

End User License Agreement for Mira Applications ("EULA")

1. Scope and functions

1.1 This EULA provides the terms and conditions under which CLADE GmbH, Schelztorstrasse 54, 73728 Esslingen am Neckar (hereinafter „CLADE“) licenses its Mira Applications (hereinafter referred to as „Applications“) to the customer (hereinafter referred to as „Customer“) against remuneration for a limited period of time. CLADE’s Mira device consists of the Mira Analyzer, the underlying Aqua Spec Technology (together hereinafter „Hardware“) and the software running on the Hardware (hereinafter „Firmware“) (both the Hardware and Software hereinafter “Analyzer”).

1.2 Applications gives the Customer certain options to analyse samples after/while measuring them via the Analyzer. By accepting this EULA when downloading or using the Application, the Customer agrees to the terms and conditions of this EULA.

1.3 With the purchase of an Application, the customer will also receive an Application manual consisting of instructions and specifications about the use of the Application. Use of the Application outside the scope of the Application manual will void the warranty for the Analyzer and the Application, and CLADEs liability will be excluded.

2. License

2.1 Against full and unconditional payment of the contractual remuneration, CLADE grants the Customer a worldwide, yet limited, that is to say non-exclusive, non-transferable and non-sublicensable right to use the Application on one Customer hardware device as defined in the Application for the term of the contractual relationship between CLADE and the Customer and exclusively for the business purposes of the Customer.

2.2 The Customer is not entitled to rent out, lease or sublicense the Application and/or to copy, distribute, sell and/or make the Application available to third parties. Furthermore, the Customer is not entitled to reverse-engineer or reverse-translate the Application or to remove parts.

2.3 The Customer is not entitled to remove identifiers, trademarks and/or copyright notices from the Application, make changes to or manipulate the Application or request the source code to the underlying software.

2.4 The mandatory provisions of §§ 69 a ff. UrhG (German Act on Copyright and Related Rights) remain unaffected.

2.5 When using the Application, the Customer undertakes not to violate applicable law and not to infringe third party rights.

2.6 Unless expressly provided in this Section 2, all industrial property rights and copyrights of the Application, its contents and spectra database entries as well as all associated rights of use in and to the Application fully lie and remain with CLADE.

3. Modifications

3.1 CLADE reserves the right to make changes to the Application and/or to provide updates and upgrades (together hereinafter referred to as “Modifications”), but is not obliged to do so. Applications already delivered shall not be updated without the customers prior consent. CLADE will inform the customer of available updates. Updates include, but are not limited to, performance updates (applications to improve the performance of the Analyzer), and mandatory updates (applications providing security updates or bug fixes for the Analyzer). CLADE shall inform the Customer of the type of update available, and the Customer has the option to accept or decline the update. The performance update might be subject to an additional fee. Should Customer decline a mandatory update, the Application and Analyzer warranties are no longer valid, and CLADEs liability is excluded.

3.2 With regard to Modifications, all other provisions of this EULA apply correspondingly.

4. Limited Warranty

4.1 CLADE provides its Application as is. Statutory warranty provisions relating to the sale of goods do not apply.

4.2 All liability of CLADE for defects in accordance with § 536 a Abs. 1 BGB (German Civil Code) is fully excluded. All mandatory liability as stated in Section 5 remains unaffected hereby.

4.3 In case of errors or bugs in the Application, CLADE will seek to provide bug fixes or workarounds in due course and remedy such errors or bugs in a mandatory update or the next version of the Application.

4.4 Minor errors of the Application do not affect the performance of CLADE under this EULA if the overall functionality of the Analyzer and the Application are not impeded in any way.

4.5 CLADE does not assume any warranty for the accuracy and/or correctness of measurement results obtained by Customer through the use of the Application. Likewise, CLADE does not assume any warranty for uninterrupted production to the degree it is based on the use of the Application.

4.6 CLADE's warranties do not apply to any defects resulting from misuse, neglect, or accident on the part of the Customer, including without limitation: use of the Application in violation of the provisions of this EULA; installation of the Application on hardware, or use thereof in combination with products and/or software not supplied or authorized by CLADE; and modification of the Application not authorized by CLADE.

5. Liability

5.1 CLADE shall be liable without limitation for intentional wrongdoing and gross negligence as well as in case of injury to life, body or health.

5.2 With regard to ordinary negligence, CLADE shall only be liable in case of violation of essential contractual obligations. Essential contractual obligations are obligations the fulfilment of which is essential for the proper performance of the agreement and the observance of which the contractual partner may rely on. In these cases, CLADE's liability is limited to any direct, contract-typical and foreseeable damages and CLADE is not liable for loss of data, inaccuracy and/or incorrectness of measurement results, data network failures, loss of production and use, loss of turnover, loss of profit, loss of savings and/or financial loss due to claims by third parties in these cases.

5.3 The limitations or exclusions of liability pursuant to Section 5.2 shall not apply in case of statutory strict liability (e.g. under the German Product Liability Act) and/or liability arising from a strict guarantee.

5.4 CLADE shall not be liable for direct and/or indirect damages to the degree the Customer's use of the Application violates this EULA.

6. Third Party Rights

6.1 In case a third party asserts claims against the Customer in connection with usage of the Application, CLADE shall indemnify the Customer against such claims.

6.2 CLADE's indemnification obligation pursuant to Section 6.1 does not apply to the degree the Customer's usage of the Application violates this EULA and/or in case the Customer knowingly or negligently violates applicable law or the rights of third parties.

6.3 CLADE's indemnification obligation pursuant to Section 6.1 requires that the Customer immediately informs CLADE of the claims raised by a third party, leaves the defense of rights to CLADE depending on CLADE's decision and supports CLADE to a reasonable extent free of charge.

7. Miscellaneous

7.1 Upon termination of the contractual relationship between CLADE and the Customer, the Customer is obligated to immediately stop using the Application and delete it from its hardware. CLADE may block the access to the Application correspondingly.

7.1 Amendments and supplements to this EULA shall be made in writing. This shall also apply to any waiver of this written form clause.

7.3 Should a provision of this EULA be or become invalid, the validity of the remaining provisions shall remain unaffected.

7.4 This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of conflict of laws' provisions.

7.5 To the degree permitted by applicable law, the exclusive place of jurisdiction shall be Stuttgart.