

LAETUS END USER LICENSE AGREEMENT

BY YOUR USE OF THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS CONTENTS. YOU ALSO AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF AGREEMENT BETWEEN LAETUS AND YOU AND SUPERSEDES ALL PRIOR REPRESENTATIONS OR AGREEMENTS, ORAL OR WRITTEN, BETWEEN LAETUS AND YOU REGARDING THE SUBJECT MATTER OF THIS AGREEMENT.

This Agreement also covers software owned by third parties. If no license or specific terms and conditions are presented for acceptance the first time that third party software is invoked, then the use of that third party software will be governed by this Agreement.

If You are not willing to comply with the terms and conditions of this Agreement, do not use the Software. You should promptly return the Software to Laetus.

1. Definitions

Affiliate – means a company controlled by, controlling or under common control with a company.

Agreement – means this End User License Agreement.

Customer Location – means a single physical mailing address for a Plant.

Laetus – means Laetus GmbH, Sandwiesenstr. 27, D-64665 Alsbach-Hähnlein, GERMANY, or the Affiliate of Laetus GmbH that fulfilled Your Software order.

License Fees – means the fees payable by You for use of the Software as set forth in the applicable Order.

Line – means a single production line which is managed using the Laetus Software.

Object Code – means software in machine readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes Source Code.

Open Source License Terms – means any terms or conditions which meet the definition of Open Source found at <http://www.opensource.org/docs/osd> and similar terms and conditions.

Order – means a quote, order confirmation and any other document(s) provided to You by Laetus which sets forth the Software product or products licensed to you under this Agreement and any additional Usage Restrictions applicable to that Software.

Plant – means a single Customer Location which may contain one or more production Lines.

Software – means the machine-readable form of Laetus Software and related manuals and documentation, and other third party software, licensed under this Agreement.

Source Code – means software when written in a form or language understandable to humans, generally in a higher level computer language, and further including embedded comments in the English language.

Usage Restrictions– means the usage parameters set forth below and in an Order.

You – means the entity on behalf of which this license was purchased or otherwise rightfully obtained.

2. Grant of License

Perpetual License: Subject to Your compliance with the Usage Restrictions and Section 3 Limitations on Use, You are granted a non-exclusive, non-transferable, non-sublicensable perpetual license to use the Software set forth in the applicable Order in Object Code only. Perpetual licenses are granted conditioned on Your payment of the License Fees set forth in the Order. Unless otherwise agreed by Laetus in writing, this license is granted only for Your own use for internal business purposes in accomplishing the functions described in the Software's documentation.

3. Limitations on Use

3.1 *Restrictions.* You will not sell, license, sublicense, assign, transfer, lease, lend or rent the Software or provide commercial hosting services with the Software. You may not modify or translate the Software. If the Software is provided with or as part of a specific product or device, You may not remove the Software from that product or device, and You may not use any portion of the Software separately from or independent of that product or device. You will not reverse engineer, decompile, or disassemble the Software or otherwise attempt to discover the Source Code of the Software except to the limited extent expressly allowed by non-waivable provisions of applicable law. You will not tamper with, bypass or alter the security features of the Software either to circumvent the technical licensing protections, to make it available for use by more Lines than permitted hereby, or to discover the Source Code. If you receive an upgrade or update of a prior version of the Software You agree, You now may use the original software or the upgraded or updated product, not both. Unless otherwise permitted in writing, You may not use, or permit others to use, the Software for or on behalf of any third party, to run an outsourcing business, or for any purpose other than Your internal business purposes. You will only use the Laetus Software with the applicable Line or Plant for which it was originally licensed as designated on the Order.

3.2 *Location and Other Restrictions.* You are only authorized to use the Software at the Customer Location identified on the Order. If the Software is installed on a wide area network You are responsible for ensuring that the Software is not accessed and used by other than the applicable Line or Plant designated in the Order even if the license management routines do not prevent that use.

4 Limitations on Duplication

4.1 *No Copies.* You will not make any copies of the Software.

4.2 *Backup.* Notwithstanding Section 4.1 You may make one complete copy of the Software solely for back-up purposes. If You use that back-up copy in production, use of the back-up must be discontinued when normal operations of the original production Software becomes available.

4.3 *Proprietary Notices.* Any permitted copy will contain copyright and other proprietary notices as designated by Laetus or its third party licensors.

4.4 *Updates, Upgrades, Error Corrections.* This Agreement applies to updates, upgrades, error corrections of the Software that Laetus may provide to You or make available to You after the date You obtain Your initial copy of the Software, unless they are accompanied by separate terms.

5 Ownership and Copyright

Laetus reserves all rights not expressly granted to you in this Agreement. The Software is protected by copyright and other intellectual property laws and treaties. Laetus or its suppliers own the title, copyright, and other intellectual property rights in the Software. The Software is licensed, not sold. This EULA does not grant you any rights to trademarks or service marks of Laetus. The source code of the Software is not provided. You have not acquired, by virtue of this Agreement, any right of ownership in or to the Software or any related patent, copyright, trademark, trade secret or other intellectual property right. You will not remove any proprietary notice or other legend from the Software and You will reproduce those notices and legends on any copies or partial copies that You are permitted to make.

6 Warranties and Limitation of Liability

6.1 *Limited Warranty.* Laetus warrants for a period of 12 months after delivery that the Software will perform substantially in accordance with the accompanying user documentation, if the Software is used under normal operation and maintenance conditions and used as directed in the documentation.

6.2 *Disclaimer.* The warranties set forth in this Agreement will not apply if defects arise out of accident, neglect, misuse, failure of utilities, equipment failures, or other than ordinary use of causes beyond Laetus's control. Any modifications to the Software by any persons other than Laetus will void the warranty described in this Agreement and cause an event of default under this Agreement.

6.3 *Remedies.* Laetus' sole obligation will be to cause the Software to substantially conform to its documentation (to the extent technically and reasonably possible and on the condition that the error is reproducible) by amending or updating the Software or supplying an alternative version of the product in which it is embedded. In the event that Laetus is unable to bring the Software into compliance with the warranty, You may return the Software to Laetus and You will be entitled to recover, as Your sole and exclusive remedy, the fees paid for the portion of the Software which is non-complying, and depreciated over three years on a straight-line basis.

6.4 *Third Party Software.* Certain third party software may be provided with the Software. ALL THIRD PARTY SOFTWARE, IS SUPPLIED BY LAETUS ON AN "AS IS" BASIS WITHOUT CONDITION OR WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, EITHER EXPRESS OR IMPLIED.

6.5 *Exclusive Remedies.* THE WARRANTIES AND LAETUS' LIABILITY DESCRIBED IN THIS AGREEMENT ARE LAETUS' EXCLUSIVE OBLIGATIONS AND YOUR EXCLUSIVE REMEDIES. THEY ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO OTHER WARRANTIES, REMEDIES, OBLIGATIONS, LIABILITIES, RIGHTS, OR CLAIMS, WHETHER ARISING IN TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE ARE MADE OR GIVEN BY LAETUS. NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY, IS MADE EXCEPT AS SET FORTH IN THIS AGREEMENT. LAETUS EXPRESSLY DISCLAIMS (AND YOU ACKNOWLEDGE THAT IT DISCLAIMS) ANY WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.6 *Limitation of Liability.* IN NO EVENT WILL LAETUS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, WHETHER CLAIMED BY REASON OF BREACH OF WARRANTY OR OTHERWISE, AND WITHOUT REGARD TO THE FORM OF ACTION IN WHICH THAT CLAIM IS MADE. ANY ACTION ARISING AGAINST LAETUS MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION FIRST ACCRUES. THE AGGREGATE TOTAL OF ALL LIABILITIES OF LAETUS UNDER THIS AGREEMENT WILL IN ANY CASE BE LIMITED TO THE LICENSE FEES PAID BY YOU FOR THE SOFTWARE DEPRECIATED OVER 3 YEARS ON A STRAIGHT-LINE BASIS.

7 Infringement and Limitation

In the event of a claim that the Software infringes upon or violates any worldwide patent, copyright, trademark, trade secret or other intellectual property right, Laetus will defend or settle at its option and expense that claim, subject to the limitations provided for under this article and article 6 of this Agreement. If the Software, or any part of it, is held to constitute or is alleged to constitute an infringement and the use of that Software is enjoined, Laetus may, at its sole option, (i) obtain the right for You to continue using the Software or (ii) substitute the Software with other non-infringing software with similar functionalities, (iii) modify the Software so that it is no longer infringing while giving similar functionality. If those remedies are not commercially reasonably available to Laetus, Laetus may terminate the license for the affected portion of the Software and refund an equitable portion of the price or license fee paid for these items and depreciated over three years on a straight-line basis. Laetus will be subject to the foregoing obligations only if Laetus is given prompt written notice of that claim. You will fully cooperate with Laetus in the defense of that claim, if requested by Laetus and at Laetus' expense for Your out of pocket costs. Laetus will have no liability for infringement claims if the alleged infringement is based on or arises from (i) the modification of the Software by anyone other than Laetus, (ii) use of the Software in a manner that is inconsistent with the documentation, (iii) use of the Software in connection or in combination with the product of a third party if that combination caused the infringement or (iv) use of other than the most current release of the Software. The total liability of Laetus arising out of any infringement claim will in no event exceed the lesser of the fees paid by You to Laetus for the infringing Software item depreciated over three years on a straight-line basis or an amount of \$500,000.00 US. The foregoing states Laetus' entire liability and Your exclusive remedy for any claim of infringement or misappropriation.

8 Term and Termination

8.1 *Term.* Each license granted hereunder is effective from the earlier of the date provided in an Order or date of activation of the Software. Unless earlier terminated by You or Laetus, the license will remain in effect until expiration of the license as set forth below unless another period is provided in an Order.

8.2 *Certain Breaches.* Your rights under this license will terminate automatically if You fail to cure any breach within thirty (30) days of receipt of written notice. But if the breach is of Article 2 Grant of License or Article 3 Limitations on Use or an obligation that cannot be remedied, termination will be effective immediately upon notice from Laetus. Laetus may immediately suspend your use of the Software by instructing to cease all use, if You fail to make payments when due. If You lose Your hardware or software security key(s) that are provided with the Software, this Agreement will likewise terminate immediately. Upon the termination of this license, You will cease all use of the Software and return or destroy all copies, full or partial, of the Software, as will be instructed to You, on a case-by-case basis, by Laetus. Laetus may, in its sole discretion, provide replacement Software if the original Software is lost, stolen, or corrupted. You agree to only use the replacement Software or, if found or rendered usable, the original Software. You will not otherwise dispose of the replacement or original Software.

9 Consent to Use Data.

You agree that Laetus and its affiliates may collect and use technical information gathered as part of the product warranty services provided to you, if any, related to the Software. Laetus may use this information to improve its products or to provide customized services or technologies to You and will not disclose this information in a form that personally identifies you.

10 General

10.1 *Export and United States Government Restrictions.* You may not export or re-export the Software in violation of any applicable laws or regulations including but not limited to those of the United States of America, Germany and the United Kingdom. In addition, if the Software is identified as export controlled items under the export laws of the United States of America, Germany the United Kingdom or the country in which Your plant is located, You represent and warrant that You are not a citizen, or otherwise located within, an embargoed nation and that You are not otherwise prohibited under applicable export laws from receiving the Software.

10.2 *Restricted Rights.* All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

10.3 *Severability.* In the event any provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of the Agreement, the invalidity, voidness, or unenforceability will affect neither the validity of this Agreement nor the remaining provisions of this Agreement, and the provision in question will be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

10.4 *Open Source License Terms.* If any part of the Software is subject to any Open Source License Terms, as indicated by separate Open Source License Terms provided with the Software, the use and the license of that part of the Software will be subject to those Open Source License Terms. In the event of any contradiction or uncertainty between the license terms contained in this Agreement and the Open Source License Terms with respect to the portions of the Software governed by Open Source License Terms, the applicable Open Source License Terms will prevail.

10.5 *Applicable law and competent jurisdiction.* If You acquired the Software outside the United States of America, this Agreement is governed by the laws of Switzerland, without regard to any choice of law rules. The parties agree the application to this Agreement of the United Nations Convention on Contracts

for the International Sale of Goods is hereby expressly excluded. The English version of this Agreement will prevail over any version translated into another language.

If You acquired the Software in the United States of America, this Agreement is governed by and construed in accordance with the laws of the State of Illinois without regard to conflicts of laws provisions and You consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over DuPage County, Illinois.

10.6 *Assignment.* You may not assign this Agreement or any of its rights hereunder, (including by way of merger or acquisition unless You are the surviving entity) without Laetus' prior written consent. Any attempted assignment in violation of this provision will be void.

10.7 *Independent Contractors.* The parties to this Agreement are independent contractors. Neither party is an agent or representative of the other party. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement will not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party.

10.8 *Notice.* Notice under this Agreement will be deemed to be sufficiently given when (a) delivered personally or by overnight express, or nationally recognized courier services, or (b) the date received when sent by certified or registered mail, postage prepaid, addressed to the party at its address set forth below.

Any notices required to be sent under this Agreement by one party to the other will be issued in writing in English language and forwarded to the other party to the following addresses:

If to Laetus:
Laetus GmbH
Att. CFO

Sandwiesenstrasse 27
64665 Alsbach-Hähnlein

If to Customer:
Customer address as shown in the Order

In addition, any notice related to this Agreement that has to be submitted to the respective other party and be legally binding must be signed by an authorized representative.

The parties may change their delivery addresses at any time; notification of the change must comply with this provision. Compliance with deadlines defined in this Agreement is deemed to be assured if the notice in question is mailed before midnight on the last day of the applicable notice deadline (date and time of the postmark, registered mail).

10.9. *Amendment.* This Agreement may not be modified or terminated orally. No amendment to this Agreement will be effective unless it is in writing and signed by duly authorized representatives of both parties.

10.10 *Survival.* All obligations of the parties which expressly or by their nature survive the expiration or termination of this Agreement, including Articles and 1, 3, 4.1, 4.3, 5, 6.2, 6.4, 6.5, 6.6, 7 8, 9 and 10, will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire.

10.11 *Waiver.* The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision of right in that or any other instance; rather, the same will be and remain in full force and effect.

10.12 *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

10.13 *Entire Agreement.* This Agreement (including any addendum or amendment to this Agreement which is included with the Software) is the entire agreement between You and Laetus relating to the Software and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Agreement.