

# General Terms and Conditions for the Supply of Software Products (AVB Software SICK)

(as at November 2019)

## 1. Subject Matter and Scope

- 1.1 These General Terms and Conditions for the Supply of Software Products ("**AVB Software SICK**") govern the temporary or permanent provision of software installed locally or installed and operated within the customer's sphere of responsibility (on-premise) (hereinafter referred to as "**Software**") to the customer by (i) SICK AG, Erwin-Sick-Str. 1, 79183 Waldkirch, or (ii) an Affiliate of SICK AG (both (i) and (ii) "**SICK**"; an Affiliate being an individual or entity if controlling, controlled by or under common control of another individual or entity, with control for such purpose meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities or voting interests, by contract or otherwise).
- 1.2 Individual agreements, quotations, product descriptions of SICK and / or the General Terms of Delivery ("**ALB SICK**") of the SICK company supplying or providing the Software shall also apply.
- 1.3 These AVB Software SICK shall also apply to subsequent updates and upgrades of the Software provided to the customer, unless otherwise agreed at the time of provision of the subsequent version or upgrade.
- 1.4 In the event of discrepancies, the aforementioned documents shall apply in the following order of precedence:
  - (1) individual agreements
  - (2) SICK's quotations
  - (3) product description of SICK
  - (4) these AVB Software SICK
  - (5) ALB SICK.
- 1.5 Software and services provided by SICK via the Internet ("**Software as a Service**" or "**SaaS**") shall be governed by separate terms – the General Terms and Conditions for the Provision of Software as a Service ("**AVB SaaS SICK**"). If the Software is provided in combination with hardware, these AVB Software SICK shall not apply to the hardware. In regard to the hardware, solely the ALB SICK shall apply. Additional services (e.g. consultancy services, training) provided in combination with the Software are subject to separate contractual agreements. In case of doubt, such services shall be governed by the SICK General Terms and Conditions for the Provision of Services ("**AVB Service SICK**") of the respective SICK company.
- 1.6 All General Terms and Conditions of SICK are available on the website of the respective SICK company or at [www.sick.com](http://www.sick.com) upon selecting the respective country.
- 1.7 The granting of licenses for the further development of the Software (development licenses) shall be, unless expressly stipulated in the product description, governed by a separate individual contract.
- 1.8 Deviating, contradictory or supplementary General Terms and Conditions of the customer shall not be part of the contract, regardless of any knowledge of SICK, unless their application is expressly agreed upon in writing.

## 2. Rights Of Use and License Terms

- 2.1. The Software is protected by copyright. SICK grants to the customer the non-exclusive, non-sublicensable right to use the Software specified contractually and/or in the product description in the agreed version for business purposes. Such right of use may be limited to the term of the respective contract, as the case may be. In case of network licenses, the customer shall during the term of the contract be entitled to make the Software available in its internal network within the contractually agreed scope of use, to the extent this is necessary for the client-server operation.
- 2.2. The description of the license type specified by contract and/or in the product description and the other provisions of this agreement define the scope of the right of use that SICK grants to the customer. The customer does not purchase any property rights to the Software. All rights to the Software and all relevant rights to patents, copyrights, trade secrets or other industrial property rights to the Software remain vested in SICK or in the third parties from which SICK has acquired the Software licensing right. SICK reserves all rights to the Software that have not been explicitly granted under this agreement.
- 2.3. The customer is not entitled to process, modify, reverse engineer, decompile, disassemble the program code of the Software, extract parts thereof or to determine the source code in any other way, nor to create derivative software products unless this is permitted by law or by section 2.9 of these AVB Software SICK. If the Software has interfaces with IT products of third parties, section 69 e of the German Copyright Act (UrhG) shall apply. In such case, prior to any decompilation, the customer shall request from SICK and/or the respective software manufacturer the information necessary for establishing interoperability.
- 2.4. The Software is supplied in machine-readable form (object code) only. The source code will only be provided to the customer on the basis of a separate agreement, or if and insofar as this is required in the applicable terms of use of open source software.
- 2.5. The customer may not remove from the data carriers any copyright notes, serial numbers and other program identification features as well as alphanumeric and other markings.
- 2.6. The customer may only reproduce the software program to the extent the respective reproduction is required for the contractual or intended use of the program. Required reproductions within the meaning of the above sentence 1 include, in particular, the installation of the Software from the original data carrier on the mass storage of the used hardware as well as the upload of the program into the working memory.
- 2.7. Notwithstanding section 2.6, reproduction is not restricted in the following cases:
  - for Software provided free of charge together with the product sold

by SICK

- for Software which can be downloaded for free from the internet if and insofar as the Software is absolutely necessary to operate SICK hardware.
- 2.8. The Software may include technology of third parties, such as open source software supplied with the Software or may require the use of such technology. The customer is granted a license for such third-party technology either under these AVB Software SICK or under separate license terms set forth in the respective documentation, readme files, information files or other similar documents or files ("**OSS License Terms**"). In case that the customer's rights to use the Software or parts thereof are subject to OSS license terms, such customer rights shall in no way be restricted by these software-license terms. If applicable OSS license terms require the source code to be provided, SICK shall provide it upon written request; as the case may be against payment of delivery and administration cost. SICK shall inform the customer about the use and the terms of use of the open source software and provide the terms of use if so required by the latter.
  - 2.9. Software of other providers (third-party software) is, in addition to these AVB Software SICK, subject to the license terms of such third-party software, as documented or provided by SICK. In case of discrepancies, the respective stricter regulations shall apply, with the following exception: To the extent the provider of third-party software explicitly permits or demands the activities prohibited pursuant to section 2.3 hereof, the terms of use of the third-party software shall prevail over these AVB Software SICK.
  - 2.10. SICK reserves the right with regard to the customer to use a security mechanism in the Software that monitors the use of the Software and checks if the customer complies with the license terms. This security mechanism can save data relating to the Software use and the number of copies made of the Software. SICK reserves the right with regard to the customer to use license administration software, an authorization key for the license to control access to the Software, and/or device security measures for the hardware. The customer must not take any action to evade or block these measures.
  - 2.11. SICK reserves the right to modify Software provided free of charge, to make new Software available free of charge or for a fee and to discontinue the provision of free Software. SICK will consider the legitimate interests of the customer in this regard. Paid Software may be adapted at any time – including within the current contractual term – to changed legal or technical conditions, API compatibility or with regard to advancement of the Software or to technological progress; whereby the agreed basic functionalities will be maintained.

## 3. License Types

- 3.1. SICK on-premises software products are available under different license models. The license type applicable to the respective Software is specified in the contractual agreement and/or the product description.
- 3.2. The following license types in particular are offered for the individual software products or software product groups:
  - "**Device**" license means that the Software is licensed for a particular device and may be connected to this device via a hardware-ID. The Software may solely be used on this hardware.
  - "**Named User**" license means that the access to the Software is limited to the persons at the customer's company who have been named by the customer and for whom licenses have been validly purchased in accordance with this agreement.
  - "**Single**" license means that the customer is entitled to use the Software on one device or at one workstation.
  - "**Floating**" license means that access to the Software at any time is limited to a maximum number of Authorized Users, for whom valid licenses have been purchased in accordance with this agreement.
  - "**Server**" license means that the use of the Software is limited to an individual local server specified by the customer.
  - "**Company**" license means that the customer is entitled to use the Software on several devices or simultaneously at several workstations within its company. To the extent such Company license does not explicitly specify the number of devices and/or workstations, such use is permitted without limitation in number. This does not include the use on devices and workstations of Affiliates of the customer. The purchase of additional Single licenses or a Group license is required for Affiliates.
  - "**Group**" license means that the customer and its Affiliates are entitled to use the Software on several devices or simultaneously at several workstations. To the extent the Group license does not explicitly specify the number of devices and/or workstations, the use within the customer's group is permitted without limitation in number. The customer is also entitled to use the Software within a network or on other multiple-station computing systems.

## 4. Transfer of Software

- 4.1. SICK grants to the customer the right to transfer the Software, as a whole and upon complete discontinuation of the Software use, to a third party. The temporary or partial transfer of use to third parties against remuneration are prohibited, regardless of whether the Software is transferred in physical or nonphysical form. The same shall apply to any transfer free of charge.
- 4.2. The Software may only be transferred if (i) the customer ensures that all original copies of the Software are transferred to the third party and any copies created by the customer have been deleted and (ii) the third party agrees in writing to this software-licensing agreement, in

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particular with the license terms and transfer terms specified herein. Any costs and expenses incurred by SICK due to the license transfer shall be borne by the customer.

## 5. Demo Versions

- 5.1. If SICK provides a demo version of the Software to the customer, the customer's right to use this demo version is limited to (i) internal evaluation purposes in the customer's company and (ii) the period specified by SICK. Any use for production purposes is strictly prohibited. The right of use terminates automatically upon expiry of the period specified by SICK. Section 4 above shall not apply.
- 5.2. The demo version can be subject to functional restrictions; any use is at the customer's own risk.
- 5.3. SICK accepts no liability in the sense of a warranty for specific properties when providing a demo version for testing purposes; section 12 shall not apply.

## 6. Programming Examples

Software which is provided free of charge by SICK and is expressly designated as programming examples shall, in deviation from the provisions of Section 2.4 hereof, be provided as source code; it may, in deviation from Section 2.3 hereof, be freely modified by the customer - where applicable within the specifications of the product description. Programming examples are provided "as is"; these are examples without any warranted features. Sections 11 and 12 shall not apply.

## 7. Responsibility for Log-in Data/Passwords

- 7.1. Any log-in data and/or passwords for the use of the Software must be kept confidential by the customer and must in no event be made available to any unauthorized third parties.
- 7.2. If there is any concern that unauthorized third parties have gained or may gain access to the customer's log-in data and/or passwords, the customer shall notify SICK immediately via email to support@sick.com.

## 8. Remuneration, Payment Terms

- 8.1. The remuneration shall be according to the contractually agreed prices. The price to be paid for the use of the Software may consist of one-off payments (e.g. purchase license, installation fee) or recurring payments (e.g. monthly royalty) or individual additional fees. Details are specified in the contractual agreements and/or in the product description.
- 8.2. In case of recurring services, the customer shall be invoiced by SICK for the remuneration for the contractually agreed performance period in advance.
- 8.3. Remuneration is exclusive of the statutory VAT, if any, which will be charged additionally.
- 8.4. The remuneration is due and payable within 14 days after the invoice date.
- 8.5. SICK reserves all rights to the Software until all due claims of SICK against the customer are settled.
- 8.6. The customer is only entitled to offset counterclaims insofar as such counterclaims are undisputed or awarded by a final and binding decision by a court of law.

## 9. Duty of Co-operation

- 9.1. The customer has familiarized itself with the main functional features and system requirements of the Software and assumes the risk as to whether the Software meets its wishes and needs; in case of doubt, the customer shall seek the advice of the employees of SICK and/or of qualified third parties prior to the conclusion of the contract.
- 9.2. The customer is solely responsible for establishing an operational hard- and software environment for the Software of sufficient dimensions, also taking into account the additional load caused by the Software. This shall also apply to the implementation of security patches for the operating system, the use of antivirus software, and the activation of firewalls.
- 9.3. The customer shall test the Software prior to its use thoroughly for defects and for usability within the existing hard- and software configuration. This shall also apply to Software provided under warranty.
- 9.4. Regarding all deliveries and performances of SICK under this agreement, the customer shall assume an obligation of inspection and notification of defects according to section 377 German Commercial Code (HGB).
- 9.5. To the extent SICK has further performance obligations in addition to the provision of the Software as such, the customer shall assist with these free of charge to the extent necessary, e.g. by providing employees, workspaces, hard- and software, data, and telecommunication systems.
- 9.6. The customer shall take appropriate precautions for the event that the Software in whole or in part does not work properly (e.g. by creating daily backups, by troubleshooting, by regularly reviewing the results of data processing). To the extent the customer has not explicitly indicated otherwise in advance, SICK may assume that all customer data that SICK may come into contact with has been backed up.
- 9.7. SICK is entitled to verify compliance with these General Terms and Conditions in a self-audit (by filling out a questionnaire). The customer is obliged to participate in such audits and to provide truthful information. Furthermore, SICK reserves the right to audit compliance with these terms of use on the customer's premises by an independent expert who is professionally bound to secrecy towards SICK. Such expert may disclose information to SICK only to the extent as license

violations have been committed and a disclosure is necessary to pursue such violations. The audit shall be announced in writing with at least two weeks' notice. During the visit and audit, the customer shall ensure that no personal data of third parties is transferred or otherwise disclosed to the expert. Furthermore, the customer is obliged to provide to the expert the information necessary for the audit and grant the unrestricted right of inspection.

- 9.8. The customer shall bear the consequences and additional cost arising out of any breach of these duties of co-operation.

## 10. Contract Term, License Term

- 10.1. Unless expressly agreed otherwise, the granting of the license is subject to the payment of the license fee. The license agreement is concluded for the term contractually agreed upon or specified in the product description. Unless agreed otherwise, the term is automatically renewed by subsequent 12 months periods (extended term), unless either Party terminates the contract with three months' notice to the end of the fixed term or the extended term, respectively. However, unless specified otherwise, the rights of use for Software which is part of SICK hardware or which is essential for the use of SICK hardware are perpetual.
- 10.2. SICK may terminate the contract without observing a notice period if the customer (a) is in delay with the remuneration or (b) infringes these AVB SW SICK in any other way, unless the infringement is not attributable to the customer or unless the infringement and its consequences are only insignificant. In these cases, the customer is not entitled to a reimbursement of the remuneration paid for the use. SICK's right to claim damages shall remain unaffected.
- 10.3. The right of termination for important cause remains unaffected.
- 10.4. Every termination must be made in writing.
- 10.5. In the event of a termination by SICK in accordance with section 10.2, the customer's right to use the Software provided shall expire. The customer shall return to SICK all original data carriers, backup copies and other Software copies on separate data carriers, as well as the provided program documentation, and shall delete any copies of the Software and of the documentation installed on its system. The customer shall confirm to SICK in writing that the return or deletion have been complete; the customer shall upon request prove this in suitable form.

## 11. Software Maintenance and -Support

- 11.1. The access to software maintenance and -support, insofar as it is offered for the respective software product by SICK, is governed by the contractual agreement and/or the product description.
- 11.2. Signing a separate Service Level Agreement (SLA) may be a prerequisite for obtaining access to software maintenance services.

## 12. Claims for Defects

- 12.1. For a period of one year as of the date on which the Software was provided to customer (e.g. via download) ("**warranty period**"), SICK warrants that the Software conforms to the contractually agreed characteristics and/or the characteristics specified in the product description. Technical data as well as specifications and performance specifications in public statements, in particular in advertising material, are not an indication of contractually agreed properties.
- 12.2. If the Software is defective, the customer may request SICK to remedy the defect within reasonable time. Only deviations from the product description and/or from explicitly agreed characteristics which are proven and can be reproduced by the customer shall be deemed defects of the Software. A defect shall not exist if it does not occur in the latest version of the Software provided if it is reasonable for the customer to use such latest version.
- 12.3. In case the defect does not or only insignificantly affect the functionality and usability of the Software, SICK is entitled to remedy the defect by supplying a new program version (update) or an upgrade of the Software within its general implementation planning, to the extent this is achievable for SICK.
- 12.4. As part of the remedy of defect, SICK may provide remote maintenance by phone, email or via remote access. The customer shall grant to SICK access to its systems and the Software installed on them to the extent required for the provision of the contractual remedy of defects. This includes the possibility to access the Software via remote maintenance (e.g. via VPN). The customer is obliged to create the technical conditions necessary for remote access meeting the requirements of SICK.
- 12.5. SICK may refuse the remedy until the customer has paid to SICK the agreed remuneration minus the part that equals the economic value of the claimed defect. SICK is also entitled to refuse warranty if the customer does not report the defects in writing with a verifiable description of the error symptoms and insofar as possible with the written records, screenshots or other documents illustrating the defects immediately after their identification and / or does not provide the remote access to SICK pursuant to subsection 3 above.
- 12.6. The warranty period for defects starts with the delivery of the first copy of the Software. This shall not apply to warranty claims for defects occurring for the first time in subsequent deliveries of copies.
- 12.7. If after an inspection a claimed defect cannot be verified or cannot be attributed to SICK's warranty obligations ('non-defect'), SICK may charge the customer for the verification and remedy of the defect at the then applicable rates, as well as for any incurred expenses, unless the customer could not have identified the non-defect despite exercising due care.

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## 13. Liability

- 13.1. SICK shall be liable for damages – regardless of the legal cause – solely:
- a) in the event of intent;
  - b) in the event of gross negligence;
  - c) in the event of injury to life, body or health;
  - d) in the event that SICK has fraudulently concealed a defect;
  - e) insofar as SICK has given an explicit guarantee;
  - f) pursuant to the Product Liability Act; or
  - g) if SICK violates an essential contractual duty.
- 13.2. In the event of violation of an essential contractual duty pursuant to Section 13.1 g) by negligence of SICK, SICK's liability for damages shall be limited to typical contractual losses that could have been foreseen. This also applies to loss of profits and any other financial loss. An essential contractual duty is a duty the fulfillment of which is required for the due execution of a contract and the observance of which a Party relies on, and may rely on, regularly, as well as a duty the breach of which will put the achievement of the contractual purpose at risk.
- 13.3. SICK's liability for all damages, arising within the same contractual year, out of or in connection with this contract and its performance, caused by SICK, its officers, subcontractors, employees, vicarious agents or associates, as well as any obligation to indemnify the other Party, shall, regardless of the legal cause, except under the circumstances set out in section 13.1 a) to f) above, be limited (i) in case of one-off remuneration, to this remuneration (ii) in case of recurring remuneration, to the remuneration due for the respective contractual year, in any event, however, (iii) to a maximum of EUR 100,000. In the event that the liability cap is not reached in a contractual year, the liability cap for the following contractual year is not automatically raised. A contractual year in the aforementioned sense is the initial twelve-month period as of the date of provision as defined in the contract and every subsequent twelve-month period.
- 13.4. Except as provided in Section 13.1 a) – f) SICK is not liable for the loss of customer data if the damage is based on the customer's omission to create back-ups in accordance with Section 9.6 and thus to ensure that lost customer data can be recovered with reasonable effort.
- 13.5. If Software is provided free of charge, SICK does not accept any liability, with the exception of the provisions in Section 13.1 a) – f), for damage resulting from the use thereof.
- 13.6. Insofar as SICK's liability is excluded or limited, this shall also apply to the personal liability of SICK's officers, subcontractors, employees, representatives, vicarious agents and associates as well as to the liability of Affiliates, suppliers and licensors.
- 13.7. The limitation period for claims for damages against SICK is one year insofar as permitted by law, unless the damage was caused intentionally. Claims for damages pursuant to the Product Liability Act are subject to the statutory limitation periods.

## 14. Confidentiality

- 14.1. The customer shall hold in strict confidence all confidential information disclosed to it within the framework of a contract and, regardless of the purpose, use it only with the prior written approval of SICK. Confidential information includes information expressly marked as confidential by SICK and information the confidential nature of which is apparent from the circumstances of the disclosure.
- 14.2. The obligations in section 14.1 do not apply to information or parts thereof for which the customer proves that they(a) were known to the customer or were generally available prior to the date of receipt hereunder without confidentiality obligation or were lawfully disclosed to the customer by a third party after the date of receipt hereunder without confidentiality obligations (b) were already known or available to the public prior to the date of receipt hereunder or (c) became known or available to the public after the date of receipt hereunder through no fault of the customer.
- 14.3. The obligations set out in section 14.1 shall survive the termination of the contract for an indefinite period, namely for as long as an exception as defined in section 14.2 is not proven.

## 15. Data Processing, Privacy

- 15.1. SICK reserves the right to collect and process, within the legally permitted scope, anonymized machine data based on the provided Software. With the use of the Software the customer grants to SICK the non-exclusive right to collect anonymized data and process them in particular for the following purposes:
- Provision and improvement of products and services of SICK.
  - Compliance with legal requirements.
  - Web analysis and improvement of the online presence.
  - Use of restricted websites and for authentication.
  - Use of digital services, e.g. platform offerings, newsletter subscription / termination of subscription, or use of applications.
  - Prevention of misuse of the online offerings of SICK.
- 15.2. The right to collect data expires concurrently with the expiration of the software license granted by SICK. However, SICK shall remain entitled to store copies of the data already saved and to use them to develop the services of SICK.
- 15.3. SICK and the customer shall comply with the respective applicable privacy law.
- 15.4. If SICK processes personal data as the controller of data, the details of the processing are specified in the privacy information for the respective product. The customer undertakes to provide this privacy information to the persons concerned.

- 15.5. If SICK is commissioned by the customer to process personal data, the Parties shall sign an agreement on commissioned processing in accordance with section 28 of the EU General Data Protection Regulation GDPR. The customer shall inform SICK in text form without delay of this requirement.

## 16. Export Compliance

- 16.1. The customer undertakes to comply with all applicable provisions of export- and foreign trade law, in particular, but not limited to, the provision of the respective national law and of the Federal Republic of Germany, the European Union and the United States of America.
- 16.2. The license is granted subject to the proviso that this license grant is permitted according to its content and the natural persons and companies directly or indirectly involved in it in accordance with all the aforementioned provisions.
- 16.3. In case a license grant is subject to official approval, SICK shall be entitled to delay performance until an export license has been granted or to rescind the contract. SICK's liability for delayed performance or non-performance is excluded in such cases.
- 16.4. If necessary for the performance of export control inspections by authorities or by SICK, the customer shall, upon request, immediately provide all information, including but not limited to information on end user, end use and intended purpose.
- 16.5. The customer undertakes not to use, offer for sale or sell any SICK goods (goods, software and technology) or commercial goods provided by SICK for use in weapons and/or weapon systems.
- 16.6. If the customer breaches an obligation under this section 16 and/or if a business transaction is partially or completely prohibited, SICK shall be entitled to terminate the contract for good cause without notice and to rescind, in whole or partially, the contract. Any claims against the customer shall remain unaffected.

## 17. Final Provisions

- 17.1. For ongoing contracts, SICK may offer the customer to change these General Terms and Conditions or individual provisions in text form (change of contract). The offer to change the contract is deemed to be accepted if the customer does not object against such change of contract in text form within four weeks of receiving the offer to change the contract.
- 17.2. SICK undertakes to expressly inform the customer of the consequences of an omitted objection at the start of the aforementioned period.
- 17.3. Should any of the provisions of these terms of use be or become invalid, void or unenforceable, the validity of the remaining provisions shall remain unaffected thereby. In such case, the invalid, void or unenforceable provision must be interpreted or substituted in such a way as to achieve the intended economic objective. This shall not apply if adherence to the contract constitutes an unreasonable hardship for either contract party.
- 17.4. These AVB Software SICK and all obligations arising out of them are governed by the law of the Federal Republic of Germany without regard to conflict of laws principles; the application of private international law and the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.
- 17.5. If the customer is an entrepreneur as defined in section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law, all disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be the seat of the contract partner of the customer. The language of arbitration shall be German or English.

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