

End User License Agreement (EULA)

- as at November 2017 -

1. Scope

1.1

This EULA End User License Agreement ("EULA") govern all supplies of SCHMALZ software to Purchaser by all companies of the SCHMALZ Group. The delivery Terms and Conditions agreed and/or the General Terms of Delivery of the SCHMALZ Group shall additionally apply.

1.2

The scope of the present EULA shall not include development licenses (licenses conferring the right to further development). Such licenses require an individual agreement.

1.3

If the software is supplied together with hardware, these EULA shall not apply to hardware.

2. Rights of Use

2.1

In principle, SCHMALZ grants to Purchaser a non-exclusive right to use the software.

2.2

Unless stipulated otherwise, the following shall apply: - the software with the agreed performance characteristics will be provided solely for use on the hardware delivered along with the software or the agreed hardware, - in cases where only the software is supplied, such software may be used on one single system only.

2.3

The software is delivered in machine-readable form only (object code).

2.4

Purchaser is not entitled to modify, reverse engineer, translate or disassemble the software. Purchaser may not remove alpha-numeric and other codes from data carriers.

2.5

Purchaser may duplicate the software program to the extent that such duplication is required for the use of the program as stipulated in the contract and/or in accordance with the specified use. Required duplications within the meaning of sentence 1 above comprise, in particular, the installation of the program from the original data carrier onto the mass storage of the used hardware as well as loading the program onto the main storage. Furthermore, the user may duplicate the program for backup purposes. However, as a matter of principle, only one single backup copy may be made. Purchaser may not make any further copies.

2.6

In respect of any free-of-charge software added to the hardware product as well as any software which may be downloaded free of charge from the Internet (freeware) and which is urgently required for operating SCHMALZ's sensor and control products, the duplication shall not be restricted. Such software may be duplicated without restriction for operating the sensor and control products for use in Purchaser's own company.

2.7

SCHMALZ grants to Purchaser the right to transfer the right of use granted to Purchaser to a third party, provided that such third party agrees to the validity of this EULA and of any software agreement separately signed by Purchaser and SCHMALZ, if applicable. Such third party shall not be granted any rights of use beyond the rights of use granted to Purchaser under this EULA. Purchaser shall transfer the software in its entirety, including all copies made, and may not retain any copies.

2.8

Purchaser may not grant any sub-licenses of the software.

2.9

Insofar as Purchaser is supplied with software the author of which is a third party, SCHMALZ shall not grant to Purchaser any rights of use beyond those granted to SCHMALZ by the third party.

2.10

This EULA shall be governed by German law under exclusion of UN commercial law

3. Transfer of Risk

In addition to the provisions contained in the ALB, the following shall apply: if software is delivered using electronic communication media (e.g. via the Internet), the risk shall pass as soon as the software leaves SCHMALZ's sphere of influence (e.g. when downloading).

4. Defects as to Quality

In addition to the provisions contained in the ALB, the following shall apply:

4.1

Deviations from the specification and from expressly agreed characteristics respectively must be proven by Purchaser and be reproducible in order to be deemed as defects as to the quality of the software. However, a defect as to quality does not exist if such defect does not occur in the software version last provided to Purchaser and if it is reasonable to expect from Purchaser to use such software version.

4.2

Claims based on defects as to quality do not exist:

- if there is only a minor deviation from the agreed quality,
- if the usability is only slightly affected,
- in the event of any modifications made by Purchaser or a third party and the consequences resulting therefrom,
- if the software supplied is not compatible with the data processing environment used by Purchaser.

4.3

Subsequent performance shall be done by removing the defect in the software as follows: SCHMALZ shall provide a replacement in the form of an update or upgrade of the software, to the extent available to SCHMALZ or obtainable with reasonable effort. SCHMALZ shall replace a data carrier delivered with defects by a data carrier which is free of defects.

4.4

In respect of defects as to quality and defects of title in the software, a warranty period of twelve (12) months from the date of transfer of risk shall apply.

5. Term of the License

Unless stipulated otherwise, the right of use is granted subject to the payment of the license fee and is, in principle, issued for an unlimited period of time.

6. Severability

Should any provision of this EULA be or become invalid, void or unenforceable, the validity of the remaining provisions shall remain affected thereby. In such case the invalid, void or unenforceable provision will be interpreted or substituted in such a way as to achieve the intended economic objective of the invalid or void provision. This shall not apply if the adherence to the contract constitutes an unreasonable hardship for either party.