Software license agreement for Symax-Control and SMC01-Control

Preamble

The Customer purchases standard software from the Seller in order to use it as the SYMAX or SMC01 control software. The software serves exclusively to control the devices purchased by the Customer in connection with this license agreement.

§ 1 Subject of the Agreement

(1) The subject of this Agreement is the permanent transfer of the computer program Symax-Control or SMC02-Control in the form of object code including the associated user documentation ("Contract Software") and the granting of the rights of use described in § 2. The hardware and software environment within which the Contract Software is to be used is specified in the User Manual.
(2) The Seller shall provide the Customer with a copy of the Contract Software on CD-ROM, and optionally in the form of a download.
(3) The nature and functionality of the Contract Software are set out in the User Manual. The information contained therein is to be understood as product descriptions and not as guarantees. A guarantee is only granted if it has been expressly designated as such.
(4) Installation and configuration services do not form the subject of this Agreement.

§ 2 Granting of rights

(1) Upon full payment of the purchase price for the devices purchased in connection with this Agreement, the Customer shall receive a non-exclusive right, unlimited in time, to use the Contract Software in accordance with the scope specified in the User Manual. Prior to full payment of the agreed price, all data carriers and the user documentation provided shall be subject to retention of title. Permitted use includes installation of the Contract Software, loading of the Contract Software into main memory and its intended use by the Customer. Under no circumstances shall the Customer have the right to rent out or otherwise sublicense the acquired Contract Software, to reproduce it or make it publicly accessible, or to make it available by wired or wireless means to third parties against or without payment, e.g. by way of application service providing or in the form of "software as a service". The provisions of paragraph 4 remain unaffected.
(2) The Customer is entitled to make a backup copy if this is necessary to ensure future use. The Customer shall visibly affix the note "Backup copy" and a copyright notice of the manufacturer to the backup copy created.
(3) The Customer shall only be entitled to decompile and duplicate the Contract Software if this is required by law. However, this shall only apply on condition that the Seller has not made the necessary information available to the Customer on request within a reasonable period of time.
(4) The Customer shall be entitled to permanently transfer the acquired copy of the Contract Software to a third party. In this case, the Customer shall completely cease using the program, remove all installed copies of the program from their computers and delete all copies on other data carriers or hand them over to the Seller, unless they are legally obliged to retain them for a longer period of time. At the request of the Seller, the Customer shall confirm to the Seller in writing that the aforementioned measures have been carried out in full or, where applicable, shall explain to the Seller the reasons for longer retention. Furthermore, the Customer shall expressly agree with the third party that the scope of the rights granted in accordance with this § 2 shall be observed.

(5) If the Customer uses the Contract Software to an extent that exceeds the acquired rights of use qualitatively (with regard to the type of use permitted) or quantitatively (with regard to the number of licenses acquired), the Customer shall immediately acquire the rights of use necessary for permitted use. If the Customer fails to do so, the Seller shall assert the rights to which the Seller is entitled.
(6) Copyright notices, serial numbers and other features serving to identify the program may not be removed from the Contract Software or changed.

§ 3 Warranty

(1) The Seller guarantees the agreed quality and that the Customer is able to use the Contract Software without infringing the rights of third parties. The warranty for material defects shall not apply to defects arising from the fact that the Contract Software is used in a hardware and software environment which does not meet the requirements set down in the User Manual or to changes and modifications which the Customer has made to the software without being entitled to do so by law, this Agreement or with the prior written consent of the Seller.
(2) If the Customer is an entrepreneur, the Customer must check the Contract Software for obvious defects immediately after receipt and inform the Seller immediately if there are any, otherwise, warranty for these defects is excluded. The same applies mutatis mutandis if such a defect becomes apparent at a later date. § 377 of the German Commercial Code (HGB) shall apply.
(3) If the Customer is an entrepreneur, the Seller shall, in the event of a material defect, initially be entitled to subsequent performance, i.e., at its own discretion to remedy the defect ("rectification of defects") or to supply a replacement. Within the scope of the replacement delivery, the Customer shall, as necessary, adopt a new version of the software, unless this leads to unreasonable impairments. In the event of defects of title, the Seller shall, at their own discretion, either provide the Customer with a legally sound way of using the Contract Software or modify it in such a way that no rights of third parties are infringed any longer.
(4) The Seller shall be entitled to fulfill the warranty on the Customer's premises. The Seller shall also meet their obligation to rectify defects by making updates with an automatic installation routine available for download on their Web site and by offering the Customer telephone support to solve any installation problems that may arise.
(5) The Customer's right at their discretion to reduce the purchase price or withdraw from the Agreement in the event that the repair or replacement is unsuccessful twice remains unaffected. Insignificant defects do not give rise to a right to withdraw from the Agreement. If the Customer claims damages or reimbursement of futile expenses, the Seller shall be liable as per § 4.
(6) If the Customer is a consumer, the statutory warranty regulations shall apply without restriction.
(7) With the exception of claims for damages, warranty claims based on material defects shall expire by limitation in two years or in one year if no consumer is party to the transaction. In the case of sale on a data carrier, the limitation period begins with the delivery of the Contract Software, in the case of sale via download, it begins with the completion of the download process. Claims for damages and claims for reimbursement of futile expenses shall be governed by § 4.

§ 4 Liability

(1) The Seller shall have unlimited liability
- in case of intent or gross negligence,
- for loss of life, physical injury or damage to health,
- according to the provisions of the product liability legislation and
- to the extent of a guarantee granted by the Seller.
(2) In the event of ordinary negligence in a breach of an obligation which is essential for the fulfillment of the purpose of the Agreement (cardinal obligation), the liability of the Seller shall be limited in amount to the damage which is foreseeable and typical according to the nature of the transaction in question.

(3) There is no further liability on the part of the Seller.
(4) The above limitation of liability shall also apply to the personal liability of the Seller's employees, representatives and institutions.

§ 5 Confidentiality

(1) "Confidential Information" shall mean all information and documents of the other party which are marked as confidential or which can be deemed to be confidential as a result of the pertinent circumstances, in particular information about operational processes, business relations and know-how.
(2) The parties agree to maintain secrecy about confidential information.
(3) Confidential information is excluded from this agreement if
a) the information was demonstrably already known to the recipient at the time of conclusion of the Agreement or was subsequently disclosed to the recipient by a third party, without this infringing a confidentiality agreement, statutory provisions or official directives;
b) the information was publicly known at the time of the conclusion of the Agreement or became publicly known thereafter, unless this is due to a breach of this Agreement;
c) the information is required to be disclosed due to legal obligations or by order of a court or a governmental agency. To the extent that this is permissible and possible, the recipient who is obliged to disclose the information shall inform the other party in advance and give them the opportunity to take action against disclosure.
(4) The parties shall only grant access to confidential information to those consultants who are subject to professional secrecy or who have previously been subject to obligations equivalent to the obligations of confidentiality set out in this Agreement. Furthermore, the parties shall only disclose the confidential information to those employees who need to know it for the fulfillment of this Agreement and shall oblige these employees to maintain secrecy to the extent permitted by employment law, even after they leave the company.

§ 6 Miscellaneous

(1) The Customer may only transfer claims against the Seller to third parties with the Seller's written consent. The provisions of § 2, paragraph 4 remain unaffected.
(2) The Customer may only offset claims that are undisputed or legally established.
(3) Any changes and amendments to this Agreement must be made in writing. This also applies to the amendment or annulment of this clause. Electronic documents in text form do not meet the requirement for written form.
(4) General terms and conditions of the Customer shall not apply.
(5) The parties are aware that the Contract Software may be subject to export and import restrictions. In particular, licensing requirements may pertain or the use of the software or associated technologies in other countries may be subject to restrictions. The Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. The Seller's fulfillment of the Agreement is subject to the proviso that there are no impediments to fulfillment due to national and international export and import regulations or any other legal provisions.
(6) This Agreement shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).
(7) The place of performance is Erding. The exclusive place of jurisdiction shall be Erding if each party is a merchant or legal entity under public law or has no general place of jurisdiction in Germany.

(8) If individual provisions of this Agreement should be invalid, this shall not affect the validity of the remaining provisions. The parties to the Agreement shall endeavor to find a valid provision to replace the invalid provision and which comes as close as possible to the commercial import of the invalid provision.

(9) All annexes mentioned in this Agreement form a binding part of the Agreement.