

METROHM End User License Agreement (EULA)

Important Notice

Read this EULA carefully before installing or using the SOFTWARE. By installing, copying and/or using the SOFTWARE you acknowledge to have read and understood the EULA as well as the third party licenses and additional terms set forth in the ReadMe-Textfile and to accept all these terms. If you do not accept these terms, do not use this SOFTWARE.

1. Licensed Software

Metrohm provides to customer of a Metrohm analysis device software or software packages with different components ("SOFTWARE") together with a software dongle or/and license key (herein after "license key") to activate the according components. "Licensed SOFTWARE" shall comprise only those software components that are activated by the license key.

2. License granted

Metrohm grants to customer the non-exclusive and non-transferable license to use the licensed SOFTWARE in connection with Metrohm analysis devices in object code and for internal use only.

3. Long Term Support

Customer qualifies for long term support (LTS) if he has installed a long term support version of OMNIS (stated in the release notes of the respective version) and additionally has a valid "Software License Compliance/Regulation Stand-Alone" (6.06004.010) or "Software License Compliance/Regulation Client/Server" (6.06004.011) installed on the system for which support is claimed. LTS includes the support in case of software defects caused by Metrohm and having a serious adverse effect on the operation, functionality, or performance of the SOFTWARE. Long term Support of a LTS version is limited to five years after the release of the respective LTS base version. A version is qualified as LTS base version by the release notes. The release date is defined by the date of the release notes of the respective version.

4. Restrictions

Customer may not cause or permit reverse engineering, disassembly, decompilation or alteration of the SOFTWARE, remove any product identification, copyright notices or other notices or proprietary restrictions from the SOFTWARE or copy the documentation.

Customer may not distribute, sublicense, rent, lease, sell or export the SOFTWARE and acknowledge that the SOFTWARE is subject to export restrictions of various countries such as the export and re-export controls under the U.S. Export Administration Regulations or similar regulations of the U.S. or any other country. Customer agrees to comply with all applicable laws, including all the applicable export restrictions and regulations.

5. Reserved Rights

Metrohm is the owner of the SOFTWARE and its source code and reserves all rights not expressly granted to customer in this EULA. The SOFTWARE, including the licensed SOFTWARE, is protected by copyright and other intellectual property laws and treaties. The SOFTWARE is licensed not sold.

6. Consent to use Data

Customer agrees that Metrohm may collect and use technical data and related information in order to facilitate the provision of software updates, product support and other services related to the SOFTWARE and the analysis devices.

7. Limited Warranties

Metrohm warrants that the Licensed SOFTWARE will perform substantially for the use with the Metrohm analysis device and will as exclusive remedy for any breach of this limited warranty at its sole discretion repair or replace this SOFTWARE. The SOFTWARE is supplied "as is" and Metrohm disclaims any further warranties, either express or implied, including, but not limited to the implied warranties of merchantability, title, non-infringement and fitness for a particular Purpose.

8. Third Party Software

The SOFTWARE may include third party software components or software services which are provided under separate license terms as described and set forth in the ReadMe-Textfile. These third party software programs are governed by their own license terms which may include open source or free software licenses. Nothing in this EULA limits the rights or grants rights that supersede the terms of any such third party software.

9. Indemnification for Third Party Claims

Metrohm shall defend, indemnify, and hold harmless Customer, its Affiliates and their officers, directors, agents, employees, and other authorized users from and against any liability, claim, action, loss, damage, or expense (including court costs and reasonable attorneys' fees) arising out of, or relating to, any claim that the Licensed Software, or any use of the Licensed Software or Documentation in accordance with this Agreement, infringes or misappropriates a third party's intellectual property rights. Customer agrees to notify Metrohm at such time as it is apprised of any third-party claim and agrees to cooperate in a reasonable manner with Metrohm with respect to the defense and disposition of such claim.

10. Limitations

Metrohm is in no event liable for any damages whatsoever, including, without limitation third party and consequential damages, damages for loss of business profits, business interruption, loss of data or loss of use, even if Metrohm is advised of the possibility of such damages. The limitation shall not apply, if and to the extent, Metrohm's liability is mandatory under the applicable law or based on art. 9, above.

11. Termination

This EULA is effective from the first date the SOFTWARE is installed copied or used and the license may be terminated at any time by deleting or destroying the SOFTWARE. Metrohm may, without prejudice to any other rights, terminate this EULA at any time, if customer fails to comply with the terms and conditions of this EULA.

12. Miscellaneous

Customer may not transfer any rights under this EULA and agrees to communicate all terms and restrictions to all persons who have access to the SOFTWARE. If any provision of this EULA is held invalid, all other provisions shall remain valid and shall be enforced to the full extent allowable under applicable law. The failure to enforce any right resulting from the breach of any provision of this EULA will not be deemed a waiver of any right hereunder.

13. Applicable Law and Jurisdiction

This EULA shall be governed and construed in accordance with the internal, substantive laws of Switzerland, to the exclusion of any choice or conflict of laws rule or provision that would result in the application of the substantive law of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any dispute arising out of or in connection with this EULA shall be subject to the exclusive jurisdiction of the ordinary courts at the place of business of Metrohm. Notwithstanding the foregoing, Metrohm retains the right to bring legal action against customer before any other competent court or the courts at the place of business of the defendant.