

## **PE – Software**

### **End User License Agreement**

a service of the **PE-Systems GmbH**  
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#### **1. Term**

- (1) All deliveries, services and offers provided by PE-Systems GmbH (hereinafter "PE-SYSTEMS") relating to the provision of standard software for characterization of power electronic components and systems ("PE Software") are made exclusively on the basis of this End User License Agreement ("EULA") and individual orders that are placed. These are an integral part of all contracts concluded by PE-SYSTEMS with its contractual partners (hereinafter referred to as "Customer") in regard to the deliveries or services it offers. This EULA also applies to all future deliveries, services or offers to the Customer with regard to the PE software, even if it is not separately agreed again.
- (2) Terms and conditions of the Customer or third parties shall not apply, even if PE-SYSTEMS does not separately object to their validity in individual cases. Even if PE-Systems refers to a letter containing the terms and conditions of the Customer, or a third party or draws attention thereto, this will not constitute agreement as to the validity of those terms.

#### **2. Contractual Services**

- (1) PE-SYSTEMS transfers to the Customer the simple right to use the standard software for characterization of power electronic components and systems ("PE Software") in its current version at the time of release for a limited period of time. Firmware on the PE-SYSTEMS Tester ("PE-Hardware") is not part of this agreement.
- (2) Updates of the software shall only be provided – except for the purpose of remedying defects and data security – on the basis of a separate agreement or voluntarily on the part of PE-Systems, without any legal obligation to do so.
- (3) The PE software is provided for the following contractual use: exclusive use in connection with the characterization of power electronic components and systems.
- (4) The Customer receives the PE software for download and access to the electronically stored documentation (installation instructions and user manual). The Customer waives other types of provision of the documentation.
- (5) The version status and functional scope of the PE software are specified in the respective individual order.

#### **3. Delivery, Installation and Consultation**

- (1) PE-SYSTEMS provides the license key for the PE software digitally within two weeks of receipt of payment of the agreed license costs and enables access to the documentation.

- (2) The Customer installs the PE software.
- (3) PE-SYSTEMS is only expected to provide consulting services if this is expressly stipulated in a separate agreement. Any consulting services to be provided are to be remunerated separately by the Customer at reasonable and customary market conditions.
- (4) Adjustments or changes to the software along with the creation of interfaces to third-party programs by PE-SYSTEMS shall only be prescribed insofar as these are necessary for the maintenance or repair of PE software or to ensure its usage is in accordance with the Contract. In addition, PE-SYSTEMS is only obliged to make adjustments or changes if this is expressly agreed; corresponding services are to be remunerated separately by the Customer, if necessary, at reasonable and customary market conditions.

#### **4. Usage Fee**

The usage fee for the agreed usage period plus VAT in the respective statutory amount is stipulated in the individual order. It comprises the remuneration for the provision and use of the software during the agreed period together with its maintenance and repair.

#### **5. Rights of Use**

- (1) PE-SYSTEMS grants the Customer the simple, non-transferable right to use the provided PE software and other components of the software for the intended contractual purpose in accordance with the following provisions for the duration of the granting of rights of use.
- (2) The Customer is entitled to use the DP software on the number of computers agreed in the individual order (1 software license = 1 computer) during the agreed period. The use of the PE software on servers or on more than the agreed number of workstations is not permitted, unless PE-SYSTEMS expressly agrees. PE-SYSTEMS may give its consent on condition of the payment of an additional reasonable remuneration.
- (3) If the Customer is temporarily unable to use the PE software on one of the workstations, in particular due to malfunctions or repair or maintenance work, or only to a limited extent, the Customer is entitled to use the program temporarily on a different computer. In the event of a permanent change of computer, the PE software may be used on the new computer; the program must be completely deleted from the computer that was used previously.
- (4) The Customer is entitled to make copies of the PE software insofar as these are necessary to secure the future use of the PE software and for the purposes of data backup and archiving in accordance with the Customer's operational requirements.
- (5) For open source components of the PE software, the terms of use to which the open source component is subject shall prevail over the provisions of this § 5.
- (6) The Customer's authority to reproduce the program code under the conditions of § 69d para. 1 of the German Copyright Act (UrhG – Urheberrecht) shall remain unaffected. Other reproductions, processing or granting of rights to third parties are not permitted.

#### **6. Customer Cooperation**

- (1) The Customer is obliged to report defects in the PE software to PE-SYSTEMS immediately. In doing so, the Customer is to take into account the advice that PE-SYSTEMS provides to analyze the problem within a reasonable extent and shall forward to PE-Systems all available information that is necessary to remedy the defect. The Customer is obliged to provide PE-SYSTEMS with reasonable access to the PE system (PE-Hardware and PE software) to enable PE-SYSTEMS to carry out the necessary system analysis and troubleshooting by means of necessary work, such as loading other versions of the PE software by means of updates or patches.
- (2) The Customer shall notify PE-SYSTEMS of any change of computers on which the program is used.
- (3) Upon request, the Customer is obliged to inform PE-SYSTEMS of the number, storage medium and location of any copies made.
- (4) The Customer is obliged to immediately install updates of the PE software that are provided by PE-SYSTEMS and marked as security-relevant.

## **7. Warranty**

- (1) PE-SYSTEMS is obliged to remedy defects in the provided PE software, including the documentation. Defects can be remedied at the discretion of PE-Systems by means of free repair or replacement.
- (2) Termination by the Customer pursuant to § 543 para. 2 clause 1 no. 1 of the German Civil Code (BGB – Bürgerliches Gesetzbuch) for failure to grant use in accordance with the Contract is only permissible if PE-SYSTEMS has been given sufficient opportunity to remedy the defect and this has failed. The remedying of defects shall only be deemed to have failed if it proves to be impossible, if PE-SYSTEMS refuses or unreasonably delays it, if there are reasonable doubts as to the prospects of success or if it is unreasonable for the Customer for other reasons.
- (3) The Customer's rights in relation to defects are waived if the Customer makes changes to the PE-Hardware and/or PE software, or has changes made to these by a third party, without PE-SYSTEMS's consent, unless the Customer proves to PE-SYSTEMS that the changes have no unreasonable effects on the analysis and elimination of the defects. The Customer's rights in relation to defects shall remain unaffected insofar as the Customer is entitled to make changes, in particular within the scope of exercising the right of self-remedy in accordance with § 536a para. 2 of the German Civil Code, and these have been carried out professionally and documented in a comprehensible manner.

## **8. Liability for Damages**

- (1) PE-SYSTEMS' liability for damages, for whatever legal reason, in particular with regards to an inability to make a delivery or due to a delivery being delayed, defective or incorrect, or because of a breach of contract or breach of duties during contractual negotiations and tort, shall be limited in accordance with this Clause 8, insofar as culpability is relevant in each case.

- (2) PE-SYSTEMS shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Contractually integral obligations are those whose fulfillment is essential for the proper implementation of the Contract and on the compliance of which the Customer may rely, such as any obligation to deliver and install the PE software in a timely manner, the absence of legal defects and material defects that impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations that are intended to enable the Customer to use the PE software in accordance with the Contract or to protect the life and limb of the Customer's personnel or to protect the Customer's property from significant damage.
- (3) Insofar as PE-SYSTEMS is liable for damages on the merits pursuant to Clause 8 para. 2, this liability shall be limited to damages which PE-SYSTEMS foresaw as a possible consequence of a breach of contract at the time of the conclusion of the Contract or which it should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the PE software are also only eligible for compensation if such damage is typically to be expected when the PE software is used as intended. The above provisions of this para. 3 shall not apply in the event of intentional or grossly negligent conduct on the part of members of the executive bodies or executive employees of PE-SYSTEMS.
- (4) In the event of liability for simple negligence, PE-SYSTEMS's obligation to pay compensation for property damage and any further financial losses resulting therefrom is limited to six times the monthly leasing fee per claim, even in the event of a breach of material contractual obligations.
- (5) PE-SYSTEMS shall only be liable for data loss caused by simple negligence for the damage that would have occurred even if the Customer had backed up the data properly and regularly and in a manner appropriate to the importance of the data; this limitation shall not apply if the data backup was hindered or impossible for reasons for which PE-SYSTEMS is responsible.
- (6) The above exclusions and limitations of liability shall apply to the same extent in favor of the committees, legal representatives, employees and other vicarious agents of PE-SYSTEMS.
- (7) If PE-SYSTEMS provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services owed by PE-SYSTEMS, this shall be done free of charge and to the exclusion of any liability.
- (8) The limitations of this Clause 8 shall not apply to PE-SYSTEMS' liability for intentional conduct, for guaranteed characteristics, due to loss of life, personal injury or physical harm or under the German Product Liability Act.

## **9. Contract Term and Consequences of Termination**

- (1) The contractual relationship begins when the individual order takes effect and, subject to individually agreed deviations, has a term of 12 months. Unless terminated by one of the Contracting Parties at the end of the term with one month's notice, it shall be automatically renewed for a further 12 months.

- (2) The Customer's right to terminate the Contract in accordance with § 7 para. 2 remains unaffected, as does the right of each Contracting Party to terminate the Contract for good cause.
- (3) Notice of termination must be given in writing in order to be effective.
- (4) Upon termination of the contractual relationship, the PE-SYSTEMS Customer must delete the PE software from their workplaces. Any copies of the PE software and its documentation provided by PE-SYSTEMS must be completely and permanently deleted.

#### **10. Ancillary Agreements and Written Form Requirement**

- (1) Additions, including assurances of properties and guarantees, and amendments to the agreements made, including this EULA, must be made in writing in order to be effective. With the exception of managing directors or authorized signatories, the employees of PE-SYSTEMS is not entitled to make verbal agreements that deviate from the written agreement. Telecommunication, in particular by e-mail, is sufficient to comply with the written form.
- (2) The legal relationship between PE-SYSTEMS and the Customer regarding the PE Software is solely governed by the individual order, including this EULA. These fully reflect all agreements between the Contracting Parties on the Contract's subject matter. Spoken promises made by PE-SYSTEMS prior to the conclusion of this Contract shall not be legally binding and spoken agreements made by the Contracting Parties shall be replaced by the written Contract, unless expressly agreed otherwise between the Contracting Parties in each case.

#### **11. Final Provisions**

- (1) If the Customer is a businessperson, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between PE-SYSTEMS and the Customer shall be, at PE-SYSTEMS' discretion, Darmstadt or the Customer's registered office. In such cases, however, Darmstadt is the exclusive place of jurisdiction for actions against PE-SYSTEMS. Mandatory legal provisions on exclusive jurisdictions shall remain unaffected by this provision.
- (2) The relationship between PE-SYSTEMS and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).
- (3) Insofar as the Contract contains loopholes, any legally effective provisions which the Contracting Parties would have agreed upon in accordance with the economic objectives of the Contract and the purpose of these General Terms and Conditions of Delivery had they been aware of the loophole, shall be deemed to have been agreed in order to close these loopholes.

If this Contract is drafted in German and English, the German version shall always take precedence in the event of any differences.