

Berg GmbH Standard Software Licence Agreement

As of 02 March 2017, HN

1 Scope

This Licence Agreement is applicable to standard software from BERG GMBH. Hardware products, projects and services from BERG GMBH (hereinafter BERG) are subject to separate provisions for products, projects and services, respectively.

2 Object of this Agreement

2.1 The object of this Agreement is standard software recorded on a data medium or delivered with the use of terminals such as data loggers, converters, modems, meters, etc., as well as relevant software specifications, user guide and any items delivered along with the software, particularly any written material that may accompany the same (hereinafter summarily referred to as SOFTWARE). SOFTWARE supplied by BERG is protected by copyright.

2.2 BERG provides two types of software: system software on servers and clients (hereinafter S-SOFTWARE), and embedded software and firmware installed on terminals, especially on data loggers, converters, modems and meters (hereinafter E-SOFTWARE).

2.3 By installing BERG's S-SOFTWARE or by activating/using E-SOFTWARE on devices, a licence agreement is concluded between BERG and the licence holder under the following terms of use. This Agreement entitles the licence holder to use the SOFTWARE to the following extent. No permission is given for any further-reaching use.

2.4 Proper and appropriate use of the SOFTWARE is a necessary condition for the rights of use granted under this Licence Agreement. The risk of commercial use of the SOFTWARE is held by the licence holder.

3 Scope of use

3.1 BERG shall, against payment of a licence fee, grant the licence holder a simple, non-transferable and non-exclusive right of use for the term of this Agreement. This right shall not be granted until the agreed fee has been paid in full. The scope is specified in the following provisions. Any further-reaching rights of use and exploitation of the SOFTWARE shall remain BERG's prerogative. Upon purchasing the SOFTWARE, the licence holder acquires merely ownership of the physical data media.

3.2 The licence holder may only use the S-SOFTWARE in one particular location within its own company, on a single server/computer (with only one single central processing unit). The licence holder is free to decide on which device the S-SOFTWARE should be used. The licence holder may physically transfer the S-SOFTWARE from one server/computer to another, using a data medium, provided it has been ensured that the S-SOFTWARE can only be used on one computer or one server at any given time. Once the S-SOFTWARE has been transferred, it must be deleted on the original server/computer. No further use is permitted. Neither is any permission given for the use of cluster systems or further redundant systems (e.g. backup computers); such instances require separate agreements.

3.3 The E-SOFTWARE is tied to the relevant terminal and must not be transferred. If the E-SOFTWARE installed on a terminal requires activation by means of an activation code and if the licence holder wishes to install the E-SOFTWARE on a further terminal, a further activation code must be requested. If the E-SOFTWARE allows activation without an activation code, then the licence holder must purchase a further licence for each device on which the E-SOFTWARE is to be used.

4 Modifications

The licence holder is not permitted to modify, enhance or edit the SOFTWARE without obtaining BERG's prior written permission; this includes, in particular, any translation, reverse engineering and decompiling of the SOFTWARE. The licence holder must not create any works derived from the SOFTWARE.

5 Limitations

The licence holder may only use the SOFTWARE within the scope specified in clause 3 of this Agreement. No permission is given for any further use or exploitation. The licence holder must note, in particular, that no permission is given for the following:

- The licence holder must not duplicate the SOFTWARE, whether wholly or in parts, either in its original or in a modified form.
- The licence holder must not use the SOFTWARE simultaneously on more than one server/computer or terminal, and must not transfer the SOFTWARE from one server/computer to another via a network or any other data channel.
- The licence holder must not use the SOFTWARE beyond the specified licence limitations, but only as defined for the measuring points, clients, modules, hardware and only within any further parameters specified in Berg's quotation.
- The licence holder must not resell or transfer the SOFTWARE to a third party without obtaining Berg's written consent.

6 Delivery dates

Delivery dates and periods are generally non-binding and for orientation purposes only, unless they have been expressly agreed in writing as binding.

7 Backup copy and updates

7.1 The licence holder may create a backup copy of the SOFTWARE. The licence holder must put Berg's copyright notice on the backup copy or include the same thereon. Any copyright notice included within the SOFTWARE must not be removed.

7.2 BERG may, at its own discretion, issue updates of the SOFTWARE. The licence holder is only entitled to receive updates upon entering the relevant update agreement.

8 Terms of payment

8.1 In order to grant the rights specified in clause 3, BERG shall receive remuneration as specified in the individual order. All invoiced amounts and prices are quoted exclusive of German VAT and packaging, which are both payable in addition.

8.2 Payment claims made by BERG become payable within 30 days of the date of invoice, without deductions. If the payment period is exceeded, BERG is entitled to claim interest on arrears, which is 8% above the base rate applicable at the time, pursuant to the German Civil Code (BGB), section 247. This shall not impact BERG's right to assert further claims for damage caused by delay.

8.3 If the licence holder is in arrears with the payment of the fee, BERG may take measures preventing the use of the SOFTWARE until the licence holder meets its payment duty. This provision does not impact BERG's right to cancel this Agreement. BERG is entitled to make partial deliveries where reasonable. If partial deliveries are billed by BERG, the licence holder must make partial payments.

8.4 Payable amounts may only be withheld or offset against Berg's payment claims if the licence holder's payment claims have been either recognised or established as legally enforceable.

9 Warranty

9.1 Provided that the necessary software configuration for the use of the SOFTWARE is available, BERG hereby warrants that the SOFTWARE is usable for the purpose of the programme specifications issued to the licence holder and valid at the time of delivery.

9.2 The licence holder is aware that, under the current state of the art, it is impossible to create completely error-free SOFTWARE. This warranty therefore does not cover any errors that merely have a non-substantial impact on the proper usability of the SOFTWARE or none at all.

9.3 The warranty period is 12 months, starting on the date when the SOFTWARE is delivered to the licence holder. Notwithstanding the provisions of the German Commercial Code (HGB), section 377, the licence holder shall notify BERG of any obvious defects within two weeks of receiving the SOFTWARE, enclosing a detailed list of defects in writing. Claims for defects shall not be acceptable on any other terms.

9.4 In the event of partial delivery (e.g. individual modules or functions) of the SOFTWARE, the warranty period shall commence upon performance of partial delivery.

9.5 There are no further-reaching warranty obligations. In particular, no warranty is provided that the SOFTWARE meets the licence holder's specific requirements. The licence holder shall be solely responsible for the selection, installation and use of the SOFTWARE and, in particular, for the parameter settings and the intended results of those settings. BERG provides no advice on this point, even if such a point was discussed, either prior to the order or during its implementation.

9.6 Defects may also be removed through update releases, in which case the licence holder must download the relevant service patches from BERG or from a site specified by BERG for the purpose of remedial action. Any installation and communication expenses incurred in this process shall be the licence holder's own liability.

9.7 BERG may instruct third parties to conduct activities required for the purpose of meeting its warranty commitments.

9.8 Provided that defects have been indicated in writing, in the form of a proper list of defects, before the expiry of the warranty period, they shall be removed by BERG at its own expense, either immediately or within a timeframe reflecting the impact of the defects.

9.9 Should this be requested by BERG, the licence holder shall – to a reasonable extent – provide BERG with documents and information required by the same for the assessment and removal of a defect. BERG may provide a suitable provisional solution to the extent that this is reasonable.

9.10 If, upon examination, BERG finds that there is no defect, it may require the licence holder to reimburse BERG for its work, applying the relevant per diem rates.

9.11 The warranty is voided

- if the licence holder makes improper use of the SOFTWARE, modifies the same or has it modified by a third party,
- if the defect is due to the licence holder's faulty or non-performance of collaboration duties, unless the licence holder proves that the defect was not caused either by interference or by violation of its collaboration duties.

10 Liability

10.1 BERG is liable for damages due to wilful intent, gross negligence, lack of warranted qualities and violations of essential contractual duties.

10.2 Except in cases of wilful intent and gross negligence, BERG bears no liability for indirect damage, e.g. loss of earnings, consequential damage arising from defects or any damage not typically foreseeable at the conclusion of this Agreement, irrespective of the legal grounds.

10.3 BERG's liability for damage caused by delay is limited to 5% of the relevant individual order value. Any further-reaching claims for damage caused by delay may only be made if BERG has acted with wilful intent, gross negligence or in violation of one of its essential contractual duties.

10.4 If data or programs are lost and if such loss is within BERG's responsibility, BERG's liability shall be limited to the cost of recovery incurred by the licence holder, provided that the licence holder has been taking regular data backups to ensure that lost data can be recovered with a reasonable amount of effort.

10.5 BERG shall regularly check its software for virtual attacks by third parties, particularly for viruses, worms and Trojan horses. The licence holder is aware that virtual attacks by third parties can be prevented with a high level of probability, but that, technically, such prevention is not possible in full. BERG therefore accepts no liability for disruption caused by virtual attacks perpetrated by third parties of any kind if such attacks occur in BERG's or the licence holder's systems. Clause 10 subclause 1 of this Agreement shall be applicable by analogy. The licence holder shall take state-of-the-art precautions in protecting its system against virtual

attacks by third parties, particularly in the form of viruses, worms, Trojan horses etc.

10.6 This clause does not affect statutory liability for personal injury or liability under the German Product Liability Act (*Produkthaftungsgesetz*).

11 Term of this Agreement

11.1 This Agreement shall be concluded for an unlimited period of time.

11.2 The right of use, which has been contractually granted to the licence holder in respect of the SOFTWARE, shall expire without the need for BERG to send notice of termination in cases where the licence holder has violated a provision in this Agreement, particularly if the licence holder continues to be in payment arrears (by more than 14 days) or has violated licence terms or the non-disclosure agreement.

11.3 As soon as the right of use has terminated, the licence holder must – at its own expense – return to BERG the previously received SOFTWARE on the original data medium, including all items received from BERG, as well as all copies of the SOFTWARE; the licence holder must furthermore remove from its computer the SOFTWARE and all files created through the same and shall do so in such a way that no subsequent recovery is possible (hereinafter: DESTRUCTION). Should this be required by BERG, the licence holder must declare DESTRUCTION through affirmation in lieu of an oath.

11.4 This provision does not affect the licence holder's liability for damages arising from copyright violations suffered by BERG through a breach of these contractual provisions by the licence holder.

12 Data protection rights and security

Orders are processed within the BERG Group with the use of IT facilities. The licence holder hereby gives its express consent for the processing of data material of which BERG gains knowledge through their contractual relationship and which is required for the purpose of order processing. As regards data received by BERG from the licence holder through their business relationship, the licence holder gives its consent for BERG to use such data for business purposes within the BERG Group in observance of the German Data Protection Act (*Datenschutzgesetz*).

13 Miscellaneous provisions

13.1 Any claims arising from this Agreement are subject to the law of the Federal Republic of Germany, but not to the UN Sales Convention on Contracts for the International Sale of Goods (CISG).

13.2 Any disputes arising from this Agreement shall be subject to Munich as the place of jurisdiction and performance. BERG is entitled to assert its own claims at the licence holder's place of jurisdiction.

13.3 The written agreement concluded between the parties covers all the arrangements made between them; there are no collateral agreements between the parties. The licence holder's terms of purchase and delivery are hereby expressly rejected. Any changes and amendments to this Agreement, including these provisions, shall only be valid if they are made in writing. This also applies to any waiver of the written-form requirement and the termination of the Agreement.

13.4 Should a provision turn out to be legally invalid or inoperable, then this shall not impact the legal validity of the remaining provisions. In such a case the parties shall agree to replace the partially or wholly invalid provision with a provision that comes as close as possible to it in terms of legal or economic intent.

13.5 The parties agree that transmission by fax or email meets the written-form requirement, subject to proof of receipt (e.g. fax log, email read receipt).