

# Platform End User License Agreement

This End User License Agreement (this “**EULA**”) is entered into by and between PTW Freiburg GmbH, Lörracher Str.7, 79115 Freiburg, Germany (“**PTW**”) and the end user customer (“**End User**”), effective as of the date the Platform is made available to the End User (the “**Effective Date**”).

## § 1 Definitions

For the purposes of this EULA, the terms below have the following meanings:

“**Customer**” means the party that has entered into the Platform Software License Agreement with PTW, on whose behalf the End User is acting when using the Platform.

“**Documentation**” means user manuals, technical manuals and any other materials provided by PTW, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Platform.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection worldwide.

“**Order Confirmation**” means a document sent to the Customer confirming that an order of a Product has been received and accepted.

“**Platform**” means PTW’s proprietary software and related user documentation, which, in combination with Third Party Materials, as applicable, is designed for use with the Product.

“**Person**” means any individual or legal entity, including but not limited to corporations, partnerships, joint ventures, limited liability companies, governmental authorities, unincorporated organizations, trusts, associations or other entities.

“**Product**” means PTW devices intended for use with the Platform.

“**Purchase**” refers to the sale, lease, rental, license or other transfer of one or more Products, including all past, present and future tenses and forms thereof.

“**Third Party**” means any Person other than PTW or the End User.

“**Third Party Materials**” means materials and information, including software and related documentation, in any form or medium, whose intellectual property or other rights are owned by a Third Party.

## § 2 License Grant and Scope

PTW hereby grants the End User a non-exclusive, non-transferable license to use the Platform in accordance with the provisions in the Platform Software License Agreement with the Customer, and in connection with the Product. The End User may copy the Platform only to the extent necessary to use it as permitted by this EULA and for archival purposes. The Platform is licensed, not sold. The media on which such authorized copies are located shall contain the copyright and trade secret notices of PTW. The Platform and any authorized copies thereof will remain the exclusive property of PTW and will not be used in any way other than as permitted by this EULA. Licenses granted for the Platform will remain in force so long as the End User rightfully continues to use the Platform, including timely payment of all fees, as set out in the Platform Software License Agreement between PTW and the Customer. For the sake of clarity: Any other end user license agreements besides this EULA do not apply to the use of the Platform.

- (a)** The End User agrees that the Platform and any other related information or data supplied by PTW constitutes a valuable trade secret and proprietary information of PTW and/or PTW's licensors. Except as expressly permitted in this EULA, the End User shall hold such information in confidence and secrecy, agreeing not to, in whole or in part, copy or disclose such information to any Third Party, reverse compile, disassemble, reverse engineer, decompile, decode, create derivative works of, attempt to discover any source code or underlying ideas or algorithms of, or make any unauthorized use or modification in any way, without the prior written consent of PTW. This EULA shall inure to the benefit of PTW, any third party holding any right, title or interest in the trade secret and proprietary information (or any software from which it is derived), and their respective transferees, successors and assigns.
- (b)** The End User shall use the Platform, including in connection with the Product, solely as permitted under this EULA and only to the extent required for the End User's legitimate operations.
- (c)** Nothing in this EULA shall be interpreted as assigning or granting the End User any right or title to any Intellectual Property Rights associated with the Platform, any portion thereof, or any other related information or data supplied by PTW or its licensors.
- (d)** The End User acknowledges and agrees that the functionality of the Platform may be restricted or disabled if the Customer fails to pay fees, as applicable.
- (e)** The Platform may be installed and used by the End User solely at the locations specified in the Order Confirmation. Installation or use at alternate or additional locations shall require prior written authorization from PTW, which may be granted upon the End User's request.

## § 3 Limitations

Except as expressly permitted under this EULA, the End User shall not directly or indirectly, in whole or in part:

- (a)** modify, translate, adapt or otherwise create derivative works or improvements of the Platform or Documentation or any part thereof;
- (b)** remove, delete, alter or obscure any Intellectual Property Rights notices provided on or within the Platform or Documentation;
- (c)** use the Platform and Documentation in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other rights of any third party;

- (d) make the Platform, or any of its features or functionality, available to any Third Party for any reason;
- (e) use the Platform or Documentation in violation of any applicable law, regulation or rule; or
- (f) use the Platform or Documentation for the purposes of competitive analysis, for the development or provision of a competing software product or service, or for any other purpose that is to PTW's commercial disadvantage.

## **§ 4 Third Party Materials**

To the extent that Third Party Materials, including software, content, data, or other materials, along with any related documentation, are provided to the End User, additional or different license terms may apply. Such terms will be provided to the End User and will apply specifically to the use of those third-party materials.

## **§ 5 Responsibility for Use of the Platform**

The End User is solely responsible and liable for all uses of the Platform and Documentation accessed through the credentials provided by the End User, whether directly or indirectly. Specifically, and without limiting the generality of the foregoing, the End User is responsible and liable for all actions and failures to take required action with respect to the Platform and Documentation by the End User or by any other person to whom the End User grants access or use, whether authorized or unauthorized. PTW shall not be responsible for providing the system environment required to operate the Platform as specified in the system documentation set forth in the Documentation.

## **§ 6 Intellectual Property Rights**

The End User acknowledges that under this EULA, no ownership interest in the Platform or the Documentation is transferred to the End User. The End User is granted only a limited right to use the Platform and Documentation in accordance with the license granted herein, and subject to all terms, conditions and restrictions set forth in this EULA. PTW reserves and shall retain all rights, title and interest in and to the Platform and Documentation including all associated Intellectual Property Rights, except for the limited rights expressly granted to the End User under this EULA.

## **§ 7 Term / Termination / Survival**

- (a) This EULA shall commence on the Effective Date and shall remain in effect until terminated in accordance with the provisions of this EULA.
- (b) Licenses granted for the Platform and Documentation under this EULA shall remain valid as long as the End User lawfully continues to use the Platform and Documentation, unless and until terminated as set forth in the Platform Software License Agreement.
- (c) Any provisions of this EULA that expressly survive termination, or that by their nature are intended to survive, shall remain in effect following termination. This includes, but is not limited to Sections 2(a), 2(b), 3, 5, 6, this Section (7), as well as Sections 8, 9 and 12 to the extent applicable.

## **§ 8 Warranty Disclaimer**

- (a) PTW warrants that the Platform conforms to the specifications set forth in the Documentation and has been developed with due care and expertise. However, it is acknowledged that, based on the current state of the technology, it is not possible to guarantee that the software is entirely free of defects. The warranty does not apply to defects resulting from the End User's operation of the Platform in a hardware or software environment that does not meet the requirements stipulated by PTW in the Documentation.
- (b) In the event of a defect, the applicable provisions of the Platform Software License Agreement shall apply.

## **§ 9 Limitation of Liability**

- (a) Claims for damages against PTW are excluded, regardless of the legal basis, unless such damages result from intentional misconduct or gross negligence by PTW, its legal representatives or vicarious agents. PTW shall only be liable for damages caused by ordinary negligence if such negligence results in a breach of essential contractual obligations. PTW is only liable for typical, foreseeable damages. Essential contractual obligations are those obligations that are fundamental to the contract, which were decisive in its conclusion and on which the End User may reasonably rely.
- (b) PTW shall not be liable for the loss of data insofar as the loss is due to the fact that the End User failed to perform data backups and to thereby ensure that any lost data can be restored with reasonable effort. In the event that PTW's services are used by unauthorized third parties utilizing the End User's access data, the End User shall be liable for any charges incurred as a result within the scope of liability under civil law, provided that the End User is at fault for the access by the unauthorized third party.
- (c) PTW shall be liable without limitation for damages caused intentionally or negligently by PTW, its legal representatives or vicarious agents resulting from injury to life, body or health.

## **§ 10 Export Regulation**

The Platform and Documentation may be subject to applicable export control and sanctions laws. The End User shall not, directly or indirectly, export, re-export, release, or otherwise make the Platform or Documentation accessible from or to any jurisdiction or country where such actions are prohibited by applicable laws, sanctions or regulations. The End User agrees to comply with all applicable export control laws and regulations, including obtaining any necessary export license or other governmental approval prior to exporting, re-exporting, releasing or otherwise making the Platform or Documentation available outside the End User's country of domicile.

## **§ 11 Maintenance**

PTW, or a designated Third Party, will maintain the Platform in accordance with the terms and conditions set forth in the Platform Software License Agreement. If the End User or any Third Party other than PTW modifies the Platform, then PTW shall have no maintenance obligations.

## **§ 12 Miscellaneous**

- (a) This EULA is governed by and construed in accordance with German laws without regard to any choice or conflict of law provision that would result in the application of the laws of another jurisdiction. The parties expressly exclude any application of the United Nations Convention on Contracts for the International Sale of Goods to this EULA. Any legal suit, action or proceeding arising out of or related to this EULA or the licenses granted hereunder will be instituted in the courts competent for the registered office of PTW. PTW is entitled to assert claims against the End User also in the courts competent for the End User's registered office.
- (b) PTW will not be responsible or liable to the End User, nor deemed to be in default or breach of this EULA, for any failure or delay in fulfilling its obligations under this EULA if such a failure or delay is caused by circumstances beyond PTW's reasonable control. These circumstances may include, but are not limited to strikes, labor disputes, civil disturbances, riots, rebellions, invasions, epidemics, hostilities, wars, terrorist attacks, embargoes, natural disasters, acts of God, floods, fires, sabotage, power outages, unavailability of utilities (including heat, light or air conditioning), failure of the End User's equipment or loss and destruction of property.
- (c) The End User acknowledges that any actual or threatened breach of this EULA may cause irreparable harm to PTW, for which monetary damages would be an insufficient remedy. Accordingly, the End User agrees that in the event of any actual or threatened breach, PTW shall be entitled to seek and obtain injunctive relief, including temporary, preliminary, and permanent injunctions, without the requirement to post bond, prove actual damages, or demonstrate that monetary damages would be inadequate. This right is in addition to any other remedies available at law or in equity and applies to actual or threatened breaches by the End User, its employees, or agents.
- (d) All notices, requests, consents, claims, demands, waivers and other communications under this EULA shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third business day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to a party at its last known address.
- (e) This EULA, and any documents expressly incorporated by reference constitute the complete and exclusive agreement between the End User and PTW regarding the subject matter herein. It supersedes all prior and contemporaneous understandings, agreements, representations and warranties, whether written or oral, relating to the same subject matter.
- (f) The End User may not assign or otherwise transfer any of its rights, nor delegate or otherwise transfer any of its obligations or performance under this EULA – whether voluntarily, involuntarily, by operation of law or otherwise – without PTW's prior written consent. PTW may grant or withhold such consent at its sole discretion. For clarity, any merger, consolidation or reorganization involving the End User (regardless of whether the End User is the surviving entity) shall be deemed a transfer of rights, obligations or performance, requiring PTW's prior written consent. No delegation or other transfer shall relieve the End User of its obligations under this EULA. Any purported assignment, delegation or transfer in violation of this Section 12(f) shall be null and void. This EULA shall be binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
- (g) This EULA is intended solely for the benefit of the parties to it along with their respective successors and permitted assigns. Nothing in this agreement, whether express or implied, shall confer any legal or equitable right, benefit or remedy of any kind upon any third party.
- (h) The parties acknowledge that PTW may amend this EULA in accordance with the Platform Software License Agreement. Any such changes will be notified in an appropriate way that ensures the End User's acknowledgment.

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- (i) If any term or provision of this EULA is found to be invalid, illegal or unenforceable in any jurisdiction, such determination shall not affect the validity, legality, or unenforceability of the remaining provisions of this EULA nor shall it render the affected provision unenforceable in any other jurisdiction.