Licensing agreement

Please read through the following agreement carefully. By accepting the agreement and using the Software, you consent to the contents of the agreement.

Preamble

RAYLASE GmbH, hereinafter "Licensor", distributes the PROCESS DATA ANALYZER software, which it developed in-house, and shall hereinafter be referred to as the "Software". The parties hereby agree that the Software is protected under copyright law. The Software is the property of the Licensor. The Licensee holds the right to use the Software.

Definition

The "contract software" PROCESS DATA ANALYZER is a software application for the recording, display and further processing of sensor data, control signals and feedback data of deflection units and lasers, which can be recorded via the so-called "trace buffer" function of the RAYLASE SP-ICE-3 scan controller. It is provided via an installation routine by means of download, which also includes the libraries of the programmable interface and the associated user documentation. The characteristics and functionality of the Licensed Software, as well as the hardware and software environment within which the Licensed Software is to be utilized, is described in the user documentation.

1 Rights of use

1.1 The Licensor grants the Licensee, subject to full payment by the Licensee, a perpetual and non-exclusive right to use the Software within the scope that is set out in this Agreement.

1.2 The supplying of the source code is not part of the Licensor's scope of delivery. The source code of the Software is the intellectual property of RAYLASE GmbH and is only to be disclosed, modified, or utilized by employees of the Licensor.
The Licensor is also the owner of all industrial property rights and copyrights to the Software, as well as the associated user documentation. Notices regarding copyright or other industrial property rights found on or in the Software are not to be modified, removed, or otherwise rendered unrecognizable.

1.3 The Licensee is strictly prohibited from reverse engineering, decompiling, or disassembling the Software, unless this is provided for by law pursuant to Sections 69 d and/or 69 e UrhG (Copyright Act). In any case, the Licensee is prohibited from making any modifications to the program code of the Software.

1.4 The Licensee is only permitted to reproduce the user documentation for the Software provided to the Licensee, whether in whole or in part, for the employees of his company. The user documentation is not to be published without the express consent of the Licensor.

1.5 Depending on the order by the licensee, the license key can unlock the software in different editions, which decide in which functional scope the software can be used.
Without a valid license, the software may only be installed and used in the context of a demo version of the software.

1.6 The demo version of the software may only be used to record so-called "trace data" and thus offers only very limited display functions.

1.7 The software allows the licensee to use the programmable interface (API) for the creation of his own software application, based on its library commands.

1.8 Licences are either provided as software licence keys (also known as '*activation*') or as hardware licence keys (also known as *'dongles'*). A hardware licence key may be used on one or several computers. A software license key is tied to a single computer. If Licensee needs to change this computer, it has the option to return its software key to Licensor and receive in exchange a new software key for the replacement computer. Licensee is prohibited from copying or altering licence keys.

1.9 Licensee is entitled to use the Software for commercial purposes and is granted sublicenses pursuant to the terms of this Agreement and Sec. 1 (10) of this Agreement in particular.

1.10 Licensee is authorised to lease or, with prior written consent of Licensor, lend the Software to third parties.

1.11 Licensee is authorised to transfer the Software Licence to a third party, provided this third party has demonstrably agreed to the terms of this Licence Agreement and Licensee completely discontinues its use of the Software as former Licensee.

1.12 Support, i.e. usage of helpdesk services and troubleshooting provided by the Licensor, is only granted to the direct Licensee of the Software. Support is provided during the usual business hours of the Licensor.

2 Violations of the licensing agreement

The Licensor expressly reserves the right to claim damages in the event of violations of the licensing agreement, in particular Section 1 (3–6) and Section 1 (8) of this agreement.

3 Licensing fee

3.1 The amount of the licensing fee is based on the quote that was individually compiled by the Licensor for the Licensee, and which the Licensee has accepted, thereby making it a component of this agreement.

3.2 In the event of a software purchase by the Licensee, all payments are due upon delivery of the Software to the Licensee and/or provision for download and supplying of the login information to the Licensee, and are to be paid to the Licensor's account within 30 days upon the invoice being issued.

3.3 Unless a specific deviating arrangement is made, all prices are net prices; i.e. they do not include VAT. The Licensor is to indicate the tax rate and the VAT amount separately on the invoice.

4 Warranty

4.1 The Software essentially complies with the specifications listed in the corresponding program documentation and was created with the due degree of care and expertise. Despite this, the current state of the art means that it is not possible to completely rule out software errors.

4.2 Claims for defects shall not be entertained for an insignificant deviation from the agreed-upon or required characteristics and where they only result in an insignificant impact on usability. Product descriptions do not constitute a guarantee without a separate written agreement. For the delivery of updates, upgrades, and new versions, claims for defects are limited to the changes of the update, upgrade, or new version delivered as compared to the existing version.

4.3 If the Licensee requests supplementary performance due to a defect, the Licensor has the right to choose between rework, replacement delivery, or substitute performance. When the Licensee has given the Licensor a second reasonable grace period after an initial one has unsuccessfully expired, and this second period has also expired without success or if a reasonable number of rework, replacement delivery, or substitute performance attempts have remained unsuccessful, the Licensee may, at his discretion and provided legal prerequisites are fulfilled, withdraw from the contract or reduce payment and demand compensation for damages or expenses. Supplementary performance may also take the form of a handover or installation of a new program version or via instructions on eliminating or circumventing the effects of the error. If the defect does not impact functionality, or only does so insignificantly, the Licensor is, to the exclusion of further claims for defects, entitled to rectify the defect by supplying a new version or an update as part of his version, update, and upgrade planning.

4.4 The Licensee shall undertake to implement a new Software version offered to him by the Licensor as part of the error correction, unless this leads to unreasonable problems involving adaptation and adjustment for him.

4.5 Defects are to be reported in writing via a comprehensible description of the error symptoms, wherever possible, and documented via written records, hard copies, or other documents which illustrate the defects. The notification of defects should make it possible to reproduce the error. Legal obligations on the part of the Licensee to inspect and provide notification of any defects remain unaffected.

4.6 Upon withdrawing from the contract, the Licensee is to remove all program libraries of the Licensed Software from circulation which are in use by him or third parties.

4.7 The statute of limitations for claims for defects is 12 months. This period begins to elapse upon the delivery of the first copy of the licensed product, including the user manual. For the delivery of updates, upgrades, and new versions, the limitation period for these items begins to elapse upon the respective delivery.

5 Liability

5.1 The Licensor's liability for damages, regardless of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations, and tort is, provided that culpability applies in each case, limited according to this section (5).

5.2 The Licensor shall not be liable in the case of simple negligence by its bodies, legal representatives, employees or other vicarious agents, provided that this does not involve a breach of essential contractual obligations. Essential contract obligations include the obligation to punctually deliver and install the delivery item, that it be free from legal defects as well as material defects which impact its functionality or usability in a manner that is more than just insignificant, as well as advice, protection, and care obligations which serve to make it possible for the Licensee to use the delivery item as stated in the contract, or the protection of the life and limb of the Licensee's personnel, or the protection of his property against significant damages.

5.3 In cases where the Licensor is liable for damages pursuant to /5/2/ on the merits, this liability is limited to damages which the Licensor has predicted as the possible consequence of a breach of contract at the time the contract was entered into, or which he should have predicted by applying due diligence. Furthermore, indirect damages and consequential damages which are the consequences of defects in the delivery item are only eligible for compensation if such damages are typically to be expected during the intended use of the delivery item.

5.4 In the event of liability for simple negligence, the Licensor's compensation obligation for material damages and the resulting further financial losses are limited to the amount of the net purchase price for the Software license per instance of damage, even if this involves a breach of essential contract obligations.

5.5 The foregoing exclusions and limitations of liability apply to the same extent in favor of the bodies, legal representatives, employees, and other vicarious agents of the Licensor.

5.6 In cases where the Licensor provides technical information or dispenses advice, and this information or advice is not part of the scope of performance he owes and is contractually agreed upon, he does so free of charge and to the exclusion of any liability.

5.7 The limitations of this section (5) do not apply for the Licensor's liability due to intentional actions, for guaranteed characteristics and qualities, due to loss of life, physical injury, or harm to health, or pursuant to the Product Liability Act (Produkthaftungsgesetz).

6 Right to audit

6.1 The Licensee shall undertake, at the Licensor's request, to make it possible for the latter to verify that the Software is being used as agreed upon. This applies in particular to ensuring compliance with the usage scope agreed upon. As part of this audit, the Licensee shall undertake to provide the Licensor with information, disclose the documents relevant for this purpose, and to make it possible to audit the Software installations used. The Licensor shall be permitted to perform the audit on the Licensee's premises during his regular business hours. The Licensor is to minimize the impact to the business operations of the Licensee caused by his activities on the Licensee's premises. The Licensor may also have the audit be performed by third parties who have been obliged to secrecy in the prescribed manner.

6.2 In the event of a violation of the licensing agreement, the Licensee shall undertake to pay the outstanding licensing payments within 7 days, and shall bear the expenses of the audit. The assertion of further claims by the Licensor, in particular claims for damages and injunctive relief, is not affected by this.

7 Other provisions

7.1 The Licensee shall only cede claims against the Licensor to third parties with the latter's written consent.

7.2 The Licensee shall only perform offsetting with claims that are undisputed or which have been legally established.

7.3 Modifications and supplements to this agreement must be made in written form. This also applies to the modification or annulment of the written form requirement. Electronic documents in text form do not fulfil this formal requirement.

7.4 The Licensee's General Terms and Conditions shall not apply. This also applies even if no express objection is voiced against their inclusion.

7.5 This agreement is subject to German law. The United Nations Convention on Contracts for the International Sale of Goods dated 11/4/1980 (CISG) shall not apply.

7.6 The place of fulfilment is Wessling. If the Licensee is a merchant, a legal entity under public law, or special assets under public law, or if he does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes from the business relationship between the Licensor and the Licensee shall, at the Licensor's discretion, be the district court München II (Munich II) or the Licensee's domicile. In these cases, however, the district court München II shall be the exclusive place of jurisdiction for legal actions against the Licensor. Mandatory statutory regulations on exclusive places of jurisdiction remain unaffected by this provision.

7.7 Should individual provisions of this agreement be invalid, this does not affect the validity of the remaining provisions. In such cases, the contractual parties shall endeavor to agree upon a valid provision which replaces the invalid provision, while at the same time reflecting the economic interests of both contractual parties and most closely approximating the legal content of the invalid provision.

7.8 All annexes to this agreement which are specified in this agreement are mandatory components of this agreement.