

# SPECIAL TERMS AND CONDITIONS OF PAESSLER AG FOR FREWARE AND BETA PRODUCTS (STANDARD SOFT- WARE)

## CHAPTER 1: FREWARE AND BETA PRODUCTS FOR PERPETUAL LOCAL USE

### Sec. 1 Scope

(1) The Terms and Conditions set out below shall apply to the contracts of Paessler AG (hereinafter referred to as “we”) with customers for the perpetual local use of free-ware and beta products (“Software”).

(2) To the extent the Special Terms and Conditions of this chapter do not otherwise provide, our General Terms and Conditions shall have supplemental application. Upon request, we shall send these to the customer by e-mail or fax or make them available to the customer in the most recent version for downloading on our website.

(3) Unless otherwise agreed, the law of gratuitous donation shall apply. Secs. 3 (2), 4, 6 (1) to (3), 7, 9, and 11 (1) to (3) of our General Terms and Conditions shall not apply.

### Sec. 2 Our services

We provide services free of charge for the transfer of the Software to the customer.

### Sec. 3 Rights to the Software

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

(2) 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.

(3) Customers are only granted non-exclusive rights of use.

(4) 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).

(5) 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.

(6) 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 shall request us 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 us with a written declaration from the third party that the third party undertakes to comply with the terms and conditions directly vis-à-vis us.

### Sec. 4 Scope of the license

(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)

1. if the customer provides the Software without having modified it,

2. if the customer provides the Software to the third party in question on a gratuitous basis, and

3. if the customer ensures that the respective third party undertakes to comply with these Terms and Conditions for Freeware and Beta products vis-à-vis us.

(3) The customer is not permitted to make the Software available to third parties for use against remuneration.

#### **Sec. 5 Availability and maintenance**

(1) We make the information for the minimum technical requirements of the Software available online for downloading and on request also in other form. We may adapt these minimum technical requirements at any time. It is the customer's responsibility to inform himself about the respective minimum technical requirements. The customer shall bear any and all costs arising for the procurement and provision of the IT infrastructure required for the use of the Software or for the use of telecommunication services or other services from service providers besides us.

(2) We do not offer the customer a contract for the maintenance of the Software. If maintenance services are nevertheless provided in individual cases, this shall take place without acknowledgement of any legal obligation.

#### **Sec. 6 Feedback from the customer**

If the customer gives us feedback about the Software, e.g. in the form of suggestions or comments, he hereby assigns to us all rights to this feedback. This includes in particular the right to use the feedback in our products and documentation. In this case, the customer is not entitled to a remuneration or other consideration.

#### **Sec. 7 Rights of the customer due to errors**

We shall only be liable for such errors which we have fraudulently concealed from the customer.

## Chapter 2: FREWARE AND BETA PRODUCTS FOR TEMPORARY ONLINE USE

### Sec. 1 Scope

(1) The Terms and Conditions set out below shall apply to the contracts of Paessler AG (hereinafter referred to as "we") with customers for the temporary online use of freeware and beta products ("licensed Software").

(2) To the extent the Special Terms and Conditions of this chapter do not otherwise provide, our Special Terms and Conditions for the Temporary Online Use of Standard Software as well as our General Terms and Conditions shall have supplemental application. Upon request, we shall send these to the customer by e-mail or fax or make them available to the customer in the most recent version for downloading on our website.

(3) Secs. 3 (1), 4, 5 (1) sent. 4, 6 (2) sent. 2 to 4 and (3) to (6), 7 to 11, 12 (2), 13, 15, 16, and 17 (1) to (8) of our Special Terms and Conditions for the Temporary Online Use of Standard Software as well as all provisions listed there that refer exclusively to "Remote Probes" shall not apply. Furthermore, secs. 4, 6, 8 (4) and (6) as well 9 to 12 of our General Terms and Conditions shall not apply.

### Sec. 2 Our services

During the term of the contract, we provide services free of charge for the provision of the licensed Software for use by the customer.

### Sec. 3 Availability and maintenance

(1) We make the information for the minimum technical requirements of the licensed Software available online for downloading and on request also in other form. We may adapt these minimum technical requirements at any time. It is the customer's responsibility to inform himself about the respective minimum technical requirements. The customer shall bear any and all costs arising for the procurement and provision of the IT infrastructure required for the use of the licensed Software or for the use of telecommunication services or other services from service providers besides us. We are neither responsible for the establishment nor for the maintenance of the data connection after the handover point of the server operated by a service provider on our behalf to the data connection to the customer.

(2) We are entitled to interrupt or restrict the availability of the licensed Software at any time for the purpose of maintenance (e.g. for updates = provision of new program versions).

(3) Beyond the scope described in sub-section (2) above we do not offer the customer a contract for the maintenance of the Software.

(4) The maintenance services pursuant to sub-section (2) as well as maintenance services nevertheless performed in

individual cases contrary to sub-section (3) shall be performed without any acknowledgement of a legal obligation.

### Sec. 4 Provision of new versions

We shall provide the customer with the current version of the licensed Software for use during the term of the contract at our discretion.

### Sec. 5 Further development

For the purpose of further development, we are entitled to modify, supplement, further develop and remove functions from the licensed Software during the term of the contract.

### Sec. 6 Feedback from the customer

If the customer gives us feedback about the Software, e.g. in the form of suggestions or comments, he hereby assigns to us all rights to this feedback. This includes in particular the right to use the feedback in our products and documentation. In this case, the customer is not entitled to a remuneration or other consideration.

### Sec. 7 Rights of the customer due to errors

We shall only be liable for such errors which we have fraudulently concealed from the customer.

### Sec. 8 Effective date and expiration of the contract

(1) The contract becomes effective with the beginning of the use of the licensed Software by the customer.

(2) The contract expires, without any declaration of a contracting party being required, for beta products with the end of the beta phase, and for freeware products with the final and permanent discontinuation of use by the customer. The end of the beta phase can be freely determined by us.

(3) The right of extraordinary termination remains unaffected hereby. It requires the written form to be effective.

(4) Upon expiration of the contract, the customer is no longer entitled to use the licensed Software.