Supplementary Provisions to Section 1.4 of our General Business Terms and Conditions Applicable to the Licensing of Software Products for the Industrial Automation (Powering, Measuring, Switching, and Controlling)
August 2014

1. Subject Matter of the Supplementary Provisions

1.1. The following supplementary provisions shall amend the General Delivery and Performance Terms & Conditions of the FST Industrie GmbH, which are in the following referred to as GDPT.

1.2. The subject matter of these supplementary provisions is the software, which the customer regularly receives as part of the product.

1.3. These supplementary provisions shall not obligate us to provide support services for the software. Such services shall be subject to a separate agreement.

2. Risk Transfer

Supplementary provision to section 5.3 GDPT:

If the software is provided to the customer via electronic communications media (e. g. the Internet), the risk shall be transferred upon the software leaving the provider's control (e. g. download via the server).

3. Liability for Data Loss

Supplementary provision to section 10 GDPT:

In case software defects cause the customer to lose data or the customer's data and/or programmes are damaged, the software provider shall be liable solely within the framework specified in section 10 GDPT.

4. Documentation

The customer buys the software documentation separately from the software unless the order confirmation lists the documentation as part of the delivery.

5. Single-User License

5.1. The customer acquires the agreed usage rights to the software as specified in the order confirmation or software product certificate.

5.2. The supplier shall grant the customer the non-exclusive right to use the software with the device(s) specified in the order confirmation or the software product certificate for an indefinite time; a single-user license shall entitle the user to run the software on only one device at a time. If several work stations are associated with a single device the single user license permits the software use for one work station only.

5.3. The customer shall be permitted to copy the software as precautionary measure exclusively (safety copies). Before copying the software for any other purpose the customer must acquire a multi-user license.

5.4. The licensed software user shall not modify, retro-engineer or translate the software or isolate parts of it. The customer shall not remove alpha-numeric or other code from the data medium and shall transfer this code to the safety copies without modification.

5.5. The software supplier grants the customer/user the irrevocable right to transfer his/her usage rights to third parties. If the customer acquired the software license as part of a purchased device the customer shall transfer the software to third parties only for use together with the device. The software user/customer shall enter into an agreement with the third party, which binds this third party to the provisions of this supplementary agreement. In case the SFT Industrie Company customer sells his usage rights to the software to a third party, the customer shall be responsible for the compliance with existing export requirements and shall indemnify the SFT Industry GmbH from any and all liability resulting from the software transfer.

6. Multi-User License

6.1. The customer is required to buy a multi-user license if he wants to use the software for more than one device or work station. Prerequisite to obtaining a multi-user license is the purchase of a single-user license plus the written confirmation by the supplier stating the number of permissible software copies. The multi-user license entitles the customer to the non-exclusive, non-transferable usage rights to the software for an indefinite time, to create the number of software copies as stated in the written confirmation, and to use these copies as if they were multiple single-user licenses; this shall include the right to transfer the usage rights to third parties.

6.2. Software servicing several devices at the same time shall be considered equivalent to the usage at several work places in a network. The latter does not require copying the software (network license). The provisions for multi-user licenses apply to network licenses accordingly. The number of permissible terminals is equivalent to the number of permissible software copies.

The customer/user shall comply with the provisions for copying the software as stated in the instructions for multi-user licenses. The customer/user shall keep records of the number and destinations of the software copies and present these records upon the software supplier's request. The customer/user shall transfer the alphanumeric and other codes on the data medium to all copies without modification.

7. Liability for Defects

Supplementary provision to section 11 GDPT:

7.1. The software supplier and customer mutually agree that it is not feasible to develop software in such a way that it is error-free for all applications. In this context, software defects are defined as follows: Errors are reproducible deviations from the associated documentation using the newest software version as proven by the customer/user; the error must be significant unless the error is based on the absence of a guaranteed characteristic. The customer/user shall provide the software supplier with verifiable documentation on the type and occurrence of the deviations from the software documentation and shall provide assistance in pinpointing the observed error(s). We shall not be liable for software defects caused by the deviation from the usage conditions for the programme, which are specified in the software documentation.

7.2. Should a delivered data medium turn out to be unsatisfactory the purchaser shall only have the right to the error-free replacement software.

7.3. In all other cases, the software supplier shall remedy the defect by replacing the defective software at his discretion either with an updated or new version of the software. Until the software upgrade/update is available, the software supplier shall provide the customer/user with an interim solution to circumvent the software error providing this is feasible and reasonable. This will enable the customer to perform urgent tasks until the software replacement is delivered. In the event the software error cannot be remedied, the customer/user has the right to a price reduction or the right to withdraw from the agreement. If the customer owns a multi-user license he/she shall be permitted to make the licensed number of copies of the replacement software.

7.4. At the discretion of the software supplier, the software error shall be remedied either on site or on the premises of the supplier. In case the software supplier decides on trouble-shooting the error on site, the customer/user shall provide operators as well as the hardware and software for this task and create suitable operating conditions as required for the efficient error correction. The customer/user shall provide the software supplier with the necessary documentation and information for the error correction. The software supplier may request compensation for the costs associated with correcting the software error on site (costs of travel, transport, and accommodation)

7.5. In the event the customer/user reports a software error and this error is not reproducible or caused by user error(s) or is otherwise not covered by warranty, the software supplier shall have the right to demand from the customer reasonable compensation for the trouble-shooting plus compensation for the costs of transport, travel, and accommodations.

7.6. In case the customer or a third party extended the software use via an interface provided by the software supplier, the software warranty shall extend up to this interface only.

7.7. The software supplier does not guarantee that the purchased software is compatible with the customer-created data processing environment; this applies in particular to the hardware and software used by the customer.

7.8. The customer shall use all just and reasonable measures to avoid or reduce damages due to software error; furthermore, the customer shall report errors to the software supplier immediately and do everything in his/her power to secure the programmes and data.