1. Subject Matter and Scope

1.1. Subject matter of these Software as a Service Terms and Conditions (“AVB SaaS SICK”) is the granting of the right of online use, via the Internet, of software which is described in more detail in a contract and/or in the product description (“SaaS Software”) as well as the storage of customer data by (i) SICK AG, Erwin-Sick-Str. 1, 79183 Waiblingen, Germany (or (ii) an Affiliate of SICK AG (both (i) and (ii) “SICK”); an affiliate being an individual or entity controlling, controlled by or under the common control of another individual or entity, with control meaning such power being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities or voting interests, by contract or otherwise. The customer is given the technical possibility and authority to access via the Internet SaaS Software hosted directly or indirectly by SICK and to use the features of the SaaS Software within the framework of this contract (“SaaS Software”, “SaaS”).

1.2. Contractual agreements, product descriptions and (i) or (ii) the General Terms of Delivery (“ALB SICK”) of the SICK company providing SaaS also apply, as do the General Terms and Conditions for the Registration of a SICK ID to Use Services on the Internet website www.sick.com and in the SICK IntegrationSpace® (“ANB ID SICK”).

1.3. These AVB SaaS SICK also apply to subsequent SaaS Software updates and upgrades provided to the customer, unless otherwise agreed at the time of provision of the subsequent version or upgrade.

1.4. In the event of discrepancies, the aforementioned contract documents apply in the following order of precedence:
   (1) individual agreements
   (2) SICK’s quotations
   (3) product description of SICK
   (4) these AVB SaaS SICK
   (5) ANB ID SICK
   (6) ALB SICK.

1.5. In case of customer-specific services (e.g. consultancy services, trainings) are provided in combination with SaaS, they are subject to separate contractual agreements. In case of doubt, such services shall be governed by the General Terms and Conditions for the Provision of Services (”Terms of Delivery”) of the respective SICK company or at www.sick.com upon selecting the respective country.

1.6. All General Terms and Conditions of SICK are available on the website of the respective SICK company or at www.sick.com upon selecting the respective country.

1.7. Deviating, contradictory or supplementary General Terms and Conditions or Conditions of the customer shall not be part of the contract, regardless of any knowledge of SICK, unless their application is expressly agreed upon in writing.

2. Provision of SaaS

2.1. The provided SaaS can be, for example, cloud- or software services, application programs, the provision of product data, electronic media, information or any other content. The scope of the SaaS provided is specified in the product description and/or the description of the services at www.sick.com. Furthermore, the scope of performance comprises those features available at the respective time.

2.2. SICK provides the SaaS to the customer via the Internet as of the agreed date for the duration specified in the contract and/or the product description for use and enables access. For this purpose, SICK directly or indirectly hosts SaaS Software. The SaaS can be accessed by the customer via the Internet, e.g. via browser or app.

2.3. If necessary, SICK will provide the customer with the log-in data required to use the SaaS. The registration of a central SICK ID, which is subject to the ANB ID SICK, may be a prerequisite for the use.

2.4. The available SaaS features may include services and performance of third parties (“Partners”) which SICK solely provides access or any data other than its own data for any purposes other than those mentioned in the product description and/or in the product description for use and enables access. For this purpose, SICK directly or indirectly hosts SaaS Software. The SaaS can be accessed by the customer via the Internet, e.g. via browser or app.

2.5. Transition point for the contractual performance of SICK is the router output to the Internet of the computing centers used by SICK. The customer’s connection to the Internet, maintaining the network connection as well as the procurement and provision of the necessary hardware and software on the part of the customer are thus not subject matter of this contract.

2.6. SICK shall provide the SaaS Software, where technically possible, in the respective version currently offered, provided that the update of the software version – taking into account SICK’s interests – is reasonable for the customer. SICK will notify the customer in due time of any changes to the SaaS Software used, provided that such changes affect the agreed upon functionality.

2.7. SICK reserves the right to modify SaaS provided free of charge, to provide next to SaaS against payment, or to discontinue the provision of SaaS provided free of charge. SICK will take into account the customer’s legitimate interests. SaaS provided against payment may be adapted at any time – also during a contractual relationship – to changed legal or technical conditions, API compatibility, SaaS upgrades or the state of the art, with the agreed basic SaaS functionalities retained.

3. Licensing and License Terms

3.1. The SaaS are protected by copyrights. For the duration of the contract of use as specified in the contract and/or the product description for use and enables access, SICK grants to the customer a limited, non-exclusive, non-transferable and non-sublicensable right to use SaaS for the customer’s business purposes. If the license also applies to all new versions, updates or upgrades of the SaaS Software provided by SICK during the contract term, if any.

3.2. Unless expressly agreed otherwise, the license is subject to the payment of any remuneration that is owed and due under the contract.

3.3. Customer may copy SaaS Software only to the extent necessary for the authorized use of the SaaS Software. This includes uploading the SaaS Software into the working memory, but not the installation or storage, not even temporary, of the SaaS Software on local data carriers or on hardware used by the customer.

3.4. The customer is not entitled to use, copy or download SaaS Software of a SICK company other than its own data for any purposes other than those of this contract, or to make SaaS Software or SaaS available for use free of charge or against payment to third parties or to persons outside the agreed group of users. In particular, the customer is not entitled to process, modify, reverse engineer, decompile, disassemble, the program code of SaaS Software or parts thereof or to determine the source code in any other way, nor to create derivative works from SaaS Software. However, the performance of the directions 69d, 88e UrhG (German copyright law) shall remain unaffected.

3.5. In each individual case the customer allows the use of SaaS Software and/or SaaS to third parties, the customer shall be obliged to pay damages in the amount of the remuneration that would have been due for a single user if a contract had been concluded, unless the third-party use is not attributable to the customer, the SICK company has been notified in due time in written form (Sec.126b of BGB – German Civil Code).

5. License Types

5.1. The SaaS can be categorized in different categories of license models. The license type applicable to the respective SaaS is specified in the contractual agreement and/or the product description.

5.2. In particular, the following license types may be offered for individual SaaS:

5.3. “Named User” license means that the access to the SaaS is limited to the persons at the customer’s company who have been named by the customer and for whom licenses have been validly purchased in accordance with this agreement.

5.4. “Single” license means that the customer is entitled to use SaaS on one device or at one workstation.

5.5. “Floating” license means that access to the SaaS at any time is limited to a maximum number of Authorized Users, for whom valid licenses have been purchased in accordance with this agreement.

5.6. “Company” license means that the customer is entitled to use the SaaS on several devices or simultaneously at several workstations within its company. To the extent such Company license does not explicitly specify the number of devices and/or workstations, such use is permitted without limitation in number.

5.7. This does not include the use on devices and workstations of Affiliates of the customer. The purchase of additional Single licenses or a Group license is required for Affiliates.

5.8. “Group” license means that the customer and its Affiliates are entitled to use the SaaS on several devices or simultaneously at several workstations. To the extent the Group license does not explicitly specify the number of devices and/or workstations, the use within the customer’s group is permitted without limitation in number. The customer is also entitled to use SaaS Software within a network or on other multiple-station computing systems.

6. Demo Versions

6.1. If SICK grants the customer access to SaaS for demonstration purposes (“Demo Version”), the customer’s right to use SaaS shall be limited to (i) the use for internal evaluation purposes (ii) for the period specified by SICK. Any productive use is strictly prohibited. The right of use expires automatically after expiry of the period specified by SICK.

6.2. The Demo Version may be subject to functional restrictions; any use shall be at the customer's risk.

6.3. When providing a Demo Version for testing purposes, SICK expressly disclaims any liability in the sense of a warranty for specific properties.
7. Data Storage
7.1. The storage of customer’s data is a prerequisite for the use of SaaS. The customer hereby grants to SICK the perpetual, non-exclusive right, unrestricted as to place and content, to such data (including the right to modify and reproduce them), to (a) enable SICK to provide SaaS, (b) analyze and enhance the services provided and (c) develop further services. In the event that personal data are processed, the provisions of section 14 additionally apply.
7.2. To the extent the customer has to enter or transmit specific parameters to SICK in order to use the SaaS, the customer is obliged to ensure that such parameters are not met or exceeded. In such case, SICK may be entitled to redefine the data transition point at any time if necessary for the unobstructed use of the services by the customer. In such case, the customer shall establish a connection to the newly defined transition point. SICK assumes no responsibility for any malfunction in the transition of or access to data outside of SICK’s control (e.g. due to maintenance times or in case of malfunctions attributable to the provider of storage capacity, the internet provider, the network provider, etc.);
7.3. The customer is obliged to keep the log-in data provided by SICK and to protect it secure from unauthorized access by unauthorized third parties, thus making it impossible for third parties to gain access to the personal password. The password may be changed in regular intervals. As soon as the customer has any indication that a third party may have gained unauthorized access to, or may have received the user and access rights, the customer is obliged to inform SICK thereof without delay via support@sick.com.
8. Customer’s Obligations
8.1. The contractual use of the services provided by SICK depends on the hardware and software architecture used by the customer, including workplace computer, router, data communication means etc., meeting the minimum technical requirements for the use of the SaaS Software version as offered from time to time and on the authorized SaaS users being familiar with the operation of the SaaS.
8.2. The customer shall establish, at its own cost, a data connection via the internet between the workstations to be used and the data transition point defined by SICK. SICK is entitled to redefine the data transition point at any time if necessary for the unobstructed use of the services by the customer. In such case, the customer shall establish a connection to the newly defined transition point. SICK assumes no responsibility for any malfunction in the transition of or access to data outside of SICK’s control (e.g. due to maintenance times or in case of malfunctions attributable to the provider of storage capacity, the internet provider, the network provider, etc.).
8.3. The customer is obliged to keep the log-in data provided by SICK confidential from unauthorized third parties and to keep it secure from access by unauthorized third parties, thus making it impossible for third parties to gain access to the personal password. The password may be changed in regular intervals. As soon as the customer has any indication that a third party may have gained unauthorized access to, or may have received the user and access rights, the customer is obliged to inform SICK thereof without delay via support@sick.com.
8.4. The customer must not use improperly, or allow any improper use, of SaaS and SaaS Software; in particular, the customer must not transmit any illegal content. The customer shall refrain from any attempt, including through unauthorized third parties, of unauthorized retrieval of information or data from interfering programs run by SICK or from intruding into data networks of SICK without authorization.
8.5. When using the SaaS and the SaaS Software as well as the contractual services, the customer is required to observe applicable law, in particular all applicable laws and regulations. The customer is in particular prohibited from uploading data or content that infringes legal provisions, third-party property rights or copyrights, or other third-party rights.
8.6. To the extent possible, the customer shall save the data and content transferred to SICK on a regular basis and according to the risk involved and change his own back-ups in order to ensure their recoverability in the event of data and information loss. The customer shall in particular use any options provided by SICK to save its data in its own sphere of responsibility. The customer shall scan the data and information for viruses prior to upload and use state-of-the-art antivirus programs.
9. Remuneration, Payment Terms
9.1. The remuneration shall be according to the contractually agreed prices. The price to be paid for the SaaS can consist of one-off payment (e.g. installation fee) or recurring payments (e.g. monthly/annual user fee) or individual additional fees. Details are specified in the contractual agreements
9.2. Remuneration is exclusive of any insurances, taxes or other duties.
9.3. In case of recurring services, the customer shall be invoiced by SICK for the remuneration for the contractually agreed performance period in advance.
9.4. The remuneration is due and payable within 14 days after the invoice date.
9.5. If SICK uses electronic billing by sending invoices by e-mail, the customer may demand the invoice to be sent by mail for which additional costs may accrue (processing and mailing costs). In this case, SICK will notify the customer of the costs for the invoice dispatch.
9.6. SICK reserves its claim to the SaaS Software until all due claims of SICK against the customer are settled.
9.7. The customer is only entitled to offset counterclaims insofar as such counterclaims are undisputed or ruled with res judicata effect by a court of law.
10. Contract Term, License Term
10.1. The contract is concluded for the term contractually agreed upon or specified in the product description. Unless agreed otherwise, the term is automatically renewed by subsequent 12-month periods (extended term), unless either party terminates the contract with three months’ notice to the end of the fixed term or the extended term, respectively.
10.2. SICK may terminate the contract without observing a notice period if the customer (a) is in delay with the remuneration or with a not insignificant part of the remuneration which equals the remuneration for six months or (b) infringes these AVB SaaS SICK in any other way, unless the infringement is not attributable to the customer or the customer proves that SICK or the affected Partner has not suffered any damage or that the actual damage is significantly lower than this amount. SICK or the relevant Partner may provide its actual damage exceeds this amount.
10.3. The right of termination for important cause remains unaffected.
10.4. Every termination must be made in writing.
10.5. In the event of a full termination of the contract of use, SICK may, upon the expiry of 30 calendar days after the effective date of the termination and upon expiry of any statutory retention periods, irretrievably delete all data created during the term of the contract of use. Irrespective of any existing contract of use, SICK may be obliged to delete personal data at an earlier date in line with the provisions of the applicable privacy law.
11. Support
11.1. The contract partner of the customer provides during its usual business hours a technical support hotline that can be reached by e-mail, fax or phone. The hotline serves to provide support to the customer regarding the use of the performance owed by SICK under this contract. Customer requests to the hotline are processed in the order of their receipt.
11.2. The conclusion of a separate service level agreement (SLA) can be a prerequisite for getting access to support services. In such SLAs, further optional services can be agreed upon, subject to availability.
11.3. Support, availability of error classification and response times are specified in the respective SLA.
12. Claims for Defects
12.1. SICK shall, at its sole discretion, rectify or perform duly notified defects in the performance within reasonable time. With regard to third-party software licensed by SICK for use by the customer, the liability for defects is limited to the document and installation of generally available upgrades, updates or service packs.
12.2. The customer shall inform SICK of defects in the contractual services in written form (including email or phone) without undue delay and state in a reproducible manner how and when the defect or defect occurs. The customer shall actively support SICK in troubleshooting by providing suitable documentation (hardcopy, etc.) and any other documents, data, etc. necessary for the analysis and elimination of the defect by SICK. If during the inspection of a complaint the defect turns out not to have occurred within SICK’s area of responsibility, SICK may charge the customer for the inspection at the respective applicable prices. This does not apply if the customer, exercising due care, could not have determined that the malfunction did not occur in SICK’s area of responsibility.
12.3. If, due to reasons attributable to SICK, subsequent performance fails within a reasonable grace period notified by the customer, the customer may reduce the agreed remuneration on a pro rata basis for the time in which the software was not available to the customer or to the agreed extent. The right to reduce the remuneration is limited in amount to the monthly remuneration due for the defective part of the performance.
12.4. Liability without fault due to initial defects in accordance with Section 536a (1) of the German Civil Code (BGB) is excluded.
13. Liability
13.1. SICK shall be liable for damages – regardless of the legal cause – solely: a) in the event of intent; b) in the event of gross negligence; c) in the event of injury to life, body and health; d) in the event that SICK has fraudulently concealed a defect; e) insofar as SICK has given an explicit guarantee; f) pursuant to the Product Liability Act; or g) if SICK violates an essential contractual duty.
13.2. In the event of violation of an essential contractual duty pursuant to Section 13.1 g) by negligence of SICK, SICK’s liability for damages shall be limited to typical contractual losses that could have been foreseen. This also applies to loss of profits and any other financial loss. An essential contractual duty is a duty the fulfillment of which is required for the due execution of a contract and the observance of which a Party relies on, and may rely on, regularly, as well as a duty the breach of which will put the achievement of the contractual purpose at risk.
13.3. SICK’s liability for all damages arising, within the same contractual year, out of or in connection with this contract and its performance,
13.7. The limitation period for claims for damages against SICK is one year.

13.4. Except as provided in Section 13.1 a) – f) SICK is not liable for the loss of customer data if the damage is based on the customer’s omission to create back-ups in accordance with Section 8.6 and thus to ensure that lost customer data can be recovered with reasonable effort.

13.6. Insofar as SICK's liability is excluded or limited, this shall also apply to the liability of SICK’s officers, subcontractors, employees, representatives, vicarious agents and associates as well as to the liability of affiliates, suppliers and licensors.

13.5. If SaaS are provided free of charge, SICK does not accept any liability with the exception of the provisions in Section 13.1 a) – f), for damage resulting from the use thereof.

13.3. If SICK’s liability is excluded or limited, this shall also apply to the personal liability of SICK’s officers, subcontractors, employees, representatives, vicarious agents and associates as well as to the liability of affiliates, suppliers and licensors.

13.2. The SaaS are provided subject to the proviso that this is permitted directly or indirectly involved in them in accordance with all the foreign trade laws.

13.1. a) – f) SICK is not liable for the loss of customer data if the damage is based on the customer’s omission to create back-ups in accordance with Section 8.6 and thus to ensure that lost customer data can be recovered with reasonable effort.

17.6. If the customer breaches an obligation under this section 17 and/or if a business transaction is partially or completely prohibited, SICK shall be entitled to terminate the contract for good cause without notice and to rescind, in whole or partially, all individual contracts concluded hereunder. Any claims against the customer shall remain unaffected.

18. Reservation of Changes


19.1. SICK will notify changes to these terms of use or to individual provisions to the customer in text form or online. In such case, the customer may either (i) confirm the respective change of contract or, if SICK does not offer to maintain the contract under the previous terms, (ii) choose termination of the contract by SICK with effect as of the next possible date in which case section 10.4 shall not apply. In the event of a change of contract pursuant to (i) above, the new terms shall apply as of the date of the declaration of confirmation. In the event of termination of the contract by SICK, the terms of use applicable prior to the change shall apply until the end of the notice period. SICK will inform the customer about these options and the consequences of its decision in the change notification.

19.2. Should any of the provisions of these terms of use be or become invalid, void or unenforceable, the validity of the remaining provisions shall remain unaffected thereby. In such case, the invalid, void or unenforceable provision must be interpreted or substituted in such a way as to achieve the intended economic objective. This shall not apply if adherence to the contract constitutes an unreasonable hardship for either Party.

19.3. These AVB SaaS SICK and all obligations arising out of them are governed by the law of the Federal Republic of Germany; the application of private international law and the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.

19.4. If the customer is an entrepreneur as defined in Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law, all disputes arising out of or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be the seat of the contract partner of the customer. The language of arbitration shall be German or English.

17.5. The customer undertakes not to use, offer for sale or sell any SICK goods (items, software and technology) or commercial goods provided by SICK for use in weapons and/or weapon systems.

17.4. If necessary for the performance of export control inspections by authorities or by SICK, the customer shall, upon request, immediately provide all information, including but not limited to information on end user, final destination and intended end-use.