

Software Licensing Conditions

(04/2018)

1. Supply of Software and Granting of Rights to Use Software

1.1 Definitions

"Order Data" are the concurring details of the Parties as to the identification of the Software including the item number of Flender as well as the corresponding order information belonging to the item number from the current catalogue of Flender at the time of the order confirmation. Insofar as the Customer receives no order confirmation from Flender, the details of the item number of the CoL which Flender provides to the Customer with the acceptance of its order shall apply.

"CoL" means the Certificate of License containing details of the nature of the rights of use acquired for the Software. The CoL is to accompany the Software or the delivery note.

"Engineering Software" is software for engineering, such as, for example, project planning, programming, parameter setting, testing or commissioning.

"Earlier Version" is an earlier release of the Software; normally such is recognizable from the change in the version number.

"Instance" means either an instance in a physical operating system environment or an instance in a virtual operating system environment.

"Open Source Software" includes Open Source Software or similar software of third parties.

"Runtime Software" is software for plants and machine operation, e.g. operating systems, basic systems, system extensions or drivers.

"Service Pack" is an issue of software in which defects are corrected but which generally does not involve any change in functionality.

"Software" is the software product which the Customer acquires from Flender under this Agreement including the related documentation.

1.2 Scope of these General Conditions

These General Conditions shall apply exclusively to the provision of Software by Flender to the Customer. General terms and conditions of the Customer shall apply only where such are expressly accepted in writing by Flender.

1.3 Subject Matter

Flender shall provide the Customer the Software specified in the Order Data and it shall grant the Customer the rights to this Software based on the License Type (see Section 2) and the applicable Software Type (see section 3). The License Type and Software Type are detailed in the Order Data or, additionally, in the CoL.

If, on the basis of the Order Data or the CoL, the Customer receives only the Software but Flender grants no license to use, the Customer shall be entitled to use the Software only if it acquires license rights of use in accordance with section 2 and, insofar as a License Key is necessary, also obtains a License Key.

If the Software is supplied electronically or, if copying rights are granted for it, the rights and duties set out under these General Conditions shall apply to the copies generated by the Customer with the approval of Flender.

1.4 Scope of Delivery

Flender shall deliver the Software as well as the respective CoL to the Customer, according to the Order Data, either on a data medium or via download.

Flender shall enclose the documentation related to the Software, at the choice of Flender, either in electronic form with the Software itself or, in electronic form available for download free of charge. Insofar as it is evident from the Order Data that the documentation is not included in the scope of delivery, the documentation shall be purchased separately; in such case the Customer shall not have any right to generate copies but shall purchase the required number of documentation copies.

Flender shall deliver a License Key to the Customer if the Software requires a License Key for technical activation purposes.

If the Parties agree that the Customer is to acquire only the Software but not the rights of use for the Software for the time being, the License Key and the CoL shall not be included in the scope of delivery. If the Customer acquires the rights of use limited to validation purposes, a CoL may be included in the scope of delivery.

1.5 Included Third-party Software Components

Insofar Open Source Software is included in the Software, such is listed in the Readme_OSS file of the Software. The Customer is entitled to use the Open Source Software in accordance with the respective applicable license conditions of the Open Source Software. These OSS license conditions are included with the Software and shall prevail over these General Conditions. The Open Source Software license conditions shall have priority insofar as such grant the Customer on the basis of the connection of OSS components with propriety components certain rights of use also in relation to the propriety components.

Flender shall make available to the Customer, at the request of the Customer, the Open Source Software source code in return for payment of a fee to compensate for expenses insofar as the license conditions of the Open Source Software envisages such a release of the source code. The Software may, in addition to Open Source Software, also contain other licensed software, i.e. software which was not developed by Flender itself but which Flender has obtained from third parties, e.g. Microsoft Ireland Operations Ltd, under license. If the Customer shall receive in such case the conditions of the respective licensor of the licensed software in the Readme_OSS file, these shall apply to the liability of the licensor in relation to the Customer. In terms of the liability of Flender to the Customer, the General Conditions shall apply in each case.

1.6 Nature of the Software, Systems Environment

The nature of the Software shall be based exclusively on the Order Data/ the order confirmation in connection with the documentation to the Software available at the time of the concluding of the contract. The Customer shall make available the system environment in accordance with the requirements in the Order Data/ order confirmation or the CoL and the related documentation.

The Customer shall install the Software itself and shall configure such.

2. License Type

Flender shall grant the Customer the following rights to the Software for the License Types stated hereinafter.

Software Licensing Conditions

(04/2018)

- 2.1 Single License actual usage.
- The Customer shall be granted a non-exclusive right, valid for an indefinite period of time, to install the Software one (1) instance and to utilize the Software thus installed in the manner specified in the Order Data or CoL (see "Type of Use").
- 2.2 Floating License
- The Customer shall be granted a non-exclusive right, valid for an indefinite period of time, to use the Software simultaneously on such number of the Customer's objects (e.g. users or devices) as specified in the Order Data and/or the CoL. The Customer is permitted to install the Software on up to ten (10) times as many Instances as he has acquired licenses for objects. Example: In case the Customer acquires the license to use the Software on three (3) objects at the same time, he is entitled to install the Software on thirty (30) of the Customer's Instances.
- 2.3 Rental License
- The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or CoL (see "Type of Use"), to install the Software on one (1) Instance and to use such. If the period of use is specified in hours, the respective time limits for usage shall be determined from the Software start-up and end with the closing of such. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.
- 2.4 Rental Floating License
- The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or the CoL (see "Type of Use"), to use the Software simultaneously on such number of the Customer's objects (e.g., users or devices) as specified in the Order Data or the CoL. For this purpose, the Customer is permitted to install the Software on up to ten (10) times as many of the Customer's Instances. If the period of use is specified in hours, the usage decisive for the calculation of the respective time limits for usage shall be determined from the Software start-up and end with the closing of such. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.
- 2.5 Demo License
- The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or the CoL (see "Type of Use"), to install the Software on one (1) Instance and use it for validation purposes. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.
- 2.6 Demo Floating License
- The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or CoL (see "Type of Use"), to install the Software on any number of the Customer's Instances. The number of objects (e.g. users or devices) permitted to utilize the Software at the same time for validation purposes can be derived from the Order Data or CoL. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of
- 2.7 Trial License
- The Customer shall be granted the non-exclusive right to install the Software on one (1) Instance and use it for validation purposes as stipulated in the Order Data or the CoL (see "Type of Use"). The period of usage is limited to 14 days and shall commence with the start-up of the Software, unless a different period of usage is specified in the Order Data or the CoL. The Customer must delete or uninstall the Software after period of use.
3. Software Type
- The Customer may acquire from Flender both Engineering Software as well as Runtime Software. If the Software Type is not detailed in the Order Data or the CoL, the rights in relation to the Software shall be those in accordance with section 3.2 (Runtime Software).
- 3.1 Engineering Software
- In the event that the Customer uses the Engineering Software to generate its own programs or data containing parts of the Engineering Software, the Customer shall have the right, without having to pay any license fee, to copy and to use these parts of the Engineering Software as a part of its own programs or data, or to supply such to third parties for use. Insofar as, in relation to the due use of Engineering Software, parts thereof are included in programs developed by the Customer, such parts of the Engineering Software shall apply as components of its own programs or data. Otherwise, it shall not be permissible to separate parts of Engineering Software; section 5.3 shall not be affected hereby. If the Customer makes available to any third party the above named developed programs or data, it shall protect the Engineering Software contained therein in accordance with the provisions under section 5.
- 3.2 Runtime Software
- If the Customer incorporates Runtime Software or any parts thereof into its own programs or data, it shall purchase a license with respect to the Runtime Software each time it installs or otherwise copies its own programs or data containing (Flender) Software or parts thereof, or which the Customer links with a copied item of its own programs or data, in accordance with the relevant intended type of use and on the basis of the Flender's catalogue valid at that time. If the Customer makes available to any third party the specified programs or data, section 5.4 shall apply in relation to the corresponding Runtime Software. This section 3.2 does not grant any rights to separate Runtime Software parts; section 5.3 shall not be affected hereby.
- If the Runtime Software contains tools for parameterization/configuration and extended rights have been granted in this regard, such shall be detailed in the Readme file of the Runtime Software.
4. Earlier Versions, Upgrade and Power Pack
- 4.1 If from the Order Data or the CoL it is apparent, e.g. through the additional identification of "Upgrade" or "Power Pack" in the product name of the Software, that the Software is to serve as an Upgrade for another Software, on such upgrading the rights of use granted to an Earlier Version shall cease. The rights of use in accordance with section 4.3 shall not be affected hereby.
- 4.2 The Customer has the right, insofar as it has in its due possession an Earlier Version of the Software, to exercise the rights

Software Licensing Conditions

(04/2018)

of use granted to the Software either in relation to the Software itself or –insofar as such is technically foreseen – to the Earlier Version.

- 4.3 Insofar as in the Readme file of the Software under the section "Parallel Use" Earlier Versions are listed, the Customer shall have the right to exercise the rights of use granted to the Software as an alternative also on the Earlier Versions listed therein in one (1) instance. If in the Order Date or in the CoL the named "Type of Use" is: "Installation" or "User", the Customer may use the Earlier Versions listed in the Readme file in addition to the licensed Software and parallel to the Software on the number of instances for which it is allowed to install or use the acquired Software. Any transfer of Earlier Versions to a third party is permissible only together with the transfer of Software in accordance with section 5.4 et seq.

5. Further Rights and Duties of Customer

- 5.1 The Customer shall have no right to rent out or in any other way license Software or to publicly make available or accessible such by way of cable or wireless or make available such to third parties for any charge or free of charge, for example, in the course of the application service providing or as 'Software as a Service'.
- 5.2 The legal right of the Customer to the generation of a back-up copy shall remain unaffected.
- 5.3 The Customer shall not change the software nor decompile it or translate the software or extract program elements insofar as such is not permitted in accordance with the provisions of copyright law. Insofar as the Customer acts under any of these provisions of law as such is necessary in order to establish the interoperability to an independently obtained computer program, the Customer shall, before undertaking such measures, request the necessary interface information or other information from Flender in writing and allow Flender a reasonable time and opportunity to make such information available so that the legitimate interests of Flender can be protected. In addition, the Customer is not entitled to remove any alphanumerical identification, brands or copyright labels from the Software or the data medium and shall, insofar as the Customer is entitled to generate copies of the Software, copy such without alteration.
- 5.4 The Customer is entitled to transfer any Software acquired by the Customer in the course of a purchase from Flender to a third party. In such case the Customer shall cease fully to use the Software and shall remove all installed copies of the Software from its equipment and its Instances and erase any copies located on other data medium or, at the request of Flender, shall provide such to Flender insofar as the Customer is not required to retain such for a longer period in accordance with the law. The use of any such retained copies is prohibited.
- 5.5 If the Customer has received a License Key for the Software, this key shall be supplied to the third party together with the Software. Furthermore, the Customer shall submit to the third party the order confirmation and the CoL together with these General Conditions. The Customer shall submit the CoL received for the Software to Flender at any time, if requested.
- 5.6 If the Software is a Power Pack or an Upgrade, the Customer shall keep the CoL of the Earlier Version and submit it to Flender at any time, if requested, together with the CoL for the Software. The Customer shall transfer to the third party also the CoL of the Earlier Version, when it transfers the Power Pack and the Upgrade according to section 5.4.
- 5.7 The Customer shall confirm in writing to Flender upon the request of Flender the complete carrying out of the measures set

out in sections 5.4, 5.5 and (insofar if such is applicable) 5.6 or shall describe to Flender as necessary and as applicable any reasons for a longer retention. In addition, the Customer shall make any third party expressly subject to the duties to observe the rights granted in accordance with sections 2 and 3 and the duties in accordance with sections 5.1 to 5.3.

- 5.8 If the Customer receives a data medium which, in addition to the Software, contains further software products which are released for use, it shall have the right to use these released software products exclusively for validation purposes, for a limited period of time and free of charge. Such period of use shall be limited to 14 days, commencing with the first start-up of the relevant software program unless a different period is specified, e.g. in the Readme file of the relevant software product.
- 5.9 Such software products supplied exclusively for validation purposes shall be governed by the stipulations contained in these General Conditions. The Customer shall not be authorized to pass on these software products separately, i.e. without the Software, to a third party
- 5.10 Details in case of use by U.S. government authorities: the Software is commercial computer software.

The terms of the purchase contract shall apply with priority except where and to the extent the purchase contract states otherwise. In the event of any conflicts or inconsistencies between these conditions and the terms of the purchase contract the purchase contract shall prevail.