

End User License Agreement for Vector Standard Software Products

Preamble

The terms and conditions of this End User License Agreement (hereinafter referred to as "EULA") apply to Vector standard software products and are an integral part of the License Contract between Vector and the Customer.

Definitions

The following definitions shall apply to the EULA:

"Activation" is the technical procedure to enable the use of the Product on or together with a given Device or Server. The activation is performed through storing the license identification on the Device. The activation does not define any right to use the Product on or together with a Device or Server, but is the precondition to exercise any License granted under the EULA.

"Assignment" means the assignment of the License to the Device, Client or Server to be licensed within the licensing scope of the EULA. A Product the License of which is not assigned to a Device, Client or Server must not be used.

"CAL" means Client Access License. This is a License that permits the use of a Client Product to get access to the corresponding server software.

"Client" means a Device in a network that uses the services (access to files or shared peripherals) provided by a Server.

"Customer" means the legal entity which has entered into the License Contract and obtained the right to make use of the Licenses under the License Contract and the EULA.

"Defect" means a deviation from the agreed specifications or, to the extent certain specifications are not agreed, a deviation from the product description or user documentation related to the Product.

"Device" means a single physical hardware system to which a License can be assigned. There are several kinds of Devices: (i) Operation Computers, as far as they are not a Server, (ii) hardware interfaces provided by Vector, e.g. Vector VN1630, and (iii) dongles that have been approved by Vector.

"Device CAL" means a Device License for Client access to the Server Product.

"Device License" means a License that permits the use of a Product on an Operation Computer together with one (1) licensed Device.

"EULA" or "End User License Agreement" means these terms and conditions which apply to Vector standard software products and which are an integral part of the License Contract between Vector and the Customer.

"License" means the non-exclusive right to use one (1) specific Product at a time.

"License Contract" means (i) Vector's quotation together with Customer's purchase order accepting such quotation; or (ii) Customer's purchase order together with Vector's order confirmation accepting such purchase order; or (iii) any other agreement between the Customer and Vector referencing the EULA.

"Licensed Server" means the single Server to which a Server License is assigned.

"Maintenance" means the licensing and delivery of new Versions of a Product made available by Vector during the Maintenance period.

"Operation Computer" is the PC or other computing machine on which the Product is operated on.

“Product” means one of the Vector standard software products to which the EULA applies.

“Server” means a computer that provides services to Clients by granting access to files or shared peripherals.

“Server License” means a License that permits the use of a Server Product on one (1) Licensed Server.

“Version” means the specific software version of a Product defined by a version number.

Licensing Terms

1. Products

Vector will provide the Product to the Customer in a way that it can be operated on a computer. Vector will provide the user documentation solely in electronic format, generally integrated in the Product as help function. Vector may deliver the Product and its user documentation on data storage media, through the Internet for downloading or by e-mail.

2. License Types

In general, Vector offers the license types stated below. The availability of these license types depends on the Product.

For stand-alone applications:

- Device License

For Client/Server applications:

- Server License
- Device CAL

Regardless of the type of License, to ensure that the product is used in accordance with the license acquired, the proper Assignment and Activation of the respective license under section 6 and 7 is a prerequisite for Customer's right to use the Product.

2.1 Device License

A Device License grants the right to use the Product on or together with one (1) Device in accordance with the required assignment. The Device could be the Operation Computer itself or the Device could be connected with the Operation Computer.

The Product may be used by any number of users on or with the assigned Device, provided that the Product is used simultaneously only on one (1) Operation Computer. This means that the Customer may launch and run only one (1) Product per license on the Operation Computer with one (1) Device at the same time.

It is not permitted to virtualize the Device, to which the Product is assigned. In particular it is not allowed to virtualize the Device so that the Device can be used together with several potential Operation Computers by means of this virtualization or by any other automated mechanism.

Following applies for a Device License:

- It is not permitted to use the Product that is licensed with a Device License by remote connection or automated use. This means among others, that the licensed Product never may be operated on a compile server, build server or similar server types.

- Exceptions may be defined in the respective Product documentation or data sheets (e.g. remote operation of a test stand).

2.2 Server License

A Server License grants the right to use a Server Product on one (1) Licensed Server.

2.3 CAL License

A CAL License grants the right to use a Client Product in order to access a Server Product through a Client. Access to a Server Product via a CAL License requires a Server License for that Server Product.

2.4 In order to ensure that the Product is used in accordance with the acquired License, the proper Assignment and Activation of the respective License pursuant to Sections 6 and 7 are prerequisite for Customer's right to use the Product, regardless of the License Type.

3. Licensing Model

3.1 Perpetual License

A Perpetual License refers to a specific Version and provides the perpetual right to use this Version. A Perpetual License has no expiration date.

3.2 Maintenance Contract

In order to ensure that the Product is always up to date, the Customer and Vector may agree to a Maintenance contract as an optional add-on to the Perpetual License. A Maintenance contract is only available for the most recent Version.

The Maintenance period is one (1) year beginning with the first day of the calendar month following the conclusion of the Maintenance contract.

4. License Restrictions

4.1 Evaluation License

An Evaluation License permits the use of the Product solely for the internal evaluation whether and to what extent the Product appears suitable for the Customer's purposes.

An Evaluation License is always limited in time. The License period is specified in the License Contract. In the context of an Evaluation License the Product may be licensed with full or reduced functionality.

The Customer may not use the Product after the expiration of the License period.

4.2 Academic License

An Academic License permits the use of the Product within an agreed department of a university by (i) lecturers of this university for teaching purposes; or (ii) students as part of their studies.

An Academic License may be limited in time or unlimited. If the License is limited in time, the License period is specified in the License Contract and the Customer may not use the Product after the expiration of the License period.

4.3 Training License

A Training License permits the use of the Product for the internal training of employees of the Customer and of third parties acting on behalf of the Customer.

A Training License may be limited in time or unlimited. If the License is limited in time, the License period is specified in the License Contract and the Customer may not use the Product after the expiration of the License period.

5. Scope of License

- 5.1 Vector grants to the Customer the License to use the Product under the License Type and Licensing Model agreed in the License Contract, subject to the condition that Assignment and Activation of the License have been properly performed by the Customer. Vector reserves all intellectual, industrial and other proprietary rights to the Products and Customer shall not use the Products except as expressly agreed in the License Contract; in particular, without limitation, the Customer shall not modify, adapt, extend, port or translate the Products or create derivative works thereof.
- 5.2 Independent of the agreed License Type and the Licensing Model, Customer`s right to use the Product is granted subject to the full payment of the license fee.
- 5.3 The Licenses are solely granted for the Customer`s own purposes.
- 5.4 The Customer is not permitted to allow third parties to make use of Customer`s Licenses, neither in return for payment nor free of charge. However, Customer is allowed to permit subcontractors and temporary workers to make use of Customer`s Licenses for Customer`s purposes. For the avoidance of doubt, Customer shall be responsible for its subcontractor and temporary workers` compliance with the License Contract and the EULA.
- 5.5 Vector allows the Customer to use preceding Versions of a given Version without acknowledging any obligation and on the condition that the Customer
 - has obtained a License for a given Version
 - may only run one (1) Version at the same time; and
 - acknowledges that Vector is not obligated to remedy any Defects of preceding Versions.

For the avoidance of doubt, the Customer`s rights related to acquired Version remain unaffected.

- 5.6 The Products may include open source software and/or other third-party software which are subject to specific license terms. To the extent required by these license terms, the license terms shall apply in addition to and, in case of discrepancies, prevail over the License Contract and the EULA. If this is the case and to the extent required by the respective license terms, Vector will (i) indicate the third party software and the applicable license terms; and (ii) provide these license terms or make them otherwise available to the Customer, within or, upon Customer`s request, separately from the Product and/or its user documentation.

6. License Assignment

- 6.1 Before Customer uses a Product under a License, the Customer has to assign that License to a Device or Server, as appropriate for the License Type.
- 6.2 Vector is entitled to examine Customer`s data recorded with the Assignment process.

7. Technical Measures – Activation, Re-Activation

7.1 Vector may use technical measures to enforce provisions that allow and restrict Customer's use of the Product. The technical measures may verify compliance with those provisions as provided in the License Contract and the EULA.

Thus some Products require Activation or another form of validation. If Activation or another validation is defined for a Product, the Activation or the validation of the License is required in order to use the Product. Activation is only permitted on hardware provided by Vector or on the Operation Computer.

7.2 Vector may require the License to be reactivated periodically by performing a re-Activation.

General Terms and Conditions

8. Customer Obligations for Product Protection & Installations

8.1 The Customer acknowledges that the Products, including the accompanying documents, even in future versions, are copyright-protected and constitute business and trade secrets proprietary to Vector. The Customer shall ensure with no limit in time that the Products are protected against misuse.

8.2 If Vector provides Products in source code, the Customer shall only make them accessible to any third party with Vector's prior written consent. Vector shall not unreasonably withhold such consent, but Vector is not required to give it in order to enable the Customer to obtain maintenance services for the Products from a third party.

8.3 The Customer shall ensure that no license protection will be circumvented by technical measures.

8.4 The Customer agrees to use the Products only on operating system versions which Vector has declared to be compatible with the specific Product.

8.5 It shall be the responsibility of the Customer to bring the installed Product into operation. To this end, the Customer shall inspect the Product under its conditions of use before the Customer uses the Product productively. Vector is prepared to assist the Customer in this respect upon request in return for compensation based on expense.

9. Utility Software

9.1 Some Product deliveries contain small software programs that perform specific tasks related to the Product (hereinafter "Utility Software"). Vector provides this Utility Software free of charge to the Customer for own use only. The Customer may not modify, extend, reproduce or distribute such Utility Software. Vector reserves all intellectual, industrial and all other proprietary rights to such Utility Software.

9.2 Vector may modify the Utility Software and discontinue its delivery at any time without notice.

10. Interfaces

10.1 In the event a Product uses an interface provided by Vector for interoperability with other programs, Vector may enhance or change this interface and the related documentation in subsequent Versions at any time without notice and without ensuring upward compatibility.

10.2 In the event a Product uses an interface provided by a third party for interoperability with other programs, Vector is not obligated to ensure upward compatibility between the Product and the interface in subsequent Versions.

11. Payment Terms

The license fee shall be with delivery of the Product. Maintenance fees shall be paid annually in advance.

12. Claims for Defects

If Vector is obliged to remedy a Defect or deliver a Product free of Defects, Vector may comply with this obligation by replacing a defective Product with a newer Version of the Product, provided that the newer Version has a functionality which is the same as or higher than the functionality agreed in the License Contract.

13. Liability

- 13.1 Regardless of the cause, Vector shall only be liable for damages and reimbursement of futile expenses (*Ersatz vergeblicher Aufwendungen*) as follows:
 - 13.1.1 Vector shall only be liable if a material obligation (*Kardinalpflicht*) of the License Contract is culpably (*schuldhaft*) breached. In this case Vector's liability shall be limited to the amount of the foreseeable damage that typically must be expected to arise. Material obligations are duties, the performance whereof makes it possible to properly perform the contract, and with respect to which the contractual party may ordinarily rely on compliance.
 - 13.1.2 To the extent that Vector is liable under Section 13.1.1, Vector's liability is limited to a total of one hundred thousand (100,000.00) Euro or the net order value, whichever is higher.
 - 13.1.3 The liability limitations in Section 13.1.1 and Section 13.1.2 shall not apply to the extent the damages are covered by Vector's business liability insurance, and to the extent the insurer has paid Vector.
 - 13.1.4 Further, the liability limitations in Section 13.1.1 and Section 13.1.2 shall not apply in case of (i) intentional or grossly negligent conduct by Vector, or (ii) damages arising from bodily injury, or injury to health, or loss of life, or (iii) a warranty given by Vector (*Beschaffheitsgarantie*), or (iv) mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).
 - 13.1.5 To the extent Vector's liability is excluded or limited under Sections 13.1.1 through 13.1.4, this shall also apply for the benefit of Vector's (vicarious) agents (*Erfüllungsgehilfen*).
- 13.2 The provisions under Section 13.1 shall not result in a modification of the burden of proof to the disadvantage of the Customer.
- 13.3 Notwithstanding the provisions above and with regard to Products or other software delivered by Vector free of charge, Vector's liability, regardless of the legal reason, in particular liability based on contract or tort, is limited as follows: Vector shall only be liable for loss or damage based on or resulting from a Defect in the software in case of intent or to the extent Vector has fraudulently concealed the Defect. In all other cases, Vector is only liable for intent or gross negligence. Claims for a breach of a material obligation (*Kardinalpflicht*), or claims for damages arising from bodily injury, or injury to health, or loss of life, claims for failure to comply with a guarantee of the quality given by Vector and mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected.

14. Application of Terms and Conditions

- 14.1 This EULA applies in the course of business with entrepreneurs, public law corporations and special funds under public law.

- 14.2 Any provisions in the Customer's standard terms and conditions which conflict with, vary from or add to the EULA will not become part of the License Contract, unless Vector has expressly consented to them in writing.
- 14.3 In case of discrepancies between the EULA and the other provisions of the License Contract, such other provisions of the License Contract shall prevail.

15. Assignment of Rights and Claims

Any assignment of rights and claims with the exception of claims for payment is subject to Vector's prior written consent.

16. Requirement of Written Form

Amendments and additions to the License Contract and/or the EULA must be made in writing and signed. The same applies in particular with regard to amendments and additions to this written form clause.

17. Governing Law and Jurisdiction

- 17.1 The License Contract and EULA will be interpreted in accordance with and governed by the law of the country (and state/province, if applicable) of Vector's principal place of business to the exclusion of its conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 17.2 The courts having jurisdiction over Vector's principal place of business will have sole jurisdiction for any disputes arising directly or indirectly from this contractual relationship.

18. Important Safety Instructions

- 18.1 Some features of the Products are designed for analyzing, controlling and/or otherwise influencing electronic systems in operation. Their use could cause serious operational malfunction in the surrounding environment, damage to property and/or bodily injury. Therefore, these features are exclusively intended for operation by persons who (i) have understood the possible effects of the actions which may be caused by the Products; (ii) are specifically trained in the handling with the Products and the electronic systems intended to be influenced; and (iii) have sufficient experience in using the Products in a safe manner (hereinafter collectively "Qualified Personnel"). Customer shall ensure that only Qualified Personnel operates the Products.
- 18.2 The knowledge necessary for the operation of the Products can be acquired in workshops and seminars offered by Vector.
- 18.3 Vector shall in no event be held liable for any damages resulting out of operation of the Products by non-Qualified Personnel as described in this Section 18.