

**Software License Agreement  
for Weidmüller Software Products  
Version 1.0 of 01 July 2018**

## **1. BINDING AGREEMENT**

This Software License Agreement is a binding agreement between you, our customer (also referred to as "Customer" or "Licensee"), and Weidmüller Interface GmbH & Co.KG ("WM"). It shall become effective, subject to the following terms ("Terms"), upon (1) signature of a written agreement to which these Terms are attached, or (2) acceptance of an offer which is subject to these Terms or (3) by accepting these Terms when downloading and installing by a confirmation click that you have read and understood these Terms and fully accept them (the day on which such actions occur hereinafter referred to as "Effective Date").

You explicitly confirm by the actions described under (1) to (3) above that these Terms are exclusively applicable even if you should generally use terms of purchase whether with or without provisions that allegedly prevail over these Terms save where WM has explicitly agreed to provisions different from these Terms in writing and confirmed by WM's signature.

## **2. SCOPE OF THE AGREEMENT**

These Terms apply to the use of the Software which may be already pre-installed on Weidmüller's hardware products as firmware as well as to Weidmüller's stand-alone Software products downloaded from the internet or delivered on media like CDs, USB-sticks, dongles, etc. Where indicated in writing, individual, separate or additional license terms may apply to the use of specific Weidmüller Software products.

By these Terms, you do not purchase the software, you are granted a right to use the Software in accordance with these Terms. The purchase of any accompanying or associated Weidmüller hardware products is, however, governed by the general terms of sale of the respective Weidmüller local company or of the Weidmüller distributing partner company.

## **3. DEFINITIONS**

- **"Software"**: means the WM software programs and 3<sup>rd</sup> party software programs, whether Firmware or stand-alone software, supplied by WM under these Terms. This includes any versions, updates, upgrades or other new deliveries of WM software code and it includes corresponding documentation, associated media, printed materials and online electronic documentation.
- **"OSS" or "Open Source Software"**: shall have the meaning as described in clause 12
- **"Firmware"**: means Software pre-installed or to be installed only on a distinct Weidmüller hardware device product. This includes updates, upgrades, revisions or bug-fixing stacks provided for such pre-installed Software, even if provided to be downloaded onto such device for improvement or altering of pre-installed Firmware.

## **4. LICENSED RIGHTS, LIMITS**

- 4.1 Subject to these Terms, WM hereby grants to Customer the non-exclusive, non-transferable right to use and exploit the Software. WM grants to Customer also the non-exclusive and non-

transferable rights to revise and to compile the Software as far as applicable and mandatory legal provisions prevent WM from the exclusion of such right; any further right to revise or to compile is excluded. The right to use and exploit is limited to the purposes described in these Terms, especially as specified by the Purpose of Use.

4.2 The right to use and exploit and the right to copy the user documentation are limited to internal purposes. Customer may make printouts and/or additional copies provided that these printouts and/or copies are solely used for internal purposes.

4.3 In the event Software is not Firmware, the following applies: The right to copy the Software is limited to the installation of the Software on a single computer system which is in Customer's immediate possession and to fulfill the Purpose of Use. Customer may not use the Software on a computer system with more than one CPU or on additional virtual machines without WM's explicit written authorization. Customer may copy the Software as far as this is required for the loading, display, running, transfer or storage of the Software on the computer system after the installation. Customer is entitled to make one copy for security backup purposes if and as required by applicable and mandatory legal provisions.

4.4 If Software is not Firmware: Customer may not sell, transfer or distribute the Software or transfer the rights granted under these Terms to a 3<sup>rd</sup> party unless the Software is incorporated in Customer's products and such products are sold, transferred or otherwise distributed or unless authorized. Customer shall ensure that all obligations under these Terms are passed on to the 3<sup>rd</sup> party to which Customer's products are sold or otherwise distributed. Customer may not retain any licensed material after the transfer.

## 5. PURPOSE OF USE

5.1 Firmware: Firmware is provided to be run on a specific device. Customer may use Firmware only for purposes of using the Weidmüller hardware product device and only in accordance with the purpose and within the specifications of such device. The other way round, a Weidmüller hardware product device may only be used by using the Weidmüller Firmware and only in accordance with the Firmware's purpose.

5.2 The following applies to Software other than Firmware: Because the Software is designed to run or be incorporated in a hardware product, WM licenses the Software to Customer for incorporation in Customer's products and Customer may only sell, transfer or otherwise distribute the Software if it is combined with, or incorporated in, Customer's product. Because the Software is designed to be used on a single computer system identified by, among others, its central processing unit ("CPU"), Customer shall only use the Software on one CPU. If the CPU or the other hardware components are changed Customer may have to request new license keys from WM.

5.3 Specific types of engineering Software: Only in the event the documentation contains a description of the interfaces provided for such purposes such as, but not limited to, defined APIs, Customer may connect the Software to other software, i.e. facilitating interoperability. Otherwise, Customer shall not modify, translate, or otherwise edit and transform the Software. Neither shall Customer retranslate the Software into the form of source programs or other modes of presentation. Any retranslation of parts the Software for making an independently developed program interoperable with the Software shall be subject to the applicable legal provisions and any WM restrictions.

5.4 If the purpose of specific engineering Software is to enable Customer to create own software and to incorporate such software with the Software in a hardware product, WM does not represent and warrant that the Software is suitable for any particular purpose. Customer is obliged to examine the suitability of the Software and any software based on or connected with the Software. Customer shall not incorporate the Software in any hardware product without adequate testing.

5.5 Customer shall not change Software in any way except for those changes which are required for purposes to repair any Software faults if WM is in default with, or not in a position, to repair such fault.

5.6 Any use beyond this scope is not agreed to and not permitted.

## **6. RESTRICTIONS**

6.1 Safe where explicitly stipulated in clauses 4 and 5 of these Terms or in separate written agreements to the contrary, no other rights to use or exploit Software are granted. Especially, Customer shall **not** (1) alter, merge, modify, adapt or translate, decompile, reverse-engineer, disassemble or otherwise reduce the Software to a human receivable form, (2) distribute copies of the Software nor otherwise sell, lease, rent or sublicense the Software, (3) modify or create derivate works based upon the Software, (4) export the Software to any country prohibited by the applicable export control statutes, regulations or acts. Customer shall not use the Software to develop any software or other technology having the same primary function as the Software, including, but not limited to, using the Software in any development or test procedure that seeks to develop like software or other technology, or determine if such software or other technology performs in a similar manner as the Software.

6.2 If Customer fails to comply with the restrictions of this clause 6, WM has the right to terminate the license and where terminated Customer must destroy all copies of the Software.

## **7. PAYMENT OF ROYALTIES**

7.1 If agreed, the Customer shall be obliged to pay the remuneration/periodical fees/royalties ("Royalty"). In the event that Weidmüller does not charge a Firmware Royalty in excess to the purchase price of the Weidmüller hardware device this shall not be construed such that the principle of exhaustion applies to any right to use or copy beyond use of the Weidmüller hardware device product

7.2 Any Royalty is to be paid net, i.e. is payable plus respective applicable VAT, excise or other sales tax. The price is decided by the most current price list. WM is entitled to cut access to any Weidmüller online platform or cloud solution in the event Customer is in arrears and WM sent a payment remainder and a reasonable grace period has expired.

## **8. CUSTOMER'S OTHER DUTIES AND OBLIGATIONS**

The Customer shall fulfill duties and obligations as are required to give the agreement effect. Namely, the following applies:

8.1 Customer is responsible for providing the system environment in accordance with system requirements for the use of the Software specified by WM: Customer has reviewed and hereby confirms that the system requirements are met for those Software modules and variants that Customer intends to apply.

8.2 Software may contain trademarks, trade names, product names, logos, labels, copyright notices, legends, symbols, or other proprietary notices ("Proprietary Notices") of WM protected in Germany or other countries or of other respective owners. Customer may not remove or alter any Proprietary Notices. Where copies of Software are permissible under these Terms, Customer shall reproduce such Proprietary Notices without change in any copies made.

8.3 Customer will keep confidential any authentication ID-data provided by WM to enable access to Software ("ID-Data"), protect ID-Data against access by unauthorized third parties and not hand over ID-Data to unauthorized users. ID-Data is to be protected by usual and required means. The Customer will notify WM without undue delay in the event Customer suspects that unauthorized persons had or have access to or are in possession of any ID-Data.

8.4 If the Customer processes any content data by the Software Customer shall save such content data in his own responsibility and WM shall not be responsible for any loss of such content data. Likewise, the Customer shall be responsible for any restore- or save duties or any documentation periods as may be required by any applicable laws or regulation or under Customer contracts with 3<sup>rd</sup> parties.

8.5 Customer shall use state of the art anti-virus and anti-spyware technology, review any data or information accordingly before they are transmitted by the Software or connected Weidmüller platforms or cloud solutions.

8.6 Customer shall inform WM without any undue delay of any Software Faults in accordance with clause 10.3.

8.7 Customer is responsible and liable that Software is not used for any unlawful purposes or in any way that the use violates governmental regulations or government authority decisions nor that any content data comprises such content or is used for such unlawful purposes. Namely, the Software must not be used for any criminal, terroristic or illegal pornographic purposes and Customer shall not load, access or read unauthorized data or penetrate or use any unauthorized data. Applicable export control legislation is to be observed by the Customer.

8.8 Customer confirms and takes all steps required to prevent the unauthorized or prohibited use of any non-Weidmüller content data and 3<sup>rd</sup> party rights to content data are respected. Customer reviews whether any non-Weidmüller content data processed by Software comprises, or can comprise, personal data and whether this results in any Customer contractual or statutory obligations as to the processing of such personal data. In case Software is part of any cloud-solutions it is in Customer's responsibility to consider the resulting legal obligations under the applicable data protection laws especially with respect to close a data processing contract if necessary (vide especially Art. 28 EU General Data Protection Regulation "GDPR" and applicable national data protection provisions with comparable legislative content outside the European Union). Upon Customer's notice, WM is happy to propose respective data processing contract templates. If the content data comprises personal data Customer shall acquire the user's personal assent for processing user's personal data if required by the applicable data protection laws.

8.9 In the event the Customer allows access to the Software to any companies affiliated with Customer or to authorized 3<sup>rd</sup> parties, Customer shall extend and subcontract the same duties and obligations to such affiliated companies and/or 3<sup>rd</sup> parties. Customer shall be liable for any companies affiliated to Customer or authorized 3<sup>rd</sup> parties to whom Customer allows access to Software.

8.10 WM reserves the right to cut access to any Software platforms without any liability in the event of any reasoned suspicion of violations as described above.

8.11 Customer hereby indemnifies and confirms to hold WM harmless as against any 3<sup>rd</sup> party claims due to Customer's, Customer's agents', employees' or authorized persons' unlawful or unauthorized use of the Software or of any connected WM online platforms or of WM cloud solutions or 3<sup>rd</sup> party claims which result from Customer's data protection, copyright or other infringements in relation to the use of content data.

## **9. CHANGE OF SOFTWARE AND SYSTEM REQUIREMENTS**

9.1 WM is entitled, but not obliged, to make changes and improvements to the Software or connected platform services or cloud solutions or to system requirements. Information will be provided in due form.

9.2 WM will duly inform the Customer in advance if any changes or any new versions have any detrimental effect on the usability of functionalities on the Software.

9.3 Customer is entitled to terminate the agreement in accordance with clause 15 of these Terms if the Customer is, due to WM's change, limited in Customer's business or technical procedures and/or in the usability of the data previously produced or if the Customer cannot correctly use the Software anymore as a result of such changes.

## **10. WARRANTY RIGHTS**

10.1 The parties are aware and agree that it is not possible to develop any software in a way that it meets all the requirements of the application without any error so ever. WM represents and warrants that the Software has such features as are stated in the respective data sheets or documentation and that Software has no faults which materially reduce the general or agreed usability or their value ("Fault"). The faults have to be material, i.e. essential functions of the Software have to be affected by insufficient quality - minor or immaterial deviations from the agreed or assumed features or slight impairments of use shall not qualify for a Fault and thus not for a warranty claim under these Terms. WM's warranty is excluded and there is no Fault if Software does not fulfill the Customer's mere motives or wishes as it is Customer's duty to review whether the features described in the data sheet or documentation meet his targets. Subject to clause 13, a Fault requires WM's negligence.

With respect to updates and modifications, this warranty for Faults shall be limited to the new features of the update or modification compared to the previous version release.

10.2 In the event of a Fault in the Software, WM shall remedy such deviation, at WM's sole discretion, by improvement, replacement delivery or replacement services, delivery of bug-fixes, delivery or installation of a new version of the Software or a workaround ("Improvement Measures"), unless such remedial Improvement Measures result in unreasonable or inadequate costs or are technically impossible. (1) If WM does not fully succeed in eliminating such Fault within reasonable period of time, Customer has the right to adequately reduce the Royalties relative to the reduction of usability and relative to the period of reduced usability. (2) If the Software is rendered finally and entirely useless for Customer with view to the Purpose of Use, Customer has the right to terminate the agreement and to be redeemed the Royalties paid. (3) In the event limited performance caused by a Fault is due to at least negligence of WM and causing

damage the Customer is entitled to claim such damages in accordance with and subject to the limitations of clause 13.

10.3 Customer shall sufficiently document such detrimental deviations, make the documentation available to WM and work with WM so as to enable WM to reproduce and thus find the respective Software Faults which is key to develop an effective remedy. To the same aim, Customer shall inform WM on incidents of erratic malfunction of the Software once they occur. The description shall include at least (1) environmental factors that potentially may have had an influence on the malfunction and (2) Customer's attempts to self-remedy such malfunction. The onus of proof with respect to the timely information is with the Customer.

10.4 The warranty does not apply and is excluded if damages or problems are caused by Customer's breach of his obligations under these Terms. This warranty shall be excluded if the Customer has not, prior to or at the time Customer becomes aware of Faults, installed Improvement Measures as provided or offered by WM where WM can show that such Improvement Measures had, among others, remedial character.

10.5 The warranty period shall be one (1) year from delivery of Software to the Customer.

10.6 Subject to clause 13, to the maximum extent permitted by law, unless expressly stated in these Terms or in a deviating written agreement, WM disclaims any and all other warranties and conditions, whether express, implied or statutory, including without limitation any warranties, duties or conditions of, or related to, merchantability, fitness for a particular purpose, lack of virus countermeasures, accuracy or completeness of responses, results, quiet enjoyment, correspondence to description, non-infringement, workmanlike effort with respect to the Software and the use thereof.

## **11. THIRD PARTY RIGHTS**

11.1 WM warrants that WM has no current knowledge of any copyright or another intellectual property right of a 3<sup>rd</sup> party which prevents the use of the Software in accordance with these Terms.

11.2 WM may, at WM's sole discretion, decide to defend Customer against 3<sup>rd</sup> party intellectual property infringement claims in connection with the Software and caused by WM. Customer shall assist WM in such a claim. Customer shall notify WM without delay of any such claims. If WM does not decide to defend Customer, Customer shall be free to defend Customer and WM shall assist Customer in such a claim.

11.3 If claims under Clause 11.2 have been asserted against Customer, or if such assertions of claims must be expected, WM may modify or replace Software code at its own expense as far as this is reasonable for Customer. Each party to this agreement may terminate the license without notice if such modification or replacement cannot be accomplished at reasonable cost, or if a right of use cannot be obtained at a reasonable expenditure.

11.4 If WM should receive knowledge of any 3<sup>rd</sup> party rights which may limit the usability of the Software or the contractual performance WM shall inform the Customer without undue delay.

11.5 The Customer is not obliged to pay the Royalty inasmuch and in so far Customer's rights to use the Software are limited.

11.6 In the event WM should not have, or not have any more, 3<sup>rd</sup> party rights required to fulfill WM's obligations under these Terms, namely any licenses to allow the use of the Software are necessary and, as a result, Software cannot be used by the Customer anymore WM will either

purchase at own costs the respective license or provide adequate work arounds. In the event WM should not be able to comply with the above obligations both Parties have the right to terminate the agreement with immediate effect.

11.7 WM's liability shall be excluded in the event a 3<sup>rd</sup> party right is violated due to the Customer exceeding Customer's rights to use. In the latter case, Customer indemnifies WM and holds WM harmless against any 3<sup>rd</sup> party claims.

11.8 Subject to clause 13 and its limits, to the maximum extent permitted by law, unless expressly stated in these Terms or in a deviating written agreement, WM disclaims any and all other warranties and conditions, whether express, implied or statutory, pertaining to the infringement of any 3<sup>rd</sup> party rights with respect to the Software and the use thereof.

## **12. OPEN SOURCE SOFTWARE**

12.1 The parties are aware and acknowledge that upon using Software open source software ("OSS") may also be used which is delivered together with Software. Any OSS delivered together with Software may have their own OSS license terms and conditions which are, partly or entirely, to be applied to OSS mandatorily ("OSS License"). OSS shall be governed and construed by the respective separate OSS Licenses and not by these Terms.

12.2 OSS Licenses usually require that the use of OSS is revealed and the OSS Licenses are sub-licensed, accordingly. In order to meet these requirements, WM shows an overview of the OSS licenses in due form, usually in the respective "*about*" menu folder of the Software or a link stated on the respective Weidmüller product data sheet ("OSS Overview"). The OSS Overview comprises a table of all software components, if any, which are subject to OSS Licenses, the OSS License and if required, the wording of the respective OSS Licenses. The Customer is obliged to comply with the terms of OSS Licenses while using the Software.

12.3 Any liability caused by wrong handling of OSS shall be subject to and limited by the limits of clause 13.

## **13. INDEMNIFICATION, LIABILITY AND LIMITS OF LIABILITY**

13.1 For WM's, WM's agents' or employees' negligence other than gross negligence, any liability is excluded safe where WM is liable for a major breach of contract, defined herein as a breach of an obligation of particular importance for realizing the objective of the parties' agreement, in which case the equitable relief is limited to typical, contractually relevant and foreseeable damages or losses. If the use of Software is granted as a test license liability for any kind of negligence other than gross negligence is generally excluded.

13.2 Any indirect and consequential liability such as, but not limited to, loss of profit, loss of other commercial success, business interruption and advisors' fees shall be excluded - in particular where such damages result from the use of the Software for the development of other software.

13.3 In the above cases, WM is liable for the Customer's loss of data in so far only as the loss had occurred if the Customer had duly saved the data.

13.4 WM's liability does not include any compensation for damages of a non-Weidmüller hardware product in which the Software is incorporated or caused by such a hardware product. Furthermore,

13.5 The foregoing provisions are applicable, *mutatis mutandis*, to frustrated expenses as well.

13.6 Notwithstanding any terms of this clause 13 to the contrary, (1) the Parties shall be fully liable in the event of physical injury or death where caused by them; (2) liability is unlimited for damages caused by gross negligence or intentional conduct; and (3) the foregoing provisions shall not limit any mandatory claims pertaining to or in connection with the EU Regulation on Product Liability, its national transformation laws or non-EU applicable and mandatory national laws pertaining to product liability.

The foregoing shall be the sole and only WM liability and any other WM liability shall be excluded.

#### **14. CONFIDENTIALITY**

The Customer and WM will keep confidential all information which require secrecy and which they may have acquired in connection with this agreement and shall reveal any such information to any 3<sup>rd</sup> party only if the respective other party gave its prior written consent to abide to these terms on confidentiality. The foregoing obligation is not applicable if one party pleading its case can proof that (1) information was known to such party before the information was confidentially disclosed or (2) information was public domain before information was confidentially disclosed.

#### **15. TERM, TERMINATION**

15.1 This agreement shall come into force on Effective Date as described under clause 1 of the Terms and shall continue in full force and effect until terminated by either party in accordance with this section 15 or upon expiry of a license period as may be agreed between the parties.

15.2 Either party may terminate this agreement for convenience with at least three (3) months' prior written notice to the commencement date of any renewal term.

15.3 In the event of either party's material breach of this agreement the other party is entitled to terminate this agreement with immediate effect. Without limiting the generality of the foregoing, any failure by Customer to pay any Royalty shall be deemed a material breach of this agreement by the Customer.

15.4 Upon termination of this agreement and irrespective of the reason for such termination, Customer shall immediately cease to use the Software. Customer acknowledges and agrees that WM, in the event of termination of this agreement for whatsoever reason is entitled to delete Customer as user.

#### **16. OBLIGATIONS AFTER TERMINATION**

16.1 If any Customer's content data is stored or processed in connection with Software by a WM service offering with the Software, WM has the right to erase after the agreement's term has expired and is not extended by a new Version. In such case, WM will announce the erasure within a reasonable period of time in advance. The Customer has the obligation to save any content data, separately.

#### **17. FORCE MAJEURE**

In the event of force majeure neither party has the obligation to perform. By way of example, a force majeure event is deemed to take place in the event of (1) a failure of the telecommunication system or grid system (2) an event of explosion or fire or flood (3) act of war (4) strikes exceeding the period of 6 weeks and are not the fault of one party (5) problems in the internet which cannot

be influenced by one party safe if WM's offers the respective internet services as well. Each party has the obligation to inform the other party of a force majeure event without undue delay.

#### **18. APPLICABLE LAW, ATTACHMENTS, ENTIRE AGREEMENT, VENUE**

18.1 Applicable Law: This agreement shall be subject to German Law under exclusion of the United Nations Convention on the Sale of Goods and choice of law provisions.

18.2 Attachments, in their then applicable version, are an integral part of the agreement.

18.3 Entire Agreement: This agreement is the entire agreement and there are no other side agreements, oral nor written agreements unless expressively stated in writing. Any change to this agreement and to the attachments requires written form including the provisions of this requirement of written form.

18.4 Whole Agreement: In the event certain provisions are or become invalid this shall not inure the validity of the whole agreement. The invalid provision shall be replaced by a valid provision with the closest proximity to the commercial intend of the parties at the point of time of signature. The same applies to any gaps.

18.5 Venue: Exclusive venue shall be Detmold, Germany, save if mandatory laws stipulate otherwise.