

General conditions for developing and licensing software for use

1. SOME DEFINITIONS

- a) **CAREL:** CAREL Industries S.p.A. and all the companies belonging to CAREL Industries S.p.A. group, i.e. every company that is directly or indirectly controlled by CAREL Industries S.p.A. or that directly or indirectly controls CAREL Industries S.p.A. and every associate company.
- b) **Customer:** a natural or legal person that enters into a Contract (as defined below) with CAREL and accepts these General Conditions (as defined below).
- c) **General Conditions:** these general conditions for developing and licensing software for use.
- d) **Contract:** a contract between CAREL and the Customer for the development of Custom Software, the licence to use it and/or the licence to use Standard Software or Software Tools (as defined below), concluded as stated in Clause 3.
- e) **Type "A" licence:** a licence to use a Software Tool (as defined below).
- f) **Type "B" licence:** a licence to use a Standard Software product (as defined below).
- g) **Type "C" licence:** a licence to use a Custom Software product (as defined below) supplied without the source code, which does not allow the Customer to modify the Software, as stated in Clause 4.
- h) **Type "D" licence:** a licence to use a Custom Software product (as defined below) supplied with all or part of the source code of the Software (as defined below), which allows the Customer to modify the Software, as stated in Clause 4.
- i) **Quote:** an electronic or hard-copy document, email or fax produced by CAREL for developing and licensing Custom Software, based on the Technical Specifications (as defined below) provided by the Customer and CAREL's other terms of service. The Quote states, among other things: (i) the contractual fees; (ii) the timescales for releasing the Software Beta Version (as defined below); (iii) the type of licence; (iv) the payment terms and conditions.
- j) **Order:** the purchase order with which the Customer accepts the Quote for developing and licensing the Custom Software and which the Customer must always send in writing via email, fax or post to CAREL along with a digitally or manually signed copy of the General Conditions.
- k) **Software Programs or Software:** the Software Tools, Standard Software and Custom Software under the Contract.
- l) **Software Tool:** a computer software program for developing and managing application software designed and developed by CAREL, including updates and plug-ins, e.g. pCO manager, VPM, ComTool, Device Creator, 1tool, c.suite, PlantVisorPRO, PlantWatchPRO, BACset, LONset, K-Set, 1tool Touch Editor, RemotePRO, boss, c.web, STone, Spark, Sparkly, Applica Desktop, Replica.
- m) **Standard Software:** an application software program, macroblock, module or plug-in or firmware, BIOS, OS or any other software designed and developed by CAREL and not classifiable as a Software Tool or as Custom Software.
- n) **Custom Software:** an application software program, macroblock, module or plug-in or firmware, BIOS, OS or any other software personalised by CAREL based on the Technical Specifications (as defined below) provided by the Customer in writing.
- o) **Software Beta Version:** a preliminary version of the Custom Software released to the Customer with a limited user licence for the sole purpose of testing and validating the Software, as described in Clause 10. The Software Beta Version is specifically identified with the suffix "B", "BETA", "prototype", "RC" or "Release Candidate" after the software version shown in the information window and in the downloaded file name (e.g. filename_1.1.01B).

p) **Technical Specifications:** a document provided or in any event accepted by the Customer that defines the specifications to which the Custom Software must conform, regarding settings and modes, basic and additional functions, alarm handling, Customer interface, hardware products involved, the number and type of hardware inputs/outputs supported, connectivity with other devices, protocols, systems, etc.

q) **Trial Version:** Software licensed by CAREL for use for a limited duration and/or with limited functionality under Clause 4.7.

2. SUBJECT MATTER OF THE CONTRACT

2.1 The Contract concerns the development of Custom Software based on the Technical Specifications provided by the Customer, the user licence for that Custom Software and/or the user licence for Software Tools or Standard Software. These General Conditions cover the conclusion of the Contract, the development of the Custom Software, and the Software licences.

2.2 The tasks of installing, configuring for use, and testing the Software to ensure that it works correctly are not covered by the Contract. They are done at the exclusive responsibility, risk and expense of the Customer and/or of any subsequent sub-licensees and/or licence assignees, where permitted.

2.3 The Customer acknowledges that: (i) the Software may contain errors and faults; (ii) it is not possible to develop the Software to function without error for all possible and potential uses and applications; (iii) Software updates may introduce new errors not present in earlier versions. A Customer wishing to use the Software therefore acknowledges and accepts that the Software may contain errors and faults. The Customer waives any claim for compensation against CAREL that is in any way related to the Software.

3. MEANS OF CONCLUDING THE CONTRACT

The Contract is concluded in one of the following ways:

a) for licensing Software Tools or Standard Software to the Customer, when: (i) the Software is downloaded from the website or otherwise installed after the Customer has accepted these General Conditions via a "clickwrap" or (ii) the Customer receives the Software on a physical medium after having requested it from CAREL by email, fax or post, attaching a manually or digitally signed copy of these General Conditions to the request;

b) for developing and licensing Custom Software, when CAREL receives an Order that matches the Quote and was sent with a manually or digitally signed copy of these General Conditions.

4. USER LICENCE

4.1 CAREL grants the Customer a licence to use the following types of Software:

- Software Tools - type "A" licence
- Standard Software - type "B" licence
- Custom Software without source code - type "C" licence
- Custom Software with source code - type "D" licence.

4.2 The Software user licences covered by these General Conditions include the rights to (i) install and (ii) use the Software, within the limits of the intended uses of the Software and/or of the CAREL products (the **Products**) for which the Software is intended, under Clause 4.4. All the instructions and technical documentation for installing and using the Software are available from CAREL at the Customer's request.

4.3 Software user licences are granted exclusively within the limits and at the conditions stated in these General Conditions for each type of licence, as set out below.

4.4 The Software has been created to enable the Products to work. The Products are for use in the refrigeration, air-conditioning and humidification sectors and, in any event, only in the market sectors where CAREL Group operates. Purchases of the Products are always governed by the CAREL General Conditions of Sale.

4.5 The Customer will not acquire any right other than those set out in these General Conditions. The Customer must directly inform any sub-licensees and/or assignees of the Software licence, where permitted, about these General Conditions, how they can be obtained, the restrictions stated in them, and the obligation to comply with them in full. The Customer must ensure that any sub-licensees and/or assignees of the Software licence accept these General Conditions.

4.6 To prevent or, in any event, to limit any damage to itself and third parties, the Customer must diligently test and check the operation of the Software in detail before, during and after any important operation (such as installing, updating or configuring the Software). The Customer must keep precise, detailed records of the testing/checking data thus collected, in order to detect or prevent possible Software faults.

4.7 A licence granted to the Customer to use a Trial Version of a Software Tool or of Standard Software will be of type "A" or type "B", respectively, although the licence duration and/or some aspects of its functionality will be limited.

4.8 Software Tools - type "A" licence

a) Unless otherwise agreed, type "A" licences are perpetual, free of charge, non-exclusive, non-transferable and not sub-licensable.

b) The Customer chooses the Software Tool to suit its requirements and the computer on which the Software Tool must be used, based on the information in the technical documentation referred to in Clause 4.2. The Customer therefore has sole responsibility both for determining its own needs and requirements regarding the preselected computer programs and systems and for its own machines, tools, peripherals and IT equipment.

c) The type "A" licence includes the rights under Clause 4.2 and entitles the Customer to make a single copy of the licensed Software Tool to keep in case of faults (the backup copy). The Customer must not remove the trademarks or the copyright or proprietary-rights notices mentioned in Clause 6 from the backup copy. In any event, if the number of installations exceeds the number of licences purchased, the Customer must use a mechanism to ensure that the number of simultaneous users of the Software Tool does not exceed the number of licences purchased.

d) To use the Software Tool, an 'Activation Key' may be needed. This is supplied by CAREL on request and may comprise a file or alphanumeric code.

4.9 Standard Software - type "B" licence

a) Unless otherwise agreed, type "B" licences are perpetual, free of charge, non-exclusive, transferable and sub-licensable, without prejudice to Clause 4.5.

b) The Customer chooses the Standard Software to suit its requirements and the computer on which the Standard Software must be used, based on the information in the technical documentation mentioned in Clause 4.2. The Customer is therefore solely responsible both for determining its own needs and requirements regarding the computer programs and systems and for its own machines, tools, peripherals and IT equipment. At the Customer's request, CAREL may supply the Customer with part or all of the source code for the Standard Software. In that event, without prejudice to the clauses on type "B" licences in these General Conditions, the terms concerning type "D" licences will apply as stated in paragraphs 4.10(b)(ii) and 8.4(e) and in Clauses 5, 6 and 7, where compatible.

4.10 Standard Software - type "C" and "D" licences

- a) Unless otherwise agreed, type "C" and "D" licences are perpetual, for payment, exclusive, transferable and sub-licensable, without prejudice to Clause 4.5.
- b) Unless otherwise agreed, licences for Custom Software are of type "C":
 - i. The type "C" licence includes the rights under Clause 4.2 and entitles the Customer to make an unlimited number of copies of the Software;
 - ii. The type "D" licence includes the rights for type "C" licences and supply of all or part of the Software's source code and entitles the Customer to modify the Software to suit its own requirements. A Customer holding a type "D" licence cannot disclose or transfer the Software source code to third parties without CAREL's prior written permission.

5. LIMITATIONS ON THE RIGHT OF USE

Without CAREL's specific written permission, and unless mandatory legal provisions require otherwise, the Customer is NOT permitted to:

- a) "reverse engineer" the Software, i.e. to work back to obtain the source code and all its constituent elements. This limitation also applies to Software for which the Customer holds a type "D" licence, but only for the parts of the Software for which no source code was provided;
- b) use the source code in another Software Tool or a non-CAREL product (Type "D" licences only).

6. INTELLECTUAL PROPERTY IN THE SOFTWARE

6.1 Unless otherwise agreed in writing with the Customer regarding Custom Software, CAREL exclusively owns all the intellectual-property rights to the licensed and/or developed Software and all the technical documentation (electronic and hard copy) provided to the Customer.

6.2 Where a type "D" licence applies, the Customer exclusively holds the intellectual-property rights in the modifications that it has made to the Custom Software for the innovative content of those modifications only. In any event, the Customer will not acquire any right additional to and/or other than those set out in these General Conditions.

6.3 The Customer acknowledges that CAREL's Software Programs are protected by Italian and international copyright and intellectual-property law. The Customer must not remove CAREL's trademarks or copyright and proprietary-rights notices from any of the copies of the Software Programs, except as stated in Clause 6.2.

6.4 CAREL accepts no liability for any violations of the intellectual-property rights of others committed by the Customer or by any sub-licensees and/or assignees of the Software licence through use of the licensed Software.

7. CONFIDENTIALITY AND SECRECY OBLIGATIONS

Excepting modifications to Custom Software made by a Customer holding a type "D" licence, for the innovative part of the modifications concerned - unless otherwise agreed with CAREL in writing - all the techniques, algorithms and procedures contained in the Software Programs, the associated documentation and the supporting media must be treated as commercial secrets and reserved confidential information owned by CAREL. They must not be used beyond the limits and/or for purposes other than those stated in these General Conditions. On its own behalf and that of its employees, contract staff and consultants, the Customer must take all appropriate and necessary measures to keep the Software Programs, the source code and the associated documentation secret and confidential.

8. WARRANTIES

8.1 General principles

- a) The Software developed and/or licensed free of charge and the Trial Versions of Software are supplied as is; CAREL provides no guarantee whatsoever, express or implicit. Any faults in this Software may be fixed at CAREL's discretion.
- b) Without prejudice to Clause 2.3, if the Software has serious faults that the Customer reports promptly within the timescales stated below for each Software program and within the warranty period, and if CAREL's initial investigations deem that the Software can be repaired, then the Software will be fixed exclusively at CAREL's premises, unless the parties agree otherwise. If it is not possible or economically worthwhile to fix it, then CAREL may replace the Software program free of charge with a new one, and CAREL will then have no further liability to the Customer. For all matters not covered by these General Conditions, the CAREL General Conditions of Sale below will apply. In any event, purchases of CAREL Products and the associated warranties are governed by the CAREL General Conditions of Sale.
- c) CAREL offers no warranty for Software defects resulting from a failure to follow the instructions in the technical documentation in Clause 4.2, if the Software has been tampered with, improperly used, or incorrectly installed, configured, maintained, repaired, modified or altered by the Customer or third parties;
- d) Save as expressly provided by law, the Customer agrees not to seek any remedy not envisaged in these General Conditions for any faults in the Software.

8.2 Software Tools

- a) CAREL warrants that the Software Tools substantially conform to the specifications stated in the associated technical documentation in Clause 4.2.
- b) CAREL offers no express warranty as to the proper functioning of the Software Tools.
- c) The warranty lasts for 2 (two) years from when the Software Tool is downloaded (or otherwise delivered).
- d) If a fault appears in the Software during the warranty period, then CAREL may choose, as an alternative to the arrangement in paragraph 8.1(b), to refund any money paid for the Software user licence.
- e) The Customer must report any faults in the Software to CAREL in writing at most 30 (thirty) days after the date when they were found. Faults must be adequately documented and reproducible.
- f) If a fault is reported within the warranty period for a Software Tool supplied on a physical medium, then, according to the terms and conditions in this Clause 8.2 and unless the parties agree otherwise, the Customer must send the defective Software Tool to its reseller at its own expense. The Customer must send the Software Tool in its original packaging and/or suitably packaged, stating the identification code, the serial number and a detailed description of the fault found. CAREL will accept the material only if received from its direct reseller. Therefore, the Customer must deal directly with the reseller (an authorised distributor or subsidiary). The reseller will collect the Software Tool to be repaired or replaced and will send it to CAREL. CAREL will perform all appropriate checks and/or work and will return the material once the repairs have been made, without prejudice to CAREL's rights under paragraphs 8.1(b) and 8.2(d).

8.3 Standard Software

- a) The Standard Software is supplied "as is"; CAREL and its suppliers offer no warranty whatsoever, express or implicit.
- b) Any faults in the Software may be fixed at CAREL's discretion.

8.4 Custom Software

- a) CAREL warrants that the Custom Software conforms to the Technical Specifications and to the specifications stated in the associated technical documentation in Clause 4.2.
- b) The warranty lasts for 90 (ninety) days from when the Software is downloaded (or otherwise delivered). It applies to the official version of the Software, exclusively if serious faults arise that would have been difficult for CAREL or the Customer to spot during the Testing and Validation Period mentioned in Clause 10.3.
- c) If a fault is found in the Custom Software during the warranty period, then the Customer shall report it promptly to CAREL. CAREL shall then accept the fault report within 5 (five) working days and shall release a correct version of the Custom Software within 15 (fifteen) working days of the report, except where the fault concerns structural components (e.g. a BIOS or HW bug affecting the 1tool application), when a resolution could take longer.
- d) If a fault is reported within the warranty period regarding Custom Software supplied on a physical medium, then, according to the terms and conditions stated in this Clause 8.4 and unless the parties agree otherwise, the Customer must send the Software to CAREL in the original packaging and/or suitably packaged, stating the identification code, the serial number and a detailed description of the fault found. CAREL will perform all appropriate checks and/or work and will return the material once the repairs have been made, without prejudice to CAREL's right under paragraph 8.1(b) to replace the Software free of charge with a new version.
- e) The Customer shall keep an accurate, detailed record of significant details about the Custom Software's operation for the entire warranty period, to monitor and document any faults and to include in any fault reports to enable CAREL to promptly identify and fix the faults in the Custom Software.
- f) Without prejudice to paragraph 8.1(c), the warranty does not apply in the event of:
- i. tampering with, modification of, or improper use of the Custom Software and/or source code for Custom Software with a Type "D" licence;
 - ii. faults due to errors or omissions in the Technical Specifications;
 - iii. faults due to the integration or interaction between the Custom Software or the Product in which the Custom Software is installed and other software programs, applications, systems or products not made or sold by CAREL.
- g) The warranty applies exclusively in favour of the Customer.

9. RESPONSIBILITIES

9.1 The Customer is responsible for checking and ensuring that the Software installed in its units/applications fully meets the requirements and provides the specified performance.

9.2 CAREL is not responsible for faults due to a non-conformity in the hardware and/or the product in which the Software is installed.

9.3 Excepting any liability for wrongful intent and/or serious negligence, CAREL declines any liability on its own behalf and/or that of its suppliers, whether contractual or non-contractual, for faults, errors and malfunctions in the Software. Nor does CAREL accept liability for direct and indirect damage to the Customer or third parties (including loss of information or profit, costs, expenses or lost earnings) caused by those faults, errors and malfunctions.

The Customer agrees not to make any demand, recourse or claim for compensation for damage against CAREL, except in the event of wrongful intent or serious negligence. CAREL's total liability, if any, is limited to reimbursement of the fee actually paid by the Customer for the Software to be developed or licensed.

9.4 The Customer must indemnify CAREL and hold it harmless from any liability, claim for compensation, legal or administrative action, or any other kind of demand from third parties concerning:

- a. use of the Software and/or use and/or modification of the Software source code;
- b. improper use or failure of the Software. The Customer takes full responsibility for the Technical Specifications provided to CAREL and for any error in the Software caused by the Technical Specifications or any error in the Product in which the Software is installed.

9.5 The Customer acknowledges that the Software was not designed or made for use in dangerous environments that require guaranteed performance, such as: applications in nuclear power stations; aircraft flight and communication systems; air-traffic control systems; medical, hospital and lifesaving equipment; armaments or other applications in which any software problems might cause deaths, personal injuries, or serious physical or material damage (collectively, **High-Risk Activities**). CAREL offers no express or implied warranty of suitability for High-Risk Activities. The Customer or its sub-licensees will have sole responsibility for using the Software in High-Risk Activities.

9.6 The Customer acknowledges that: (i) the operation of the Software may be compromised by adverse factors, including power fluctuations, malfunctions in peripherals connected to the hardware, installation errors, malfunctions or faults in the control devices, temporary faults in electronic systems (hardware and/or software), malfunctions or faults in communication devices (faxes, data-communication networks, fixed-line/mobile telephones, relays, etc.), unforeseen incorrect usage, or mistakes by the Customer or by the application designer (adverse factors of this kind will be known as **System Faults**); (ii) any application for which a System Fault could create a risk of damage to property, injury to people or both (including the risk of physical injury and death) must not rely exclusively on electronic monitoring; (iii) to avoid damage, injury or death, the Customer must take reasonable, prudent measures to guard against System Faults, including backup and power-down mechanisms; (iv) all the Customer's systems have been adapted and differ from the systems on which CAREL performs its tests, and the Customer might use the Software in combination with other products in ways not tested or envisaged by CAREL. The Customer therefore takes ultimate responsibility for testing and validating the Software wherever the Software has been incorporated into a system or application, including this system or application's procedures and security.

10. DEVELOPMENT OF CUSTOM SOFTWARE (TYPE "C" AND "D" LICENCES)

10.1 CAREL develops Custom Software to the Technical Specifications and supplies the Customer with the Software Beta Version by the deadline stated in the Quote, by making it available in the dedicated section of the CAREL website. CAREL will record the Customer's download of the Software Beta Version for traceability purposes.

10.2 If the Customer makes a written request for modifications to the Technical Specifications while the Custom Software is being developed, then the deadline stated in the Quote for releasing the Software Beta Version will be extended, as CAREL will notify the Customer from time to time. If, at CAREL's absolute discretion, the requested modifications increase the Custom Software development costs, then the parties will reach a specific agreement about the modifications, to update the contractual fees.

10.3 Unless otherwise stated in the Quote, once CAREL has made available the Software Beta Version, the Customer will have a **Testing and Validation Period** of 30 (thirty) days, in which it must thoroughly test the Custom Software to check that the Software:

- a) complies fully with the Technical Specifications, or in any event that it meets the Customer's requirements;
- b) is free of faults, errors or malfunctions and is specifically fit for the purpose for which the Customer intends to use it.

CAREL will not be liable for any damage reported by the Customer that depends on the Software's functioning or failure to function in the Testing and Validation Period.

10.4 Any errors, faults or malfunctions found during the testing and verification as above must be reported promptly to CAREL. During the Testing and Validation Period, CAREL will provide technical support by telephone/email about the procedures for installing the Custom Software and the basic functions, so that the Customer can report any errors, faults or malfunctions.

10.5 The Customer must keep accurate, detailed records of the results of the tests and checks made in the Testing and Validation Period. The Customer must report them to CAREL along with any fault reports, to enable CAREL to promptly identify and fix the faults in the Custom Software. CAREL must accept the report within 5 (five) working days and must release a fixed version of the Software Beta Version within 15 (fifteen) working days of the fault report. Once the Customer has received the new Software Beta Version, the Customer will have another 30-day (thirty-day) Testing and Validation Period to evaluate only the part of the Software that has been fixed. When the Testing and Validation Period has ended without any fault reports (or any further fault reports) being made, the Custom Software will be considered accepted and validated. If the Quote included an agreed fee for CAREL to fix the faults, then the Customer must pay that fee.

The Customer may always accept the Software as validated before the Testing and Validation Period expires, by writing to CAREL.

In accepting and validating the Custom Software, whether expressly or tacitly, the Customer confirms that it has duly verified that the Custom Software fully complies with the Technical Specifications, is free of faults, errors and malfunctions, and is suitable for its intended use

10.6 After the Software has been validated, CAREL will supply the Customer with the final release version of the Custom Software, by making it available in the dedicated section of the CAREL website. CAREL will record when the Customer downloads the Custom Software, for traceability purposes. The Customer's type "C" or "D" licence, as stated in the Quote, comes into effect when the Customer downloads the Custom Software.

As an alternative to a download, the Software Beta Version and the Custom Software can be supplied in another way, as long as the Customer has already signed these General Conditions.

11. FEES

11.1 The fees that the Customer must pay to CAREL for developing and licensing the Custom Software are stated in the Quote along with the payment methods and terms.

11.2 For any fees and the applicable terms and conditions of payment that the Customer must pay to CAREL for the Tool Software or Standard Software license, they shall apply the terms notified by CAREL to the Customer before the Contract was concluded.

11.3 Where Software programs are contained within Products purchased by CAREL, the fees and the associated payment terms and methods will be subject to the CAREL General Conditions of Sale, which govern the terms and conditions applicable to purchases of the Products.

12. TECHNICAL SUPPORT

12.1 At its own discretion, CAREL may provide the Customer with technical support and assistance in installing the Software and in using its basic features, including troubleshooting any problems but excluding customisation.

12.2 Technical support is provided via telephone and/or email only. The telephone numbers and email addresses to use are stated on the CAREL website.

12.3 If the technical support requires access to the infrastructure in which the Software has been installed, then the Customer must allow CAREL personnel to make the necessary checks on site, to be agreed in writing in advance.

13. ENHANCEMENTS AND UPDATES

Enhancements and updates of the Software version licensed for use will be provided as and when available for an additional cost, when applicable. In any event, the provision of enhancements and updates will not extend the warranty period for the Software licensed for use to the Customer.

14. TERMINATION

14.1 CAREL may end the Contract under and by reason of article 1456 of the Civil Code, without prejudice to CAREL's right to compensation for any damage incurred, if the Customer breaches one of its obligations under the following terms in the General Conditions:

- paragraph 4.10(b)(ii) on the prohibition on communicating and/or transferring the source code to third parties that was provided in full or in part to the Customer;
- Clause 5 on the limitation on the right to use the Software;
- Clause 7 on confidentiality obligations;
- Clauses 10.5, 11.1 and 11.2 on payment of the fees for developing and/or licensing the Software.

14.2 If the Contract ends or is transferred, then the Customer must immediately cease to use the Software and must ensure that third-party users or sub-licensees do likewise. The Customer must also destroy and/or delete the licensed copy and any other copies in its possession, whether modified or not, regardless of the material medium used or the computer or product on which they were installed.

15. APPLICABLE LAW AND COMPETENT COURT

15.1 The Contract and these General Conditions are governed by Italian law. The United Nations Convention on Contracts for the International Sale of Goods, adopted in Vienna on 11 April 1980, does not apply to this Contract.

15.2 In dispensation with any other international conventions or laws, for any disputes that may arise between the parties about these General Conditions and the Contract, the sole competent court will be the Court of Padova, Italy.

16. LANGUAGE

The original text (*) of the General Conditions is written in the Italian language. If it is also translated into English, then in the event of any discrepancy or inconsistency between the Italian and English texts, the Italian text will take precedence.

(*) The Italian text literally reads "These General Conditions are written in the Italian language."

17. MISCELLANEOUS

If any clause in these General Conditions were found to be void or inapplicable, then the validity of the other terms would not be affected, and they would remain applicable and in effect. If an

inapplicable term is amended by a court ruling and thus becomes applicable, then that term will be reformulated accordingly.

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