End User License and Terms of Use for Free-of-Charge Optris Software and Optris Software Development Kits

1. Introduction

This End User License and these Terms of Use together ("EULA") form the legal agreement between you ("User", "you") and Optris GmbH & Co. KG ("Optris") governing your use of

(a) software provided by Optris free of charge for the communication between Optris devices and a personal computer, including PIXConnect, CompactPlus Connect, Compact Connect and Optris Connect Software ("Software") and
(b) the Optris Software Development Kits ("SDK").

This EULA applies exclusively to business entities as defined in Section 14 of the German Civil Code (BGB), legal entities under public law, and special funds under public law. Neither the Software nor the SDK is intended for use for private or predominantly private purposes.

By installing and/or using the Software and/or SDK, you agree to be bound by the terms of this EULA and by the General Terms and Conditions of Sale – Optris GmbH & Co. KG (the "General Terms").

If you do not agree with this EULA and the General Terms, do not use the Software and/or SDK.

If you have any questions about this EULA, the General Terms, the Software, or SDK, please contact us.

2. Nature of Software, SDK and Their Provision by Optris

Optris provides the Software and SDK free of charge and on a voluntary basis. Neither the Software nor the SDK forms part of the contract of sale for the Optris devices that it can be used with ("Devices") and is not part of the agreed quality (Beschaffenheit) of the Devices. The Devices can be used as intended without the Software, i.e., data from the Devices can be read out and processed via the User's own or third-party software. You can control Optris devices from within your own (or third-party) software, read and change device settings, retrieve measurement data and thermal images, and further process, visualize, and save this data. No part of the purchase price for the Devices is attributable to the Software and/or SDK.

The Optris SDK provides programming interfaces, libraries, documentation, and sample code that you or third-party vendors can use to develop your own software products, system solutions, and applications that communicate with Optris Devices.

3. Grant of License; No Claim to Continuity

Optris grants you a simple, royalty-free, non-exclusive license to use the Software and the SDK for your business operations solely for the purposes the Software and SDK is intended for pursuant to and in accordance with this EULA and the General Terms.

The provision and use of the Software and SDK is subject to this EULA and the General Terms. Where this EULA and the General Terms collide, this EULA takes precedence in regard to the Software and SDK.

The User has no claim to the provision, supply, further development, maintenance, updates, error correction or support of the Software and SDK, or to any particular availability. Optris may discontinue provision, maintenance, and support of and for the Software and SDK at any time with effect for the future; the right to use versions of the Software or elements of the SDK that are already installed by the User remains unaffected, subject to Optris' termination rights under this EULA and the General Terms.

The SDK may be used as a component of the User's own commercial products and solutions. In particular, the User may use the SDK to develop their own software, combine it with their own functions, and distribute the resulting products to their own customers. To the extent necessary for the operation of the User's products, the Optris runtime libraries or redistributable components intended for this purpose may also be provided to the User's customers together with the User's own product. Sample code may be copied, modified, and integrated into the User's own products. The restrictions set forth in Section 4 must always be observed.

The license and the granted right to use the Software and SDK do not include any rights beyond those explicitly granted and, in particular, do not include any rights to Optris firmware, internal source code, or other software components not expressly included.

4. Restrictions and User Conduct

You may not:

(a) As regards the Software:

- Modify, adapt or create derivative works of the Software.
- Reverse engineer, decompile or disassemble the Software.
- Remove or alter any copyright or proprietary notices or labels on the Software.
- Distribute, sell, lease, rent or sublicense the Software to third parties, except that you may transfer the license to third parties in the ordinary course of resale of the items subject to the limitations and conditions provided for such case in the EULA and the General Terms (including the obligation to contractually transfer the obligations set forth in this EULA and in the General Terms to the third party).
- Undertake any other act with regard to the Software that is in violation of this EULA or the General Terms, including but not limited to Article I.5. of the General Terms.

(b) As regards the SDK:

- Market or resell the Optris SDK itself, either unchanged or substantially unchanged, as your own software development kit, development product, or standalone software library.

Furthermore, you agree, as regards both the Software and the SDK not to:

- Use the Software or SDK for any illegal or unauthorized purpose.
- Interfere with or disrupt the Software, SDK, and/or servers connected to the Software and/or SDK.
- Violate any applicable local, state, national or international law.

The rights conferred upon the User by applicable mandatory law (including § 69g (2) of the German Copyright Act, if applicable) remain unaffected by this EULA.

5. Ownership

Neither the Software nor the SDK are being sold. Optris retains all intellectual property rights, title and interest in the Software and SDK and all its intellectual property rights in any texts, graphics, logos, and other intellectual property embedded in or connected with the Software and/or the SDK.

6. Termination of EULA and Right to Use

This EULA shall remain in effect for as long as you use the Software and/or SDK and until it is terminated by Optris.

Optris may terminate this EULA (and thereby your right to use) for cause. Cause exists in particular if you breach material obligations under this EULA or the General Terms and fail to remedy the breach within a reasonable grace period granted by Optris in writing; Optris is not required to grant a grace period if, taking all circumstances into account, it would be unreasonable to expect Optris to do so.

Upon termination, you must immediately stop using the Software and SDK, delete all copies of the Software in your possession and confirm such stop and deletion to Optris in writing. Optris may take legal steps to prevent you from using the Software and SDK beyond termination.

7. Exclusion of Warranties; User's Obligations

The Software and the SDK is provided free of charge and "as is", in its condition as it exists from time to time. Statements in product descriptions, manuals, data sheets or other documents are descriptions of performance and do not constitute warranties or guarantees as to quality or durability (Beschaffenheits- oder Haltbarkeitsgarantien). A warranty or guarantee

exists only if Optris expressly provides one in writing using the words “warranty”, “warrant”, “guaranty” or “guarantee”.

Warranties of any kind, including relating to:

- the quality of the Software and the SDK,
- the suitability of the Software and the data generated by it, and the SDK, for a specific purpose (e.g., the User’s purposes or compliance with specific legal standards, guidelines, or regulatory requirements),
- specific characteristics of the Software and SDK,
- the Software’s and SDK’s freedom from material and legal defects (including third-party rights),
- uninterrupted usability of the Software and SDK,
- compatibility of the Software and SDK with specific hardware, other software, or operating systems and IT environments,

are hereby expressly excluded to the greatest extent permitted by mandatory applicable law for software and software development kits that are provided free of charge and that are not strictly necessary for the operation of the Devices.

User is obliged to:

- Independently verify the fitness and suitability of the Software and SDK for the User’s intended specific use and application,
- independently verify the results generated with the Software and/or on the basis of the SDK before using such results, in particular before any use for safety-relevant purposes, High Risk Applications (as defined below), testing or acceptance decisions, and/or vis-à-vis third parties,
- not use the Software and software created on the basis of the SDK as the sole safety-critical protective measure in applications that create risks for persons, equipment, the environment, or of fire, explosion, production downtime, or significant property damage (“High-Risk Applications”),
- install safety-related updates immediately, only use supported versions, and refrain from using insecure legacy versions in production or network-exposed environments,
- back up its data regularly and appropriately to the risk involved, and at least prior to installing the Software and/or elements from the SDK and prior to installing updates to the Software and/or elements from the SDK, and
- comply with all obligations and restrictions of use contained in the EULA and the General Terms.

8. Limitation of Liability

Claims by the User arising from the Software, the SDK, and their provision by Optris are excluded as far as legally possible, with the exception of claims arising from:

- willful misconduct or gross negligence on the part of Optris (Section 521 of the German Civil Code (BGB)),
- fraudulent concealment of a defect or error by Optris (Sections 523, 524 of the German Civil Code (BGB)),
- a warranty or guarantee expressly assumed by Optris,
- damages resulting from injury to life, limb, or health, and
- the German Product Liability Act (Produkthaftungsgesetz).

Where Optris is liable based on one of the above exceptions, contributory negligence on the part of the User (in particular, failure to fulfill the User's obligations listed in Section 7 of this EULA) shall be taken into account to limit Optris' liability.

Optris is liable for data loss in accordance with the preceding paragraphs only up to the amount of the costs that would have been necessary for recovery had the User performed proper and regular data backups in accordance with Section 7 of this EULA.

The limitations of liability in this Section 8 also apply in favor of the legal representatives, employees, and agents of Optris.

9. Time Limitation

Claims of the User in connection with the Software and the SDK become time-barred twelve months after the statutory commencement of the limitation period. This does not apply to claims based on injury to life, body or health, fraudulent concealment, any guarantee assumed, and/or grossly negligent or intentional breach of duty; in those cases, the statutory limitation periods apply.

10. Third-Party and Open-Source Components

The Software and the SDK may contain third-party components, in particular open-source components. These are governed by the respective third-party license terms. Optris assumes no liability for third-party components beyond those license terms; Section 8 remains unaffected.

11. Changes to the EULA

Optris may amend this EULA with effect for future versions of the Software and SDK where this is required or objectively justified by legal or regulatory requirements, security reasons, technical developments or the clarification of existing provisions. Amendments shall be made available by publishing the updated EULA on the Optris website.

Before installing or first using a new version of the Software, and prior to every use of the SDK, the User shall review the EULA published on the Optris website. By installing or using the new version of the Software or using the SDK, the User agrees to the version of the EULA published at that time. The EULA applicable to the relevant version of the Software or the

SDK shall be the version published at the time of the Software's installation or first use or the SDK's use, as applicable.

Purely editorial amendments and amendments that do not materially affect the User's legal position may be made with effect for the future at any time. Material amendments shall apply only to Software versions installed or first used after publication of the amendment. Previously installed versions shall remain subject to the EULA applicable to them, unless continued use must be restricted for security reasons or to comply with mandatory law.

12. Governing Law and Jurisdiction; Governing Language Version

This EULA shall be exclusively governed by and construed in accordance with German law with the exception of rules of conflicts of laws or private international law that would result in the application of laws other than the domestic laws of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

The exclusive place of jurisdiction for all disputes arising directly or indirectly from or in connection with the Software or this EULA shall be Optris' main place of business, provided that the User is a merchant, a legal entity under public law, or a special fund under public law. However, Optris is also entitled to bring an action in other permissible courts of competent jurisdiction.

The English language version of this EULA is provided for convenience only and is not legally binding. In case of conflict between the English and German versions, only the German version governs.

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Privacy Policy

For information about the processing of personal data and privacy-related contacts, please consult our Data Privacy Policy.

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