

These License Terms and Conditions (hereinafter: "**T&C**") apply to the use of software products designed for the use on the premises and infrastructure of the customer (hereinafter: "**Software**"),

offered by

Draeger Australia Pty Ltd

(ABN 99 098 885 539)

(hereinafter "**Licensor**"), to the entity entering into this **License Agreement** for use of the Software (hereinafter: "**Licensee**"; Licensor and Licensee each a "**Party**" and collectively the "**Parties**").

The person acting on behalf of the Licensee declares:

- (i) they are authorised to validly enter into this License Agreement with effect for the Licensee; and
- (ii) they agree to be bound by these T&C.

1. Subject of the License Agreement

1.1.The subject of these T&C is the licensing of the Software to the Licensee for the term in accordance with the provisions of these T&C (hereinafter "**License**"). This License is granted on the basis of a document establishing the conclusion of the License Agreement, e.g. an order form, a customer-specific offer, a commercial agreement or a contract (hereinafter the "**Order Form**"), and the terms of these T&C which are incorporated into the Order Form.

1.2.The Licensor will provide the Licensee with copies of the Software for use on the Licensee's systems for the term and for the purposes stipulated at clause 3 of these T&C in the number necessary to achieve those purposes. The Licensee will receive the Software either online, in digital form or on a suitable data carrier - unless installation of the Software has been agreed separately, and the copies are provided directly on the Licensee's systems. The right to use the Software does not include any right to the Software's source code. The Licensee agrees to accept the Software as set out on the product websites, the order form and documents available under <https://www.draeger.com/termsandconditions> (hereinafter the "**Specification of Services**") and acknowledges that the Software in accordance with the Specification of Services, is fit for the Licensee's purposes (hereinafter the "**Purpose**"). The Purpose follows from an overall assessment of the Order Form, together with the Specification of Services.

1.3.The Licensor will provide support in accordance with the provisions of clause 2. Additional services are not the subject of this License Agreement (and are not included in the License Fee), but may be agreed separately by the Parties.

1.4.The Licensor retains the right to adjust the T&C with effect for the future at any time. This applies in particular in the event of a change in the legislative situation or if and insofar as this is necessary for reasons of IT security. The current T&C are available at <https://www.draeger.com/termsandconditions>.

2. Support and service

2.1.Unless stipulated otherwise, the Licensor shall provide support and service in accordance with the following provisions.

2.2.The Licensee acknowledges that

- (i) the support and services will not be available to the Licensee unless and until the Software is fully installed on the Licensee's systems;
- (ii) the Connectivity Package is required for support and service for some of the licensed Software;
- (iii) the support and services are provided remotely; and
- (iv) unless otherwise agreed between the Parties, the support and services are limited to ensuring that the Software is in accordance with the Specification of Services and fit for Purpose.

2.3.The Licensee warrants that it will only use the Software in accordance with the Specification of Services, the Order Form and these T&C.

2.4.The Licensee acknowledges that:

- (i) it must arrange for the installation of the Software itself;
- (ii) installation of the Software is not part of this **License Agreement** (and is not included in the License fee); and
- (iii) the Licensor is not liable for any defect or fault in the Software as a result of the installation of the Software, unless the installation of the Software was completed by the Licensor. Additional services for installation can be agreed separately in writing by the Parties.

2.5.Technical support can be contacted by phone 1800 372 437 between 9.00am to 5.00pm AEST.

2.6.The Licensor will keep the Software operational throughout the term of the License Agreement in accordance with the Specification of Services. This includes, without limitation, bug fixes and other necessary updates. It does not include specific adaptation of the Software to the Licensee's IT environment.

2.7.In the event of Software faults (hereinafter "**Fault**") that significantly impair the intended usability of the Software, the Licensor will use commercially reasonable efforts to remedy such Fault within a reasonable period of time. This will include isolating the cause of the Fault, Fault diagnosis as well as undertaking services aimed at rectifying the Fault (e.g. patches or service packs). At the Licensor's option, Fault correction services may also be provided in the form of a workaround or an update.

2.8.If a Fault correction described at clause 2.6. above fails to remedy the Fault within a reasonable period of time, the Licensee may, at its option, terminate this **License Agreement** and obtain a refund of the unused portion of the License Fee.

2.9.In addition, the Licensee will receive other Software updates and upgrades. Updates are all updates of the Software that relate to the functions contained in the Software at the time this License Agreement is entered

into ("**Updates**"). Upgrades are improvements, optimisations and functional extensions to the Software, relating to the existing scope of functions ("**Upgrades**"). The Licensee will not receive any further functional extensions other than those already included in the scope of the product. Such further functional extensions are offered separately for a fee, as add-ons, locked options, supplementary products or feature sets.

2.10. The Licensor may also, at the Licensor's discretion Update the Software for other purposes or to modify it in another form, provided that - taking into account the Licensor's interests - the Licensee can be reasonably expected to accept the Software modification. Reasonable modifications include, without limitation, modifications that do not affect the Software's essential scope of performance or are required for reasons of IT security or due to changes in the regulatory framework.

2.11. The Licensee must ensure and allow patches, Upgrades and Updates to be installed in a timely manner, and in any event no later than by the time the next version of the Software is made available, and to provide any contributory services to such installation as necessary. If the Licensor releases new functionalities that require instruction, and provides such instruction to the Licensee, the Licensee is responsible for complying with such instruction prior to any use.

2.12. Support and service will only be provided for the respective current and immediately preceding version of the Software (with all Updates and patches applied).

2.13. The License Fee (see clause 4.1) includes the remuneration for support and services under clause 2.11.

3. Intellectual property and rights of use

3.1. Any and all intellectual property rights to the Software and any future developments by Licensor remain exclusively with the Licensor (and, if applicable, its licensors). The Licensee may use the Software only to the extent expressly granted under these T&C.

3.2. The Licensee acknowledges that the Licensor (and if applicable, its licensors), retain all ownership and intellectual property rights to any names, trade marks, brands, logos, designs, trade dress and slogans that the Licensor uses in respect of the Software (hereinafter, the "**Branding**"). The Licensee agrees and warrants that:

- (i) it will not, without the express written consent of the Licensor, use the Branding; and
- (ii) it will not acquire any ownership rights or interests in the Branding by or through use of the Branding.

3.3. The Licensee is granted a revocable, non-transferable, non-exclusive right, limited in time to the agreed term and in location to the Licensee's business premises, to use the Software in accordance with these T&C, the Order Form and the Specification of Services to the extent necessary to achieve the Purpose.

3.4. Despite clause 3.3 above, the Licensee is not granted any further rights of use. In particular, to the extent permitted by law the Licensee is not entitled to do

any of the following in relation to the Software or components thereof:

- make them available to third parties – with the exception of technical service providers used merely for support, e.g. hosting providers;
- reproduce, sell, modify, maintain, alter, manipulate, repair or create derivative works of them;
- reverse engineer, disassemble or decompile them, or use other methods to derive the Software's source code;
- utilise or exploit them in such a way that no charges are incurred or usage restrictions or quotas are exceeded;
- use them in connection with a fork or derivative work, or access content using automated means, unless stipulated in the Specification of Services;
- by circumventing the security mechanisms used; or
- use them to conduct any harmful or otherwise unlawful activity.

4. Remuneration

4.1. For the use of the Software, the Licensee pays to the Licensor the license fee specified in the respective Order Form ("**License Fee**").

4.2. Unless stipulated otherwise in the relevant Order Form, invoices will be issued annually in advance and the License Fee will be payable within 14 days of invoicing.

4.3. Services outside the scope agreed in these T&C must be remunerated separately by the Licensee. The Licensor's respective current hourly rates apply.

4.4. If the Licensor makes a Taxable Supply under this License Agreement (as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* – hereinafter "**GST Law**"), the Licensee will be responsible for paying goods and services tax ("**GST**") or similar value added tax levied or imposed in Australia under the GST Law on a Taxable Supply, and the relevant fee for the Taxable Supply under this License Agreement will increase accordingly in these T&C or in the respective Order Form.

4.5. In the event that the Software is provided free of charge, clauses 4.1. to 4.4. shall not apply. The Licensee may use the Software free of charge for the period specified in the Order Form.

5. General cooperation obligations

5.1. Use of the Software is conditional on the hardware and software used by the Licensee, including workstation computers, routers, data communications systems, etc. (hereinafter "**IT Infrastructure**") meeting the minimum technical requirements of the Software version used by the Licensee (hereinafter "**Minimum Technical Requirements**"). The Minimum Technical Requirements are set out in detail in the Specification of Services. The Licensee warrants that the IT Infrastructure will meet the Minimum Technical Requirements.

5.2. The Licensee agrees that the Licensor may install individual components of the Software on the IT Infrastructure that are required to provide the agreed scope of functions but are not used by the Licensee itself. This applies in particular to so-called client

components for remote access for the purposes of service, improving the security of the Software or for Software analysis modules.

5.3.The IT Infrastructure is the sole responsibility of the Licensee and the Licensee will do all things necessary to ensure that the IT Infrastructure meets the Minimum Technical Requirements at all times (including for Updates and Upgrades as expressed in clause 2.8). This includes, without limitation, ensuring the operation and updating of the IT Infrastructure as well as carrying out periodic data backups.

5.4.The Licensee warrants that the users authorised by the Licensee to use the Software will:

- (i) comply with these T&C (and the Licensee will be responsible for all breaches of the T&C incurred by its authorised users); and
- (ii) be familiar with the Software and with these T&C.

5.5.The Licensee agrees that it will do all things necessary and provide all reasonable support to the Licensor regarding the analysis and remedying of Faults; in particular, by providing an adequately detailed Fault description to the Licensor as well as providing any associated documents, data and access to the Licensee's IT Infrastructure to the extent required for the purpose of assessing and remedying Faults. The Licensor will not be responsible for any delays caused by inability to access the Licensee's IT Infrastructure.

6. License audit

6.1.The Licensor may itself audit or may retain competent third parties who are subject to an obligation of secrecy ("**Auditor**") to audit the Licensee for compliance with the Software's agreed scope of use at any time, no greater than once a year, including by auditing the business records and other documents at the Licensee's premises ("**License Audit**"). To this end, the Licensee will grant the Licensor the required and appropriate access to its business premises during regular business hours. The License Audit should not interfere with the Licensee's ordinary business operations and will be performed in a manner that takes into account data privacy and security requirements of both Parties.

6.2.A License Audit will be notified to the Licensee in writing with a notice period of four weeks (except in justified urgent cases).

6.3.If the License Audit discloses that the Licensee is using the Software in excess of the scope of the License as set out in the Order Form (hereinafter the "**Excess Use**"), the Licensee must:

- (i) pay to the Licensor an amount reflecting the Excess Use for the duration of the Excess Use and
- (ii) adjust the License Fee such that it reflects the Excess Use. In addition, the Licensee will be obligated to bear the reasonable, demonstrated costs of the License Audit and be liable for any additional claims for damages by the Licensor.

7. Third-party rights and open source software

7.1.To the best of the Licensor's information, knowledge and belief, the Software is free from third-party rights that

would prevent the Licensor from granting the License (hereinafter "**Third Party Rights**").

7.2.Should third parties assert Third Party Rights (hereinafter "**Third Party Claim**"), the Licensor will, at its own expense, defend against the Third Party Claim and hold the Licensee harmless against the Third Party Claim. The Licensee shall notify the Licensor in writing immediately and without undue delay after being made aware of any Third Party Claim, and will do all things necessary and issue all powers of attorney and authority to the Licensor as necessary to defend against the Third Party Claim. The Licensee warrants and agrees that:

- (i) it will not do anything which would adversely affect the Licensor's defence of any Third Party Claim; and
- (ii) it will indemnify the Licensor for all expenses and losses incurred by the Licensor as a result of the Licensee doing or failing to do anything which adversely affects the Licensor's defence of a Third Party Claim. Without the Licensor's consent, the Licensee will not acknowledge any Third Party Rights or Third Party Claims.

7.3.Without limiting the Licensor's right to defend against a Third Party Claim, the Licensee agrees that the Licensor may, at its option,

- (i) acquire at its own expense additional rights of use from the third parties,
- (ii) modify or replace the Software in such a way that it no longer infringes Third Party Rights, without significantly impairing the Software's functionality, or
- (iii) if (i) and (ii) are not commercially or operationally viable, terminate this License Agreement with immediate effect and reimburse the Licensee for the License Fee for the cancelled remainder of the contractual term.

7.4.The Software includes free and open source software. The respective current open source license terms and conditions apply with priority to the open source elements. A list of all free and open source software used as well as the respective license terms conditions, notices and acknowledgements is available at <https://www.draeger.com/opensource>.

7.5.The Software may contain proprietary contents of third parties, which may be subject to their own license terms for end users and apply directly to the Licensee. Such license terms are available at <https://www.draeger.com/termsandconditions> and take precedence over the T&C in their scope of application.

8. Liability, Australian Consumer Law and Indemnity

8.1.Without limiting any other provision of these T&C, to the maximum extent permitted by law, in no event will the Parties be liable to each other or to any third party under any circumstances or under any law, for loss of profits, loss of data, business interruption or any other commercial damages or losses, or any incidental, special, punitive, indirect, or consequential losses or damages whatsoever, arising out of or related to this License Agreement or the Licensee's use of the Software. Nothing in this Agreement limits or excludes a Party's liability for death, personal injury or fraud to the

extent that such liability cannot be limited or excluded by any law.

8.2. Nothing in this License Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Licensee by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified (hereinafter "**Non-Excludable Guarantee**"). To the extent permitted by law, the Licensor's liability for a breach of a Non-Excludable Guarantee is limited, at the Licensor's option, to:

- (i) in the case of goods – the replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost of having the goods repaired; and
- (ii) in the case of services – the supplying of the services again or payment of the cost of having the services supplied again.

8.3. Without limiting any other provision of the T&C, to the maximum extent allowed by law, in no event shall the Licensor's total liability to the Licensee exceed the Licensee Fee payable for the previous 12 months period.

8.4. The above limitations of liability also apply in the event of claims for damages by either Party against the employees, representatives or bodies of the other Party.

8.5. The Licensee shall take all necessary and reasonable measures to prevent or limit any damages. In particular, the Licensee shall ensure that programs and data are periodically secured as part of an adequate back-up protocols. To the maximum extent allowed by law, Licensee accepts that the Licensor is not responsible for any loss or disclosure of any information or communications which are submitted, communicated or stored on the Software and any other information generated by the Licensee in the course of using the Software (hereinafter "**Licensee Data**"). The Licensee confirms that the Licensee Data does not include Personal Information.

9. Term and termination

9.1. The term, any renewals and the parameters for terminating the **License Agreement** for the Software are disclosed in the respective Order Form. If no provision is made in the respective Order Form, the term of the License Agreement will be one year from its conclusion, and will be automatically renewed for a further year at a time, unless terminated by either Party in writing with three months' notice prior to the end of the term, or renewed term (as the case may be).

9.2. Clause 9.1 does not affect the Licensor's right to terminate for good cause. Good cause on the part of the Licensor includes, without limitation:

- the Licensee's IT Infrastructure fails to meet the Minimum Technical Requirements at any time;
- if the Licensee uses the Software in a manner inconsistent with this Agreement, the Order Form or the Specification of Services,
- if, after written notice from the Licensor, the Licensee fails to pay to the Licensor the License Fee in full within 30 calendar days.

9.3. Notice of termination must be given in writing.

9.4. At the end of the term or renewed term (as the case may be), or if the License Agreement is otherwise terminated, the Licensee shall cease using the Software and shall completely and permanently remove any and all installed copies from its computers, and all rights granted under the License will immediately cease. The Licensee agrees and permits the Licensor to, at the Licensor's sole discretion, delete all Licensee Data following termination of the License Agreement.

10. Confidentiality

10.1. The Parties undertake to treat all confidential information they become aware of in connection with the services under this **License Agreement** as confidential and to use it only for the purposes of this License Agreement. **Confidential Information** as defined in the T&C means any and all information, documents, details and data designated as such or which, by their nature, upon reasonable assessment must be considered confidential and includes, without limitation, all documentation, know-how and other material relating to the Software (including the Software).

10.2. The Parties undertake to grant access to the respective other Party's Confidential Information only to those employees who have been obligated to maintain confidentiality and who for the purpose of fulfilling the Party's obligations under this **License Agreement**, the Order Form and the Specifications of Services need to or may need to know such Confidential Information.

10.3. Adequate measures shall be implemented to protect the respective other Party's Confidential Information from unauthorised third-party access. The Parties will grant access to Confidential Information only to such advisers who are subject to professional secrecy or on whom obligations corresponding to the non-disclosure obligations under the T&C have been previously imposed.

10.4. This non-disclosure obligation does not include any Confidential Information that:

- (i) was demonstrably already known to the recipient upon conclusion of the T&C or subsequently was obtained from a third party without any breach of a non-disclosure agreement, statutory provisions or regulatory orders;
- (ii) upon conclusion of the T&C is in the public domain or enters it subsequently, unless this is due to a breach of the T&C;
- (iii) must be disclosed due to statutory obligations or due to court or regulatory order. To the extent permitted, the recipient required to disclose will notify the other Party in advance and provide it with the opportunity to proceed against the disclosure.

10.5. This non-disclosure obligation will survive for a period of five (5) years following the end of the term of the T&C (including any renewed term) or five (5) years following the date the License Agreement is terminated, whichever is earlier.

11. Personal Information and Data protection

11.1. Licensee agrees that:

- (i) the Licensor may collect **Personal Information** (as defined in Privacy Act 1988 (Cth), hereinafter "**Australian Privacy Laws**") for the purposes of providing the Software to the Licensee under the License and fulfilling its obligations under this License Agreement, the Order Form and the Specification of Services; and
- (ii) the Licensor may be unable to provide the Software in accordance with the License Agreement, the Order Form and the Specification of Services if it cannot collect the Personal Information.

11.2. By using the Software, the Licensee warrants that it has complied with Australian Privacy Laws, including in respect of Personal Information. Specifically, the Licensee warrants that it has obtained the consent of the individual from which the Licensee Data originates for the Licensor to use the Personal Information for the purposes of this License Agreement, the Order Form and the Specification of Services.

11.3. In this regard Licensor and Licensee agree to conclude all necessary data privacy agreements.

12. Licensee Data and Data usage

12.1. The Licensee grants the Licensor a perpetual, irrevocable, non-exclusive, unlimited and transferable right to use the Licensee Data for the Licensor's own business purposes, free of charge and without further consideration, consent, or notice to the Licensee or any third party. Such business purposes include, without limitation, product development and enhancement, maintenance work and requirements forecasts, usage environment and behaviour analysis, as well merging and aggregating with other data sets for the aforementioned purposes.

12.2. The Licensee warrants that it is authorised to grant these rights of use.

13. Force Majeure

13.1. Neither Party shall be liable for any delay or non-performance of any obligation under the T&C or any Order Form if such delay or non-performance is caused directly or indirectly by any event beyond the reasonable control of the Party affected.

13.2. This applies in particular to strikes, epidemics, floods, accidents, earthquakes, hurricanes, riots, civil commotion, acts of terrorism, armed conflicts, blockades, embargoes or other events of force majeure ("**Force Majeure Event**"). The affected Party shall notify the other Party in writing (e-mail is sufficient) within ten (10) days of the occurrence of such Force Majeure Event.

13.3. If the fulfilment of a Party's obligations is delayed by more than one hundred and eighty (180) days from the date on which the other Party received the notice under this clause 13., the non-affected Party shall be entitled to immediate termination. The terminating

Party shall not be liable for any damages resulting from the termination.

13.4. As soon as there is no longer a Force Majeure Event, the Parties shall resume performance of the License Agreement without delay, unless notice of termination has been given in accordance with clause 13.3..

14. Final provisions

14.1. The Software may not be used in any country that, with regard to the object of the Software, is subject to embargo regulations of the USA, the UN or the EU. Likewise, the Software may not be used if the Licensee's organisation or its employees assigned to use it are included in any embargo lists of the USA, the UN or the EU.

14.2. All of the Licensee's General Terms and Conditions do not apply. This also applies if the T&C are not expressly objected to. No verbal or written collateral agreements exist regarding the services under this **License Agreement**.

14.3. The Licensee will require the Licensor's prior written consent to assign its rights under the License Agreement.

14.4. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable, invalid or unfair under Part 2-3 of the Australian Consumer Law, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable, invalid or unfair under Part 2-3 of the Australian Consumer Law, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

14.5. The T&C are governed by the laws of the State of Victoria, Australia, under the exclusion of the UN Convention on Contracts for the International Sale of Goods (if applicable). The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria, Australia (and any courts which have jurisdiction to hear appeals from any of those courts) for claims between the Licensor and the Licensee under the T&C, the Order Form or use of the Software. Both Parties waive any right to object to any proceedings being brought in those courts.

14.6. In the interpretation of the Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared the documents forming part of the Agreement or any part of it.

14.7. None of the terms of the Agreement shall be varied, amended, waived, discharged or released except with the prior written consent of the Licensor. No action, consent, conduct or representation by the Licensor, other than prior written consent, shall constitute any amendment, variation, waiver, discharge or release of the Licensee's obligations to strictly comply with the Agreement.

14.8. All prior statements and representations or collateral warranties that may have been given whether oral or in writing by the Licensor its servants or agents prior to the delivery of the Software are expressly excluded to the full extent allowed by law and accordingly the Licensor is released by the Licensee

from any liability as a result of such statement or representation.

14.9. The following terms shall be defined as follows:

"Specification of Services": shall mean the technical, functional and operational parameters of the software as derived from the product websites, the order form and documents available under www.draeger.com/termsandconditions"Purpose": shall mean the scope of the software in which and to the extent it is supposed to be used as derived from Specification of Service and these T&C.
