG Apps**

(1) As a complementary service for PRTG installations, the Paessler AG provides certain PRTG Apps for different platforms that the customer may download from the platform's app stores or from Paessler AG's website.

(2) In addition to the license conditions of the respective app store, the following provisions complemented by the Paessler AG Apps Terms shall apply to the use of the PRTG Apps, whereby the license conditions of the respective app store shall remain unaffected by these provisions and the Paessler AG Apps Terms. In the event of discrepancies between these terms and the Paessler AG Apps Terms as well as the license terms of the respective app store, the license terms of the app store shall take precedence.

(3) The customer may use the PRTG Apps to connect to a PRTG server and view monitoring and related data or to configure the System. At Paessler AG's discretion, it may include or exclude features in the PRTG Apps, such as stand-alone tools for performing network tasks. The customer may be required to use the PRTG Apps in order to subscribe to push notifications from the PRTG server. Paessler AG reserves the right to offer each of the different PRTG Apps with different feature sets, depending on the platform and its technical requirements and features.

(4) The customer represents and warrants to acknowledge that Paessler AG may permanently or temporarily discontinue any or all of the PRTG Apps or to modify their features. Paessler AG will make reasonable efforts to alert the customer to a discontinuation of any of the PRTG Apps on its website or through the Software.

### **Sec. 10 License key; activation of Software**

(1) Unless otherwise agreed, the use of the Software shall require activation of the Software by means of a license key.

(2) Where use of the Software requires activation thereof by a license key, part of the Paessler AG's obligation to supply the Software is deemed to encompass the provision of a license key and the provision of information to the customer as to how to go about activating it.

(3) Upon activation, an individual ID for the computer on which the Software was installed is transmitted to Paessler AG in order to assign the license key to a specific machine.

(4) Use of the Software on a new machine shall be subject to the prerequisite that the customer has deleted the Software it has installed on the old machine and has re-activated the Software after installation on the new machine.

### **Sec. 11 Automated testing for availability of new program versions**

(1) The customer may configure the Software such that it carries out an automated check for availability of new program versions at regular intervals.

(2) Such checks for availability of such new program versions shall be done by means of an internet link to the server of Paessler AG. It is the customer's responsibility to ensure, at its own cost and expense, that an internet connection of this kind is present.

(3) In the course of such checks by means of the internet connection, statistical information on the PRTG installation (e.g. number of sensors) is likewise transmitted to Paessler AG. For further information, please refer to the Privacy Policy of Paessler AG (available in the respective current version at <https://www.paessler.com/company/privacypolicy>).

(4) No automated installation of the new program version is provided. It is the customer's responsibility to install the new program version.

(5) The Terms of License above do not give rise to any right to the provision of any new program version. The prerequisite to any such claim is the customer's conclusion of a maintenance contract.