Subject Matter and Scope

1.1 These General Terms and Conditions for the Supply of Software Products ("AVB Software SICK") govern the temporary or permanent provision, locally or remotely installed and operated within the customer’s sphere of responsibility (on-premise) (hereinafter referred to as "Software") to the customer by (i) SICK AG, Erwin-Sick-Str. 1, 79108 Waldkirch, Germany, or (ii) an Affiliate of SICK AG (both (i) and (ii) "SICK"); an "Affiliate" being an individual or entity, with control over such party, meaning 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.

1.2 Individual agreements, quotations, product descriptions of SICK and/or the General Terms of Delivery ("ALB SICK") of the SICK company supplying or providing the Software shall also apply.

1.3 These General Terms and Conditions for the Supply of Software Products ("AVB Software SICK") shall apply to subsequent bug-fixes, patches, updates, upgrades, etc. (hereinafter collectively referred to as "Updates") of the Software provided to the customer, unless otherwise agreed at the time of provision of the Update, as well as to permissible reproduction of the Software.

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

2. Rights Of Use and OSS License Terms

2.1. The Software is supplied in machine-readable form (object code) only.

2.2 The Software is shipped by SICK via the Internet ("Software as a Service" or "SaaS") shall be governed by separate terms – the General Terms and Conditions and Conditions for the Provision of the Software as a Service ("AVB SaaS SICK"). If the Software is provided in combination with hardware, these AVB Software SICK shall not apply to the hardware, solely the ALB SICK shall apply.

2.3. The customer is not entitled to process, modify, reverse engineer, decompile, disassemble the program code of the Software, extract parts thereof or to determine the source code in any other way, nor to create derivative software products unless this is permitted by law or by section 2.9 of these AVB Software SICK. If the Software has interfaces with IT products of third parties, section 69 e of the German Copyright Act (UrHG) shall apply. In such case, prior to any decompilation, the customer shall request from SICK and/or the respective software manufacturer the information necessary for establishing interoperability.

2.4. The Software is supplied in machine-readable form (object code) only. The source code will only be provided on written request, as the customer’s rights to use the Software or parts thereof are subject to OSS license terms, such customer rights shall in no way be restricted by these AVB Software SICK. If applicable OSS license terms require the source code to be provided, SICK grants the customer the right to request, as the case may be against payment of delivery and administration cost. SICK shall inform the customer about the use and the terms of use of the open-source software and provide the terms of use if so required therein.

2.5. Software of other providers (third-party software) is, in addition to these AVB Software SICK, subject to the license terms of such third-party software, as documented or provided by SICK. In case of discrepancies, the respective stricter regulations shall apply, with the following exception: To the extent the provider of third-party software explicitly permits or defines the activities prohibited pursuant to section 2.3 hereof, the terms of use of the third-party software shall prevail over these AVB Software SICK.

3. License Types

3.1. SICK on-premise Software is available under different license models. The license type applicable to the respective Software is specified in the contractual agreement and/or in the product description. If no license type is specified, a Device license is granted.

3.2. In particular, the following license types are offered for the individual Software or Software product groups:
   - "Basic" license means that the Software is licensed for a particular device and may be connected to this device via a hardware-ID. The Software may solely be used on this hardware.
   - "Named User" license means that the access to the Software 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.
   - "Single" license means that the customer is entitled to use the Software on one device or at one workstation.
   - "Floating" license means that access to the Software at any time is limited to a maximum number of authorized users, for whom valid licenses have been purchased in accordance with this agreement.
   - "Server" license means that the use of the Software is limited to an individual local server specified by the customer.
   - "Company" license means that the customer is entitled to use the Software on several devices or simultaneously at several workstations within its company. To the extent the license does not explicitly specify the number of devices and/or workstations, such use is permitted without limitation in number. This does not include the use on devices and workstations of Affiliates of the customer or the customer’s manufacturers or sub-manufacturers.
   - "Group" license means that the customer and its Affiliates are entitled to use the Software 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’s Affiliates are (i) any legal entity, in particular a partnership, company, or other similar legal form, (ii) a company or other legal entity within a network or on other multiple-station computing systems.

4. Transfer of Software

4.1. SICK grants to the customer the right to transfer the Software, as a whole and upon complete discontinuation of any use of the Software,
to a third party. The temporary or partial transfer of use to third parties is prohibited, regardless of whether the Software is transferred in physical or non-physical form by the customer and must not in any case be made available to any unauthorized third parties.

5.2. If there is any concern that unauthorized third parties have gained or may gain access to the customer’s log-in data and/or passwords, the customer shall notify SICK immediately via email to support@sick.com.

5.3. Responsibility for Log-in Data/Passwords

7.1. Any log-in data and/or passwords for the use of the Software must be kept confidential by the customer and must not in any case be made available to any unauthorized third parties.

7.2. If there is any concern that unauthorized third parties have gained or may gain access to the customer’s log-in data and/or passwords, the customer shall notify SICK immediately via email to support@sick.com.

7.3. Responsibility for Log-in Data/Passwords

8.1. The remuneration shall be according to the contractually agreed prices. The price to be paid for the use of the Software may consist of one-time payments (e.g. purchase license, installation fee), recurring payments (e.g. monthly license fee), usage-based payments (e.g., pay-per-use) and/or individual additional fees. Details are specified in the contractual agreement and/or in the product description.

8.2. The remuneration for recurring services shall be invoiced in advance for the contractually agreed performance period.

8.3. The remuneration is due and payable within 14 days from the invoice date.

8.4. SICK reserves all rights to the Software until all due claims of SICK against the customer are settled.

8.5. The customer is only entitled to offset counterclaims insofar as such counterclaims are undisputed or legally established.

9. Duty of Cooperation

9.1. The customer has familiarized itself with the main functional features and system requirements of the Software and assumes the risk as to whether the Software meets its wishes and needs; in case of doubt, the customer shall seek the advice of the employees of SICK and/or of qualified third parties or experts.

9.2. The customer is solely responsible for establishing an operational hard- and software environment for the Software of sufficient dimensions, also taking into account the additional load caused by the Software. The customer shall also work with regard to the implementation of security patches for the operating system, the use of antivirus software, and the activation of firewalls.

9.3. The customer shall immediately install any Updates of the Software provided by SICK. The customer shall indemnify SICK against any damages, expenses and claims (including third party claims) due to non-compliance with this obligation. Unless expressly agreed otherwise, Updates shall be made available at www.sick.com; further details shall be set out in the contract agreement, the product description and/or the release notes. A separate notification to the customer is not owed.

9.4. Prior to using the Software, the customer shall test it thoroughly for freedom from defects and for usability within the existing hard- and software configuration. This shall also apply to Software provided under warranty obligations.

9.5. Regarding all deliveries and performances of SICK under this agreement, the customer shall assume an obligation of inspection and notification of defects according to section 377 of the German Commercial Code (HGB).

9.6. If the extent SICK’s obligations exceed the provision of the Software as such, the customer shall assist SICK free of charge to the extent necessary, e.g. by providing employees, workplace, hard- and software, data, and telecommunication systems.

9.7. The customer shall take appropriate precautions in the event that the Software in whole or in part does not work properly (e.g. by creating daily backups, by troubleshooting, by regular review of the data processing results). To the extent the customer has not explicitly indicated otherwise in advance, SICK may assume that all customer data that SICK may come into contact with has been backed up. This shall equally apply to any settings and parameters, especially in evaluation or test purposes (e.g., demo-, test- or trial-versions), the use of antivirus software, security patches for the operating system, the use of antivirus software, data, and telecommunication systems.

9.8. SICK is entitled to verify compliance with the license terms in the form of a self-audit (the customer filling out a questionnaire). The customer is obligated to participate in such audits and to provide truthful information. Furthermore, SICK reserves the right to audit compliance with these terms on the customer’s premises by an independent expert who is professionally bound to secrecy towards SICK. Such expert may disclose information to SICK only to the extent the license violations have been committed and a disclosure is necessary to pursue such violations. The audit shall be announced in writing with at least two weeks’ notice. During the visit and audit, the customer shall ensure that no personal data of third parties is transferred or otherwise disclosed to the expert. Furthermore, if necessary for the audit, the customer is obliged to provide the expert with information and to give inspection.

9.9. The customer shall bear any consequences and additional cost arising out of any breach of these duties of cooperation.

10. Contract Term, License Term

10.1. Unless expressly agreed otherwise, the granting of the license is subject to the payment of the license fee. The license agreement is concluded for the term contractually agreed upon within the product description. Unless agreed otherwise, the term is automatically renewed by subsequent 12-month periods (extended term), unless either contract party terminates the contract with three months’ notice to the end of the fixed term or of the extended term, respectively. However, unless specified otherwise, the rights of use for Software that is part of SICK hardware or which is essential for the use of SICK hardware are perpetual.

10.2. SICK may terminate the contract without observing a notice period if the customer (a) is in delay with the payment of the remuneration or (b) infringes these AVB Software SICK in any other way, unless the infringement is not attributable to the customer or unless the infringement and its consequences are only insignificant. In these cases, the customer is not entitled to a reimbursement of the remuneration paid for the use. SICK’s right to claim damages shall remain unaffected.

10.3. The right of termination for cause remains unaffected.

10.4. Every termination must be made in writing.

10.5. In the event of a termination by SICK in accordance with section 10.2, the customer’s right to use the Software provided shall expire. The customer shall return to SICK all original copies of the Software and all derivative works, also those created by the customer or by third parties through the use of the Software and of the documentation installed on the customer’s system.

10.6. The customer shall continue to use SICK in writing that the return or deletion have been complete and shall provide evidence in suitable form upon request.

11. Software Maintenance and -Support

11.1. The access to software maintenance and -support, to the extent offered for the respective Software product by SICK, is regulated in the contractual agreement and/or the product description.

11.2. Signing a separate Service Level Agreement (“SLA”) may be a prerequisite for obtaining access to software maintenance services.

12. Claims for Defects

12.1. In case of Software provided on a permanent basis, SICK warrants, for a period of one year as of the date on which the Software was provided to the customer (a) that the Software complies with the characteristics contractually agreed and/or specified in the product description, technical data as well as specifications and performance data contained in public statements, in particular in marketing material, are not contractually owed properties.

12.2. If the Software is defective, the customer may request SICK to remedy the defect within reasonable time. Only deviations from the product description and/or from explicit use characterizing characteristics and/or features, that cannot and can be reproduced by the customer shall be deemed defects of the Software. A defect does not exist if it does not occur in the latest version of the Software provided and if it is reasonable for the customer to use such latest version.

12.3. In case the defect affects the functionality and usability of the Software only insignificantly or not at all, SICK is entitled to remedy the defect by providing an Update of the Software in the course of its general version planning, to the extent this is achievable for SICK using reasonable efforts.

12.4. As part of the remedy, SICK may, at its choice, provide remote maintenance by phone, email or via remote access. The customer shall grant to SICK access to its systems and the Software installed on them.
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to the extent required to remedy the defects. This includes the possibility to access the Software via remote maintenance (e.g. via VPN). The customer is obliged to create the technical conditions necessary for remote access in accordance with the requirements of SICK.

12.5. SICK may refuse the remedy until the customer has paid to SICK the agreed remuneration minus the part that equals the economic value of the notified defect. SICK is also entitled to refuse warranty if the customer does not report the defects in writing immediately after detection and/or does not provide remote access to SICK pursuant to subsection 12.4 above.

12.6. The warranty period for defects starts with the delivery of the first copy of the Software. This shall not apply to warranty claims for defects occurring for the first time in subsequent deliveries of copies.

12.7. If a claim for a defect cannot be verified or cannot be attributed to SICK’s warranty obligations after an according inspection (non-defect), SICK may charge the customer for the verification and remedy of the defect at the then applicable rates, as well as for any incurred expenses, unless the customer could not have identified the non-defect despite exercising due care.

12.8. If and to the extent that open-source software is provided to the customer, SICK shall be aware of this fact in respect, neither for freedom from defects, marketability, suitability for a specific purpose or freedom from defects of title. For details of the exclusion of warranty liability, reference is made to the respective OSS License Terms, which can be found in the documentation, the "readme" files and/or reference files for the open-source software, which are made available to the customer.

12.9. In the case of Software provided temporarily, the liability without fault for initial defects pursuant to section 536a (1) of the German Civil Code (BGB) shall be 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 or health;

d) in the event that a defect was concealed in a fraudulent manner;

e) in case of an explicit guarantee;

f) pursuant to the German Product Liability Act (ProdHaftG); or
g) in the event of a breach of an essential contractual duty.

13.2. In the event of an essential breach of a contractual duty pursuant to section 13.1 g), the liability for damages shall be limited to foreseeable losses typical for the contract. This also applies to loss of profits and other financial loss. An essential contractual duty is a duty the fulfillment of which is required for the due execution of the contract, and on the observance of which a contract party principally relies, and may rely, as well as a duty the breach of which will put the achievement of the contractual purpose at risk.

13.3. The liability of SICK for all damages arising out of or in connection with the contract, caused by SICK, its officers, subcontractors, employees, vicarious agents or associates, as well as any indemnification obligation, shall, regardless of the legal cause, except under the circumstances set out in section 13.1 a) to f) above, be limited (i) in case of one-time remuneration, to the remuneration, or (ii) in case of recurring remuneration, to the remuneration due for the respective contractual year; in any event, however, (iii) to a maximum of EUR 100,000. A contractual year in the aforementioned sense is the individual part of the date of provision as defined in the contract and every subsequent twelve-month period.

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 9.7 and to thus ensure that lost customer data can be recovered with reasonable effort.

13.5. If Software is 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.

13.6. The above exclusions and limitations shall also apply to the liability of officers, employees, representatives, vicarious agents, associates affiliated companies within the meaning of sections 15 et seq German Stock Corporation Code (AktG), suppliers and licensors of SICK.

13.7. The limitation period for claims for damages against SICK is one year insofar as permitted by law, unless the damage was caused intentionally. Claims for damages pursuant to the German Product Liability Act (ProdHaftG) are subject to the statutory limitation periods.

14. Confidentiality

14.1. The customer shall hold all confidential information disclosed to it within the framework of a contract in strict confidence and shall use such confidential information only with the prior written approval of SICK, regardless of the purpose. Confidential information includes information expressly marked as confidential by SICK and information the confidential nature of which is apparent from the circumstances of the disclosure.

14.2. The obligations in section 14.1 do not apply to information or parts thereof for which the customer proves that they (a) were known or generally available to the customer prior to the date of receipt hereunder without confidentiality obligation or were lawfully disclosed to the customer by a third party after the date of receipt hereunder without confidentiality obligations (b) were known or generally available to the public prior to the date of receipt hereunder or (c) became known or generally available to the public after the date of receipt hereunder through no fault of the customer.

14.3. The obligations set out in section 14.1 shall survive the termination of the contract for an indefinite period, namely for as long as an exception as defined in section 14.2 is not proven.

15. Data Processing, Privacy

15.1. SICK reserves the right to collect and process, within the legally permitted scope, anonymized data and information based on the provided Software. With the use of the Software, the customer grants SICK the non-exclusive right to collect anonymized data and process them in particular for the following purposes:

- Provision and improvement of products and services of SICK.
- Compliance with legal requirements.
- Web analytics and improvement of the online presence.
- Use of restricted websites and for authentication.
- Use of digital services, e.g. platform offerings, newsletter subscription / termination of subscription, or use of applications.
- Prevention of misuse of the online offerings of SICK.

15.2. The right to collect data expires concurrently with the expiration of the software license granted by SICK. However, SICK shall remain entitled to store copies of the data already saved and to use them for the above purposes.

15.3. SICK and the customer shall comply with the respective applicable data protection law.

15.4. If SICK processes personal data as the controller of data, the details of the processing are specified in the privacy information for the respective product. The customer undertakes to provide this privacy information to the persons concerned.

15.5. If SICK is commissioned by the customer to process personal data, the contract parties shall sign an agreement on commissioned processing in accordance with section 28 of the EU General Data Protection Regulation (GDPR). The customer shall inform SICK in text form (email or in writing) without delay of this requirement.

16. Export Compliance

16.1. The customer undertakes to comply with all customs and export control regulations, foreign trade laws and sanctions applicable to the relevant business transaction when using, distributing or in any other way making available goods, software, technology incl. services provided by SICK ("SICK Items").

16.2. The customer confirms not to be directly or indirectly controlled or owned by, or under common control with, a party identified on any sanctions list. The customer will notify SICK about any changes in that regard without delay.

16.3. The customer shall provide all information reasonably requested by SICK for export compliance purposes including, but not limited to, information about the end user, final destination and intended end use. No business transaction is due unless SICK has provided the customer with a purchase order or delivery note.

16.4. The customer shall fully indemnify and hold harmless SICK from and against any claims of authorities or other third parties due to the customer’s non-compliance with any provision of this section ‘Export Compliance’. The customer further undertakes to reimburse SICK for any losses and expenses incurred in this context.

16.5. The customer undertakes not to use, distribute or in any other way make available any SICK Items (i) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of weapons of mass destruction and/or of missiles capable of delivering such weapons and/or (ii) for use in weapons and/or weapons systems.

16.6. If the customer breaches any of the provisions of this section ‘Export Compliance’, SICK is entitled to terminate the contract with immediate effect or to withdraw from it, in whole or in part. All claims against the customer shall remain unaffected.

17. Taxes

17.1. Remuneration is inclusive of any withholding tax, if any, but exclusive of any statutory VAT, if any, which will be charged additionally.

17.2. If the customer is entitled under applicable tax laws to withhold and pay (withholding) tax instead of or on behalf of SICK on the remuneration payable to SICK, the customer shall deduct the relevant amounts from the payments to be made to SICK. If the customer fails to withhold and pay such (withholding) tax, the customer shall bear all additional costs arising for SICK in this regard.

17.3. The customer shall assist SICK in reducing or reclaiming such (withholding) tax as far as possible in accordance with legal regulations. The customer will therefore inform SICK in due time before deducting any amounts from the remuneration about such withholding requirements. The customer shall further provide SICK with a tax certificate and all other documents required by SICK to achieve a reduction or refund of the (withholding) tax. If SICK cannot reduce or reclaim the (withholding) tax due to the customer failing to inform SICK about the withholding requirements or failing to provide the necessary information, or the tax refund is not approved by the competent authority, SICK shall be entitled to charge the customer with the tax duties and all costs incurred in connection with such tax withholding.
documents in time, the customer shall reimburse such (withholding) tax to SICK.

18.1. For ongoing contracts, SICK may offer the customer to change these AVB Software SICK or individual provisions in text form (email or in writing) (change of contract). Such offer to change the contract is deemed to be accepted if the customer does not object against such change of contract in text form within four weeks of receiving the respective offer. SICK undertakes to expressly inform the customer of the consequences of an omitted objection at the start of the aforementioned period.

18.2. Should any of the provisions of these AVB Software SICK 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 contract party.

18.3. These AVB Software SICK and all obligations arising out of them are governed by the law of the Federal Republic of Germany without regard to conflict of laws principles; the application of private international law and the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.

18.4. 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.