

Selectron Systems AG, CH-3250 Lyss  
(hereinafter referred to as: Selectron)

**General Standard Terms and Conditions (GTC Software MAS) for Selectron® MAS (modular automation system) software, hereinafter referred to as the 'MAS Software'.**

**1. Scope**

- 1.1 These General Standard Terms and Conditions (hereinafter referred to as the 'Terms and Conditions') shall apply to the use of the MAS Software which the legitimate purchaser has purchased from Selectron, from one of its authorised dealers or from a legitimate former user. The Terms and Conditions shall also regulate the terms and conditions for the direct purchase of the MAS Software from Selectron. This constitutes an objection to the legitimate purchaser's standard terms and conditions and conditions of purchase, which shall not form part of the contract.
- 1.2 After MAS Software has been purchased from Selectron for the first time, these Terms and Conditions shall also apply to all further purchases of MAS Software from Selectron by the legitimate purchaser, even if these Terms and Conditions are not separately agreed again.
- 1.3 Any use of the MAS Software other than use under these Terms and Conditions shall be prohibited. Selectron reserves the right to take any legal action to prohibit the use of the MAS Software in the event of failure to comply with these Terms and Conditions, in particular if unauthorised copies are made, used and/or distributed, and to demand compensation for the loss incurred by Selectron, including lost user fees.

**2. Product supplied**

- 2.1 MAS Software comprises the Selectron development environment Symphony and similar software (tools such as Concerto, Maestro etc.) for programming vehicle control technology software as well as the vehicle control technology software developed by Selectron itself by means of the aforementioned development environment. MAS Software also comprises the software components which have been pre-installed by Selectron on the hardware modules supplied by it, one of its authorised dealers or a legitimate prior user (hereinafter referred to as "pre-installed MAS Software"), such as in particular the Modular Operating System (hereinafter referred to as "MOS") as well as bootloaders, bootware and other firmware. MAS Software does not comprise software created by the legitimate purchaser himself by means of the development environment supplied by Selectron, consisting of project files (generated C-source code, object and binary code) and PC executables for downloading executable code to a controller, in particular the vehicle control technology software created by the legitimate purchaser himself (hereinafter referred to collectively as "Purchaser Software").
- 2.2 An original copy of the MAS Software shall comprise either the original data storage medium and the programs stored thereon in object code, together with any associated documentation (system manual) in electronic form, or the copy of the programs in object code which the legitimate purchaser has made and stored on his computer when downloading from the Selectron website, together with any associated electronic documentation. Some parts of the MAS Software, including the MOS, are also supplied pre-installed on the hardware supplied by Selectron, one of its authorised dealers or a legitimate prior user. In addition, Selectron reserves the right to supply in source code. Also when supplying source code, the legitimate purchaser shall have no further rights in the MAS Software other than those granted him under these Terms and Conditions.
- 2.3 Unless expressly agreed otherwise, the MAS Software (programs and/or documentation) shall be supplied by Selectron in the latest release available at the time of supply.
- 2.4 The documentation shall also be obtainable in paper form, in which case the provisions of these Terms and Conditions shall apply as appropriate.

**3. Rights of use**

- 3.1 The legitimate purchaser shall acquire a non-exclusive right of unlimited duration to use the MAS Software acquired by him exclusively in connection with Selectron® MAS. No other use shall be permitted.
- 3.2 The legitimate purchaser may use only the version of the purchased MAS Software corresponding to the licence number of the specific original copy of the MAS Software, even if other versions of the MAS Software are stored on any data storage medium purchased.  
For licences for one workstation, the MAS Software may be used only on one computer at one workstation at a time; subject to this proviso, the legitimate purchaser may install the MAS Software on more than one computer. For licences which are defined as "Site Licences", the MAS Software may be installed and used at the same time on all the computers of all the employees of the legitimate purchaser at the agreed site. In addition, employees of the legitimate purchaser who are ordinarily employed at the site concerned are permitted to use the MAS Software on mobile workstations at other sites when required as part of service calls for customers of the legitimate purchaser supported from the site concerned.  
The legitimate purchaser's attention is hereby drawn to the fact that the MAS Software is suitable for local installation on one computer workstation and not for installation for access via a network.  
The documentation may be printed out for internal purposes, and extracts thereof may be copied in paper form. In addition, the documentation may be stored on the network of the legitimate purchaser for internal purposes.  
In the case of pre-installed MAS Software, the software may only be used on the respective hardware.

**4. Licence number**

- 4.1 A valid licence number for each part of the MAS Software purchased (e.g. modules and/or libraries) shall be required for the legitimate installation and use of the Software. This number shall be notified to the legitimate purchaser either together with the original data storage medium or through a written or electronic communication from Selectron. The legitimate purchaser does not require a licence number to use pre-installed MAS Software.

## **5. Copyright and other rights in the Software**

- 5.1 A legitimate purchaser shall acquire title to any data storage medium supplied to him by Selectron. Selectron alone shall have the copyright and all other intellectual property rights and rights against unfair exploitation in the MAS Software, in particular the exclusive right to permanent or temporary, whole or partial reproduction with any means and in any form, the exclusive right to modify or adapt the MAS Software, and the exclusive distribution right, including the right to grant access via networks such as the Internet, the right to lease and the right to rent out, unless expressly stated otherwise in these Terms and Conditions. This shall not include those copyrights and other rights in connection with the MAS Software belonging to third parties; in this connection Selectron guarantees that it has the appropriate rights of use and distribution rights at its disposal (third-party licences).
- 5.2 The legitimate purchaser shall have only those rights in the MAS Software granted to him in these Terms and Conditions, which shall also include the right to correct errors and the right to make a back-up and archive copy. Neither the licence number nor any copyright symbols, trade marks, trade and other business names pertaining to Selectron or third parties and appearing on the packaging, on the data storage medium, in the programs, in the documentation or in any other companion material may be altered, deleted or removed. This shall also apply to copies of the programs or the documentation.
- 5.3 The provisions of this Clause 5 shall also apply to parts of the MAS Software, including the parts which are subject to the copyrights and other rights of third parties (third-party licences). The above-mentioned provisions shall not, however, apply to the free GNU compiler software incorporated in the MAS Software. This is a product of the Free Software Foundation which is subject to the provisions of the GNU Library General Public License or the GNU Lesser General Public License.
- 5.4 In order to avoid misunderstandings, at this point it is explicitly stated that the legitimate purchaser is exclusively entitled to the copyright and all other intangible and neighbouring rights to the Purchaser Software.

## **6. Passing on the Software and use by third parties**

- 6.1 A legitimate purchaser shall be entitled to pass original copies of the MAS Software that he has purchased, with the respective licence numbers, on to a third party for use within the scope defined in these Terms and Conditions, providing that he ceases his own use of the relevant MAS Software and immediately and irretrievably deletes any complete or partial copies thereof, and that he instructs the third party to comply with these Terms and Conditions and informs Selectron or one of its authorised dealers that these original copies have been passed on and to whom they have been passed.

In the case of pre-installed MAS Software, the legitimate purchaser and any subsequent purchaser of the hardware concerned have a non-exclusive right of unlimited duration to use the pre-installed MAS Software exclusively for the operation of the hardware concerned (cf. Clause 3.2 last sentence).

- 6.2 If the legitimate purchaser is Selectron's system partner or system integrator, he shall, on the basis of a separate agreement to be concluded with Selectron in advance, be entitled to use the MAS Software purchased by him for third-party purposes or to allow third parties access to its use subject to these Terms and Conditions while simultaneously continuing to use it for his own purposes. In other instances use of the MAS Software for or by third parties shall not be permitted.
- 6.3 In order to avoid misunderstandings, at this point it is explicitly stated that the Purchaser Software may be used, exploited and passed on by the legitimate purchaser to an unlimited extent. The project files created using the MAS Software (C source code, object and binary code) and PC executables for downloading executable code into a control system may be passed on by the legitimate purchaser of the MAS Software or, in the instance referred to in Clause 6.2 above, through the relevant third parties as 'redistributable files' to the extent necessary for use of the Purchaser Software for Selectron® MAS which has been created using the MAS Software.

## **7. Decompiling**

- 7.1 The MAS Software may be decompiled only if (i) this is indispensable to achieve interoperability between the MAS Software and independently created software, (ii) despite a written request from the legitimate purchaser, Selectron has not within a reasonable time provided the information necessary to achieve interoperability, and (iii) decompiling is confined to parts of the MAS Software necessary for the purpose of interoperability.
- 7.2 The right granted under Clause 7.1 shall not permit the use of the information obtained by the application thereof for purposes other than to achieve interoperability, nor may such information be passed on to third parties or be used for the development, production or marketing of software substantially similar in its form of expression to the MAS Software, or for any other activities that would infringe Selectron's exclusive right.

## **8. New releases**

- 8.1 From time to time Selectron and its authorised dealers offer new releases of the MAS Software or parts thereof (e.g. modules or libraries). Where Selectron offers original copies of the new release for a reduced, special charge, purchase thereof shall be permitted only if the legitimate purchaser stops using the relevant MAS Software copy previously in use.

## **9. Maintenance and support**

- 9.1 Selectron shall provide maintenance and support services for the MAS Software to the legitimate purchaser of the MAS Software upon request and by agreement as the case arises at the rates shown in the price lists valid at the time. The right is reserved to agree a separate maintenance or support contract.

## **10. Prices and terms of payment**

- 10.1 The licence fees for the purchase of the MAS Software from Selectron shall be determined according to the prices stated in the particular confirmation of order given by Selectron or, where a purchase is made by downloading, according to the official price lists valid at the time. Price lists may be altered with immediate effect without notice except where orders are already in progress. The licence fees shall not include any services such as installation, start-up, training or user support. If Selectron provides services, it shall be entitled to bill these according to the cost at the rates shown in the price lists valid at the time, unless agreed otherwise in

any service contract made separately. Unless otherwise stated, all fees, rates and prices shall be expressed in Swiss francs exclusive of value added tax and excluding incidental expenses such as fiscal charges, customs duties, fees of any kind, transportation, express surcharges, packaging, insurance, or expenses of any kind. They shall be due for payment strictly net within thirty (30) days of billing.

- 10.2 If the legitimate purchaser does not meet payment dates, he shall automatically pay interest on arrears at 1% per month from the due date. The legitimate purchaser may offset against counterclaims, even if they derive from the same contract or its rescission, only with Selectron's consent in writing or if a final court judgment has been handed down.

#### **11. Delivery**

- 11.1 Delivery dates shall be binding on Selectron only if it has expressly confirmed them in writing to the legitimate purchaser. In any event Selectron cannot be held responsible for impediments to delivery that are beyond its control, for example substantial breakdowns, industrial disputes, official measures or *force majeure*. If Selectron is unable to meet a firm delivery date for reasons within its control, the legitimate purchaser must allow Selectron two reasonable grace periods, but each of at least 10 working days. If Selectron also fails to deliver by the end of the second grace period, the legitimate purchaser shall be entitled to cancel the contract. Reminders must be given and grace periods fixed in writing.

#### **12. Infringement of intellectual property rights**

- 12.1 Selectron will repudiate third-party claims in respect of the infringement of intellectual property rights on the basis of the legitimate use of the MAS Software at its own expense (including the payment of damages) and will avert any such risk if the legitimate purchaser informs Selectron of such claims immediately in writing and leaves the conduct of any legal proceedings and other measures for settlement of the dispute in or out of court exclusively to Selectron, and if the legitimate user has not himself predominantly caused, or is predominantly to blame for, the third-party claim or a final judgment against him.
- 12.2 If an action is filed for the infringement of intellectual property rights, Selectron shall have the option either of obtaining for the legitimate purchaser the right to continued use of the programs, or of replacing these by equivalent programs, or of annulling the contract and refunding the price paid.

#### **13. Warranty**

- 13.1 Selectron's warranty shall apply only vis-à-vis a legitimate purchaser who has purchased the MAS Software directly from Selectron. It shall cover repeatable defects, satisfactorily documented by the legitimate purchaser, in the unadapted MAS Software purchased from Selectron, i.e. deviations from the program descriptions in the associated documentation, and only if the defects result in considerable impairment of the use intended and specified in the contract. Selectron shall take no responsibility for features, functionalities, potential applications or other properties of the MAS Software that are not described in the documentation.
- 13.2 Selectron shall endeavour to remedy a defect by supplying a corrected version (update) or a workaround solution or instructions on how to avoid the consequences of the defect. If a defect cannot be eliminated within two reasonable grace periods set in writing by the legitimate purchaser, but each of at least 20 working days, and if the legitimate purchaser purchased the MAS Software directly from Selectron, he shall be entitled to a price reduction or, in the case of serious defects, to annulment of the contract and a refund of the price paid.
- 13.3 The warranty period shall be two months from the date of billing. Neither the correction of defects nor the provision of replacements shall have the effect of extending the warranty period. No further warranty claims shall be permitted, in particular in connection with defects and malfunctions beyond Selectron's control, for example *force majeure*, improper installation, intervention by the legitimate purchaser or third parties, unsuitable operating conditions or environmental factors.

#### **14. Liability**

- 14.1 Selectron shall be liable for any proven direct loss suffered by the legitimate purchaser, on whatsoever legal basis (e.g. contract, tort, products liability), where admissible by law up to a maximum sum equivalent to 20% of the price paid for the programs giving rise to the loss or otherwise associated with the loss-entailing occurrence. Compensation shall be ruled out, where admissible by law, for loss consequent upon a defect and other indirect losses, such as loss of profits, third-party claims against the legitimate purchaser or loss of data.
- 14.2 Payment of compensation for losses caused wilfully and knowingly by Selectron's executive officers or through their gross negligence shall be reserved.

#### **15. Use of MAS Software for the purposes of testing and monitoring (testing and monitoring versions)**

- 15.1 The right to use testing versions of the MAS Software is restricted to testing and expires automatically 30 days after installation of the software.
- 15.2 The right to use monitoring versions of the MAS Software is restricted to monitoring.
- 15.3 Selectron excludes any warranty and, insofar as legally permissible, any liability for testing and monitoring versions.

#### **16. Applicable law and legal venue**

- 16.1 **These Terms and Conditions and the entire legal relationship between the legitimate purchaser and Selectron shall be subject to Swiss material law, namely the Swiss Code of Obligations, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the Hague Convention on the law applicable to international sales of goods.**
- 16.2 **The courts at Selectron's registered office at the time, currently Lyss (canton of Berne), shall have exclusive jurisdiction for all disputes arising from or in connection with the purchase and use of the MAS Software.**