GENERAL TERMS AND CONDITIONS (GTC) FOR LICENSE CONDITIONS FOR THE PROVISION OF SMARTCOLLECT SC2 SOFTWARE AGAINST PAYMENT

Contents

Version: 1

Revision: 2

Date: 23.09.2024

1 Subject matter of the contract

1.1 The software provided (hereinafter "Software") is made available to the customer by the licensor (hereinafter "Licensor") for use in return for payment. The Customer hereby accepts that the following contractual terms and conditions apply exclusively to the transfer and the corresponding contractual relationship between the Customer and the Licensor. The subject matter of the contract includes the current version of the SMARTCOLLECT SC2 SOFTWARE END USER LICENSE AGREEMENT (EULA).

1.2 The currently available product description in the available documentation is decisive for the quality of the functionality of the software provided. At the time of delivery of the software, the version of any documentation available at that time shall apply. This applies regardless of whether it is in electronic or digital form.

1.3 No further quality of the software is owed. In particular, the customer cannot derive such an obligation from other representations of the software in public statements or in the licensor's advertising, unless the licensor has expressly confirmed the additional quality in writing. Guarantees require the express written confirmation of the Licensor's management.

2 Copyrights and property rights, rights of use

2.1 All copyrights and other intellectual property rights to the software are reserved exclusively to the licensor, unless they have been expressly transferred to the customer on the basis of the rights of use transferred herein. The licensor transfers to the customer the non-exclusive right to use the software on a permanent basis.

2.2 The licensor grants the customer a personal, non-exclusive license to install and use the software in the respective license model. The customer is entitled to install and use the software on a computer and/or server of his choice. The customer is responsible for protecting the software against misuse, incorrect operation and data loss.

2.3 The rights of use transferred to the customer shall entitle the customer,
   o to load, transfer to , apply and save the software within its own internal data processing;

Camille Bauer Metrawatt AG   41 56 618 21 11   Credit Suisse AG, Zurich, Clearing: 4835   VAT no.:
Aargauerstrasse 7   Fax +41 56 618 21 21   CHF: Account 509381-51, IBAN CH4904835050938151000   CHE-102.063.650 VAT
CH-5610 Wohlen Switzerland   www.camillebauer.com   EUR: Account 509380-72, IBAN CH1904835050938072000   EORI no.:
info@cbmag.com   SWIFT-Code: CRESCHZZ80A   5 176 492

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o to copy the software for data backup, archiving and back-up purposes. However, only the absolutely necessary number of backup copies may be kept.

2.4 The customer hereby expressly warrants,
- o not to make the delivered software and copies thereof accessible to third parties;
- o rights of use and to pass them on to third parties;
- o to make only such modifications, translations, cumulations, disassemblies and adaptations to the delivered software as are absolutely necessary for the intended use of the software and, in particular, not to remove any markings or notices or cause the software to malfunction;
- o to reproduce the documentation only for their own purposes and only within the scope of the rights of use granted;
- o in the event of the complete transfer of the rights of use to a third party, to grant the third party only the rights specified in these terms and conditions and to impose all the obligations specified herein on the third party and to notify the licensor of the transfer in writing without delay;
- o Any connection with third-party software is not permitted. However, the customer is entitled to connect the software with other programs, provided that this connection is part of the described software application.

3   Support services, duties and obligations of the parties

3.1 Optional support for the installation of the software by the licensor and its initiative and separate agreement can be promised. Services of the licensor, in particular support or advice on the use of the software or even the maintenance of the software, are not the subject of these GTC and are only provided by the licensor by separate agreement.

3.2 The customer is expressly advised that he must regularly make backup copies of the data on his computer at sufficient intervals. If he fails to do so, he is in breach of his obligation to minimize damages. The Licensor shall not be liable for any damages incurred as a result of this breach.

3.3 The customer undertakes to test the software immediately before use and to report any errors that occur or become apparent to the licensor without delay. During the entire period of use, the customer shall describe to the licensor, either himself or through a qualified employee, any errors and problems that occur or the course of system failures as precisely as possible.

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3.4 If third parties assert infringements of industrial property rights, such as patents, utility models, trademarks, registered designs, copyrights (hereinafter referred to as "property rights"), against the customer after conclusion of the contract, the customer is obliged to notify the licensor of the claims in writing without delay. The customer is also obliged not to acknowledge such infringements without the prior written consent of the licensor and to support the licensor to a reasonable extent in the defense of his rights. If the customer ceases to use the software in order to minimize damages or for other reasons, he shall be obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights. The customer shall be liable to the licensor for any damages arising from non-compliance with this obligation.

3.5 When exporting the software, the customer is obliged to observe the provisions of the relevant export administration law and the other relevant Swiss export and import regulations.

4   Warranty

4.1 Unless expressly agreed otherwise, the software provided corresponds to the current state of the art at the time of delivery and complies with the product information and specifications provided by the licensor at the time of delivery. The licensor does not guarantee that the software is suitable for purposes that go beyond the fulfillment of the contractual obligations.

4.2 The customer is advised that, despite the utmost diligence and care, program errors cannot be ruled out with 100% certainty given the current state of technology.

4.3 Misuse, incorrect operation, data loss, cyber attacks, virus programs, ransomware, malfunction of the software due to tools used (e.g. firewalls, virus scanners, browsers, modems, gateways, mobile phone connections, IoT platforms, remote access (software tools, humans), etc.), IT system architectures outside the specification, etc., are excluded from any warranty claims.

4.4 The proper warranty is not applicable to defects that are based on the fact that the software provided is used in a hardware and/or software environment that does not meet the requirements specified in the product description and for which the software is therefore not expressly released.

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4.5 The customer is obliged to check the software for obvious defects immediately upon receipt and to notify the licensor of any defects without delay. Otherwise, any warranty for the aforementioned defects is expressly excluded. This shall also apply accordingly if such a defect becomes apparent at a later date.

4.6 In the event of a material defect, the Licensor shall initially be entitled to provide subsequent performance. In the event of a replacement delivery, the customer shall also accept a new version of the software, unless the customer is unreasonably impaired by this. In the event of a defect of title, the licensor shall, at its discretion, provide the customer with a legally flawless opportunity to use the software or modify the software so that it no longer infringes the rights of third parties, insofar as this is technically and legally possible. Claims for compensation are explicitly excluded.

4.7 The licensor is entitled to provide the aforementioned services either on the customer's premises or remotely. The Licensor also satisfies the obligation to rectify defects if it makes updates that are provided with an automatic installation routine available on its homepage for the customer to download and, for example, offers telephone support in the event of installation problems occurring within the scope of the warranty (subsequent performance).

4.8 The customer's right to withdraw from the contract in the event that the rectification/replacement delivery fails twice and the right to a price reduction shall remain unaffected. The right of withdrawal shall not apply in the case of insignificant defects. If the customer claims damages or compensation for futile expenses, the provisions in Section 5 of these GTC shall apply.

4.9 Mandatory statutory provisions under the applicable law remain unaffected.

5   Limitation of liability

SmartCollect SC² is an application that can be used either on-premise or in the cloud. The software is used in the context of many software and hardware components that influence the functionality of the software. Unless otherwise agreed, the customer bears responsibility for such components...

5.1 The customer is responsible for the appropriate protection and backup of the data.

5.2 The licensor is always liable to the user:
- for damages caused intentionally or through gross negligence by the licensor and its legal representatives or vicarious agents,
- under the Product Liability Act and

▲ for damages resulting from injury to life, body or health for which the licensor, its legal representatives or vicarious agents are responsible.

The Licensor shall not be liable for simple negligence unless the Licensor has breached a material contractual obligation, the fulfillment of which is essential for the proper execution of the contract or the breach of which jeopardizes the achievement of the purpose of the contract and on the observance of which the user may regularly rely.
Liability for property damage and financial loss is limited to the foreseeable damage typical of the contract. Liability for remote consequential damages, such as loss of profit and/or loss of savings, is excluded.

The Licensor shall not be liable if and to the extent that errors are attributable to changes or additions to the software or to its improper handling or improper use by the user and/or third parties.

The above limitations of liability also apply in relation to all representatives of the licensor, in particular in relation to their managing directors, legal representatives, employees or other vicarious agents.

6 Final provisions

6.1 Amendments and supplements to these GTC must be made in writing. This also applies to the revocation of this contractually agreed written form.

6.2 Should individual provisions of these GTC be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced by a substitute provision that comes as close as possible to the purpose intended by the invalid provision. The same shall apply if a loophole requiring supplementation subsequently becomes apparent.

6.3 The Licensor may transfer the rights and obligations arising from these GTC to a third party at any time.

6.4 The contractual relationship is subject to Swiss law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

6.5 The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Zurich.

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