

General Terms and Conditions

Software SmartRain

1. SCOPE OF APPLICATION

1.1. The present General Terms and Conditions shall apply to the provision and to the use of the software SmartRain developed by Röhren- und Pumpenwerk Bauer GmbH (hereinafter "Bauer") through the contracting party (hereinafter "Customer"). The General Terms and Conditions are part of the licence agreement of the software SmartRain. For the hardware purchased with the software SmartRain, the General Terms and Conditions of Bauer (www.bauer-at.com) shall apply.

1.2 Terms and conditions differing from the General Terms and Conditions shall not apply unless they have been agreed in writing between Bauer and the Customer in the licence agreement.

2. PREREQUISITES FOR THE USE OF SOFTWARE SMARTRAIN

Technical prerequisites for the use of software SmartRain:

- Internet enabled PC
- Internet Explorer, Mozilla Firefox, Google Chrome or Safari / in their current version
- JavaScript activated
- Session cookies enabled
- Smartphone, iPhone or Android, each with current version of operating system, mobile Internet connection and GPS function

3. SCOPE OF SUPPLY

3.1. Within the scope of the licence agreement concluded with the Customer as well as within the below conditions, Bauer shall provide to the Customer the right to use the software SmartRain according to the licence agreement under the prevailing terms of payment and prices of long-distance data transmission. This right of use is non-exclusive, it is limited to the duration of contract and it is not transferrable to a third party. The Customer shall be entitled to use the software SmartRain for his professional purposes, that is, for the electronic administration and operation of irrigation plants.

3.2. It is pointed out that the software SmartRain, its form and content are protected by copyright. Its use beyond the use stipulated explicitly in the present General Terms and Conditions and/or in the licence agreement is not allowed without the explicit written approval of Bauer.

3.3. Bauer reserves the right to continually adapt the software SmartRain according to technical and legal conditions.

3.4 In principle the software SmartRain is made available to the Customer around the clock (7x24 hrs). Systematic maintenance- and update jobs may restrict the availability. A helpdesk is available to the Customer which can be reached under the phone number +43-3142-200-370 or by e-mail under info@bauer-smartrain.com on workdays from Monday to Friday from 08:00 to 15:00 hrs (CET). The helpdesk is responsible for answering questions concerning the regular operation and for error messages.

4. CONCLUSION OF CONTRACT

The contract between Bauer and the Customer shall be concluded by the written acceptance of the licence agreement through the Customer (by fax, scanned contract by e-mail or letter). Thereafter the Customer shall be enabled for the software SmartRain. The Customer shall be able to use the software SmartRain as long as he has got a valid licence agreement (see item 1.1).

5. CUSTOMER'S OBLIGATIONS

5.1. The Customer shall inform Bauer about any modifications of his data, especially of the e-mail address and the contact address. Until receipt of such a notice, every transmission to an e-mail or physical address currently known to Bauer shall be considered to have arrived at the Customer.

5.2 The software SmartRain is the exclusive intellectual property of Bauer. The Customer shall undertake to omit everything that would allow him or a third party to reproduce the software SmartRain, the software's configuration or visualization of individual database contents (layout/design). This obligation shall continue to apply even after the termination of the contract for the use of the software SmartRain.

6. CHARGES / FEES

6.1. The Customer shall have to pay the charges for the use of the software SmartRain stipulated in the licence agreement. The charges for the use of software SmartRain are due every year in advance.

6.2 In case of delayed payment, the Customer shall be charged default interests in the amount of 12% p.a. The Customer undertakes to pay to Bauer the costs for reminders arisen due to delayed payment.

6.3 In case the Customer did not meet his obligations to pay outstanding amounts despite of setting a period of grace of 2 weeks, Bauer shall be entitled to block the Customer's access. The Customer's contractual obligations remain unaffected thereof. Blocking is to be repealed when the reasons for blocking are no longer given and the Customer has paid to Bauer any costs of reminders and default interests due (see item 6.2).

7. WARRANTY AND RESPONSIBILITY

7.1. Bauer has developed the software SmartRain providing it utmost diligence, reliability and availability. However Bauer does not assume any responsibility nor warranty for the correctness of its contents (especially of the calculation methods), for the completeness of the software SmartRain nor for an uninterrupted access to the software SmartRain, for being able to establish always the connections requested nor does Bauer guarantee that all data memorized are saved under all circumstances. Bauer is not responsible for any damages arising to the Customer due to troubles occurring in the software SmartRain nor for any interruptions of transmission which are not under the control of Bauer as, for instance, the failure of an Internet connection.

7.2 Any responsibility of Bauer is excluded unless the damage has been caused by deliberate intention or by particularly gross negligence. Claims for damages of the Customer, irrespective of legal grounds, in particular claims arising from negligence in contracting, tort, inability or impossibility of performance as well as liability for consequential damages and damages arising from consultancy regarding the use of the software SmartRain or damages arising from software program errors, furthermore damages due to the use or the inability of use of the software program, are excluded, insofar as liability exclusions are authorised. This liability exclusion shall also apply without exception for operational disruptions, loss of data and/or information, loss of profit, loss of business information and for other financial loss. In any case Bauer's liability is limited to three times the amount the Customer has paid for the use of the software SmartRain in accordance with the licence agreement for the year the damage has occurred.

8. DATA PROTECTION, DATA SECURITY, STORAGE AND DELETION OF DATA, CONFIDENTIALITY

8.1. Within the use of the software SmartRain, Bauer is saving and processing both personal data of the Customer (in particular first name, surname, address, date of birth, profession, nationality, phone number, e-mail address, fax number, company's register number, commercial register number) and all data entered by the Customer during the use of the software SmartRain.

8.2 Bauer may involve also other companies in data processing without the Customer's (the principal's) consent. The Customer notes that Bauer employs also other companies for data processing and for making available the application.

8.3 After termination of the contract concerning the use of software SmartRain, Bauer shall delete within a reasonable period of time all data of the Customer. Master Customer data as well as traffic data will be deleted six months after termination of contract at the latest, content data (documents) will be deleted four weeks after termination of contract at the latest.

8.4 The access to data processed and transmitted through the software SmartRain is possible only for technical system administrators at Bauer.

8.5 If the Customer transmitted personal data via the software SmartRain, he shall assume responsibility thereof in accordance with the Code for the Protection of Personal Data. For data processing with the software SmartRain, the Customer is considered as principal in compliance with the Code for the Protection of Personal Data. It is pointed out that there may be an obligation to register and the obligation of prior checking according to the Code for the Protection of Personal Data. If necessary the Customer will make the registration.

9. DURATION OF CONTRACT / CANCELLATION

9.1. The duration of contract of the licence agreement is basically one year and it can be cancelled in writing with a 3-month cancellation period at the end of a year. If the contract was not cancelled or if it was not cancelled in due time, the licence agreement will be prolonged by another year.

9.2 Bauer shall be entitled to cancel the contract without cancellation period with immediate effect for important reasons. Such important reasons are in particular

- a. Customer's violation of basic contractual obligations;
- b. Customer's delayed payment despite of giving a grace period of 2 weeks to settle open payments;
- c. When Bauer stops the operation and sale of the software SmartRain.

9.3 If Bauer violated important contractual obligations, the Customer shall be entitled to cancel the contract without observing a notice period with immediate effect for serious reasons.

10. AMENDMENTS

10.1. Amendments and supplements to the individual licence agreement concluded with Bauer are always possible in writing by mutual agreement.

10.2 In addition to a written agreement, the present General Terms and Conditions can be amended as follows:

Bauer shall inform the Customers of the software SmartRain about any amendments of the General Terms and Conditions on its website www.bauer-at.com or in other form, for instance, by e-mail or by letter. The Customer shall be able to demand a negotiation of these amendments within 2 weeks. In the contrary case, the amendments shall be considered agreed. If no result was achieved in the negotiations about the amendment of the present General Terms and Conditions within a reasonable period, Bauer shall decide whether the old General Terms and Conditions remain valid unchanged or if Bauer cancels the contract regarding the use of the software SmartRain with the Customer.

11. MISCELLANEOUS

11.1. The Customer shall be entitled to offset Bauer's claims with his own claims only when Bauer has approved explicitly the Customer's claims in writing or when these claims have been established as legally effective by a national court.

11.2 The contract shall be governed by Austrian law, excluding all national and international conflict of law provisions (in particular Act on International Private Law and Rome I Regulation).

11.3 Court of jurisdiction is Graz. The solely place of jurisdiction for all disputes arising from the contract between Bauer and the Customer shall be the competent court for the headquarters of Bauer.

11.4 Should any provision of the present General Terms and Conditions be or become invalid and/or incomplete, any provision shall be replaced by the provision which approximates closest in terms of economic intent to the invalid provision. Whenever a provision becomes invalid or incomplete, this shall not affect the validity of the remaining provisions.

11.5 The Customer agrees to be informed occasionally about products of the Bauer Group, in particular by fax, e-mail or phone, and that the necessary processing steps are made. This approval can be revoked at any time by e-mail to bauer@bauer-at.com.