

IoT Connector Licensing Terms and Conditions

These *IoT Connector Licensing Terms and Conditions* (the “**Licensing Agreement**”) are concluded between EnOcean GmbH, Kolpingring 18a, 82041 Oberhaching, Germany (“**EnOcean**”) and the customer (“**Customer**”) acquiring the object code of EnOcean’s software product “IoT Connector” (the “**Software**”) either directly from EnOcean or from any of EnOcean’s authorized resellers (each a “**Reseller**”). EnOcean and Customer are hereinafter individually also referred to as “**Party**” and jointly as “**Parties**”.

1. Roles and Responsibilities

- 1.1 If Customer acquires the Software directly from EnOcean, this Licensing Agreement applies without any limitation. In this case, EnOcean shall particularly be responsible to provide Customer with the Software in accordance with this Licensing Agreement.
- 1.2 In case Customer acquires the Software from a Reseller, this Reseller is responsible towards Customer for fulfilling the agreement concluded between the Reseller and Customer to this end (“**Reseller Licensing Agreement**”), and particularly to provide Customer with the Software in accordance with the Reseller Licensing Agreement.
- 1.3 In the case outlined in Section 1.2 above, EnOcean’s responsibility under this Licensing Agreement is limited to granting Customer the rights to use the Software in accordance with Section 4. EnOcean may in this case provide further services towards Customer on a voluntary basis, e.g. provision of patches. In no case, however, shall EnOcean be solely or jointly responsible towards Customer for fulfilling the Reseller Licensing Agreement or be liable towards Customer for any wrongdoing of the Reseller.

2. Subject matter

- 2.1 In case Customer acquires the Software directly from EnOcean, the subject matter of this Licensing Agreement is the provision and licensing of the Software by EnOcean to Customer during the Term (see Section 8), and the payment of the agreed licensing fees by Customer to EnOcean.
- 2.2 Unless otherwise expressly agreed by the Parties, other services or deliverables by EnOcean are not subject matter of the Licensing Agreement. In absence of such an explicit agreement, EnOcean shall particularly not be obliged to provide Customer with the source code of the Software, to install the Software at Customer’s premises, or to provide other support services. The Parties may enter into separate explicit agreements for other services or deliverables against separate remuneration.
- 2.3 For the avoidance of any doubt, in case Customer has acquired the Software from a Reseller, the subject matter of this Licensing Agreement merely is the grant of the rights by EnOcean to Customer to use the Software during the Term (see Section 4).
- 2.4 The terms of the Licensing Agreement also apply to bug fixes, patches, updates and other modifications to the Software (jointly “**Updates**”) that EnOcean may make available to Customer.
- 2.5 Any other general terms and conditions of the Parties shall not apply to the Licensing Agreement, unless expressly agreed by the Parties in text form or written form.

3. Provision of the Software

- 3.1 EnOcean or the Reseller, as the case may be, will provide Customer with the Software by making the Software available for download by Customer and providing Customer with a license key to enable Customer’s use of the Software in accordance with Section 4 (“**License Key**”).

- 3.2 Unless otherwise agreed between Customer and the Reseller in the Reseller Licensing Agreement, the Software will be provided to Customer with the features and functions described in the documentation of the Software available in EnOcean's online product offering provided on EnOcean's own platform or on a third party platform ("**EnOcean's Webshop**") at provision date. Customer acknowledges and agrees that the proper functioning of the Software is dependent upon Customer's system used to operate the Software meeting the technical requirements of the Software described in EnOcean's Webshop at provision date ("**Technical Requirements**").
- 3.3 EnOcean or the Reseller, as the case may be, may provide Customer with a user documentation as part of the Software (the "**Documentation**") in English language. The Documentation may be provided to Customer in printed or in printable form, or as a web browser based online documentation.
- 3.4 Between the Parties, Customer shall solely be responsible to install the Software on Customer's system.

4. Rights of use

- 4.1 Customer acknowledges and agrees that between the Parties all exclusive rights, title and in the Software and the Documentation, including any intellectual property rights therein, are owned by and remain with EnOcean or EnOcean's licensors.
- 4.2 Subject to Customer's pre-payment of the periodical License Fee according to Section 6 to EnOcean, or, in the case outlined in Section 1.2, payment of the agreed fees to Reseller (as the case may be), EnOcean grants Customer for the respective period of time a non-exclusive, limited right and license to use the Software during the Term for and in connection with the agreed number of sensors and actuators, but solely in connection with equipment that supports the 'EnOcean Equipment Profiles' (EEP) as listed in the documentation made available in EnOcean's Webshop at provision date of the Software. The license grant includes the permission for Customer to install, operate and run the Software at Customer's premises.
- 4.3 The license grant pursuant to Section 4.2 does not include any further rights or means of exploitation. Customer is particularly not permitted by EnOcean to
- a) sell, lease, rent, sublicense, or otherwise distribute or transfer the Software, the Documentation, or any portion thereof;
 - b) modify, translate, or create derivative work of the Software, the Documentation, or any portion thereof; or
 - c) reverse engineer, decompile, or disassemble the Software, or otherwise attempt to recreate all or any portion of the Software.

All rights Customer may have under mandatory statutory law shall remain unaffected.

- 4.4 To the extent that the Software contains so called open source software, i.e. software that is open and publicly available free of charge ("**OSS Components**"), the license terms governing the OSS Components shall govern over the terms of the Licensing Agreement with respect to these OSS Components. The OSS Components included in or delivered by EnOcean together with the Software, as well as the applicable OSS license terms are listed in the Open Source Appendix available in EnOcean's Webshop at provision date of the Software.

5. Technical license activation via the Internet

- 5.1 Customer hereby irrevocably permits EnOcean to regularly verify, whether the License Key used by Customer covers Customer's use of the Software, by sending licensing requests to the Software via the Internet to technically activate Customer's license.

- 5.2 Customer acknowledges and agrees that Customer's (further) use of the Software is subject to such licensing activation being successfully executed: Customer is aware that if a licensing activation cannot be successfully executed at least once within a thirty (30) days period, e.g. due to failure of Customer's internet connection, technical measures will prevent the Software from further usage by Customer. The payment of the License Fee by Customer remains unaffected except insofar as such unsuccessful license activation is not caused by any deficiency of Customer's system used to operate the Software or Customer's internet connection.

6. Remuneration and terms of payment

- 6.1 Customer is obliged to pay to EnOcean the periodical license fee agreed (the "**Licensing Fee**") in advance, for each period of time during the Term (pre-payment).
- 6.2 The Licensing Fee is due for payment by Customer on the day the invoice for the respective year is issued by EnOcean, and must be paid by Customer within fourteen (14) days of its due date.
- 6.3 All prices are exclusive of the legally applicable value added tax.
- 6.4 In case Customer is in default of payment, EnOcean reserves the right to technically prevent the Software from further usage by Customer and/or not further active Customer's license, unless this would be unreasonable considering the amount of the outstanding payments in question. Any other claims and rights EnOcean may have in such case, including rights of retention under statutory law, shall remain unaffected.

7. Customer's cooperation duties

- 7.1 Customer bears the sole responsibility for fulfilling and maintaining the Technical Requirements to use the Software, and the functionality and the sufficient bandwidth of Customer's internet connection to allow EnOcean executing the monthly licensing requests (Section 5) and to collect Vitality Data (Section 14).
- 7.2 Customer shall use the Software only in accordance with the terms of the Licensing Agreement, and shall at all times during the Term comply with all applicable legal and official requirements. Customer will not use the Software for or in connection with any illegal activities.
- 7.3 Customer shall make use of the contact information and procedures provided by EnOcean to notify defects of the Software.
- 7.4 Customer shall provide all cooperation duties at its own expense and in accordance with the Licensing Agreement, in good time and good order. For this purpose, Customer shall only use sufficiently qualified personnel to provide cooperation.

8. Term and termination

- 8.1 The Licensing Agreement is concluded for the agreed initial term and shall end upon termination in accordance with the following provisions (the "**Term**").
- 8.2 After the initial term, the Licensing Agreement shall automatically be extended by one (1) year periods (each a "**Renewal Term**"), unless the Licensing Agreement is terminated by either Party by giving by a one (1) month termination notice prior to the end of the initial term or a Renewal Term, as the case may be.
- 8.3 The right of each Party to terminate the Licensing Agreement for good cause shall remain unaffected. Customer shall, however, not be entitled to terminate for good cause pursuant to Section 543 (2) sentence 1 no. 1 BGB, unless the restoration of the contractual use of the Software is deemed to have failed.
- 8.4 Any termination notice must be in written form or in text form to be valid.

- 8.5 As soon as termination of the Licensing Agreement becomes effective, Customer must immediately stop using the Software, uninstall the Software from its systems, and delete or return any copies of the Software.

9. Warranty and defects

- 9.1 EnOcean warrants that the Software functions in accordance with the agreed specification (Section 3.2), provided the Technical Requirements are fulfilled by Customer.
- 9.2 In case of defects, §§ 535 et seq. German Civil Code (BGB) shall apply with the provision that EnOcean's liability without fault for defects existing at the time of conclusion of the Licensing Agreement pursuant to § 536a para. 1, 1st alt. BGB shall be excluded.
- 9.3 EnOcean may also remove defects of the Software by providing Customer in the same way as the Software was provided previously with an Update that removes the defects in question.
- 9.4 For claims for damages based on defects of the Software, Section 11 applies.

10. Third party rights

- 10.1 Should a third party assert an infringement of rights by the Software or their use by Customer, Customer shall notify EnOcean immediately in text form or in written form.
- 10.2 EnOcean will provide reasonable assistance to Customer in the defense against such third party claims and provide Customer with relevant information. EnOcean's obligation to remove defects in title according to Section 9 remains unaffected.

11. Limitation of liability

- 11.1 Without prejudice to Section 11.1, in cases of slight negligence, EnOcean shall only be liable for breaches of material contractual obligations, i.e. obligations whose fulfilment is essential for the proper performance of the Licensing Agreement or whose breach jeopardizes the achievement of the purpose of the Licensing Agreement and on whose compliance Customer may regularly rely. In these cases, EnOcean's liability is limited to the typical contractual damage foreseeable at the time of conclusion of the Licensing Agreement. Beyond this, EnOcean shall not be liable for slight negligence, except if provided otherwise in Section 11.2.
- 11.2 Beyond Section 11.1, EnOcean shall be liable in accordance with statutory law in cases of intent, gross negligence, culpable injury to life, body or health, under the German Product Liability Act (ProdHaftG), and within the scope of guarantees given by EnOcean in writing.
- 11.3 Section 11 also applies in favor of EnOcean's personnel, representatives, organs and vicarious agents.

12. Confidentiality

- 12.1 The Parties shall treat confidential all confidential information which they receive or otherwise obtain in the course of the cooperation under this Licensing Agreement ("**Confidential Information**"). For the avoidance of any doubt, the term Confidential Information includes, without limitation, trade secrets of a Party, information marked or expressly designated as "confidential", information a reasonable person would deem as confidential, and the terms of the Licensing Agreement.
- 12.2 The Parties shall (i) use Confidential Information only for the purpose of the Licensing Agreement, (ii) give access only to its employees and subcontractors who need to have access for this purpose and who entered into similar confidentiality obligations, (iii) not pass it on to third parties, and (iv) protect it against unauthorized access or use by third parties.
- 12.3 No confidentiality obligation shall apply to information that

- a) are already known by, or in the possession of the receiving Party prior to receipt of any Confidential Information from the other Party;
 - b) are in the public domain or enter the public domain through no wrongful act of the receiving Party;
 - c) have been developed by a Party independently from Confidential Information received from the other Party.
- 12.4 The confidentiality obligations under Section 12.1 and 12.2 shall not apply if and to the extent that disclosure of Confidential Information is required by mandatory statutory provisions or as ordered by a court or legal supervisory authority, and if the receiving Party has informed the other Party in writing about the respective obligation without undue delay.
- 12.5 The Party providing Confidential Information shall remain the vested holder of such information. Any received documents as well as any copies of Confidential Information shall be returned or destroyed without undue delay upon termination of the Licensing Agreement.
- 12.6 This Section 12 shall remain in force for a period of five (5) years after termination of the Licensing Agreement.

13. Feedback

- 13.1 EnOcean may give Customer the opportunity to provide information, suggestions, proposals and other feedback regarding the Software, e.g. on its functionality, usability and user-friendliness ("**Feedback**").
- 13.2 By providing Feedback to EnOcean, Customer grants EnOcean in Feedback, which is protected under intellectual property rights, the non-exclusive, perpetual (permanent), unlimited, worldwide, irrevocable, right and license to review, evaluate, use, copy, modify, and otherwise exploit Feedback for any purpose at EnOcean's sole discretion in any known or unknown way of exploitation. This particularly includes the right and license of EnOcean to use Feedback for modifications, improvements and further developments of the Software, as well as for developing new products or services. This also includes the right to reproduce, edit, combine with further information, and to distribute, transfer and sublicense Feedback to third parties, and implement and exploit Feedback in any shape or form.
- 13.3 Customer shall ensure that Feedback provided to EnOcean does not include any personal data.

14. Vitality Data and Software Usage Information

- 14.1 Customer acknowledges and agrees that EnOcean may collect and analyze information on sensors and actuators interacting with the Software, e.g. debug and status information of sensors and/or actuators (hereinafter "**Vitality Data**"). The same applies to information about use of the Software on Customer's system used to operate the Software, e.g. error codes and messages (hereinafter "**Software Usage Information**"). For the avoidance of any doubt, EnOcean does not take access to measurement values sent by sensors or actuators.
- 14.2 To this end, EnOcean may take remote access to collect Vitality Data and Software Usage Information processed in the Software, or have the Software automatically send Vitality Data and Software Usage Information to EnOcean's servers. Section 13.2 applies mutatis mutandis to Vitality Data and Software Usage Information.
- 14.3 Customer hereby irrevocably grants EnOcean permission to collect and analyze Vitality Data and Software Usage Information and to access the Software and Customer's system used to operate the Software via the internet as reasonably required by EnOcean to collect Vitality Data and Software Usage Information.

15. Trial usage of the Software

- 15.1 In case the Parties have agreed that Customer may install and test the Software for a trial period ("**Trial Period**"), Customer may use the Software during the Trial Period for testing its functionalities, without the obligation to pay Licensing Fees to EnOcean.
- 15.2 With respect to the Trial Period, EnOcean's liability towards Customer shall be in accordance with the statutory provisions for loan contracts (Section 598 et seq. BGB).
- 15.3 The Trial Period automatically expires after ninety (90) days, or any different term agreed by the Parties as Trial Period, without a termination notice being required. Upon expiration of the Trial Period, the Licensing Agreement automatically terminates, unless the Parties have agreed to continue the Licensing Agreement after the Trial Period and Customer has paid the applicable License Fee.
- 15.4 During the Trial Period, the provisions of this Section 15 take precedence over conflicting terms of the Licensing Agreement. In particular, Sections 6, 8, 9, and 10 shall not apply to the Trial Period.

16. Governing law and place of jurisdiction

- 16.1 The Licensing Agreement as well as all rights, claims or obligations arising from or in connection with the Licensing Agreement are subject to the laws of the Federal Republic of Germany. The United Nation Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 16.2 The exclusive place of jurisdiction for all disputes arising from or in connection with the Licensing Agreement shall be Munich, Germany.

17. Final provision

- 17.1 The Licensing Agreement constitutes the entire agreement between the Parties in respect of the subject matter.
- 17.2 Any modifications of and amendments to the Licensing Agreement shall be made in text form or writing in order to become effective; the same shall apply to any modifications to this form requirement itself.
- 17.3 Customer may only set off claims against EnOcean under this Licensing Agreement with undisputed, legally established claims or claims ripe for adjudication which arise in connection with this Licensing Agreement, and may only exercise a right of retention based on such claims.
- 17.4 Unless expressly agreed otherwise, the place of performance for any and all obligations arising from or in connection with the Licensing Agreement shall be at EnOcean's place of business.
- 17.5 Customer may only assign or transfer claims or rights under this Licensing Agreement with the prior consent of EnOcean. Section 354a German Commercial Code (HGB) remains unaffected.
- 17.6 Should individual provisions of the Licensing Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The Parties shall endeavor to replace the invalid provision with a valid provision which comes as close as possible to the meaning and economic purpose of the invalid provision and the will of the Parties. The same applies to unintentional gaps.
- 17.7 For the avoidance of any doubt, Sections 1 to 5, Sections 7 and 8, Section 10.1, and Sections 11 to 17 also apply in case Customer has acquired the Software from a Reseller.