

## **[123] Data usage rights and data access**

### **123.1**

The provisions in this clause [123] shall apply to product data and related service data within the meaning of Regulation (EU) 2023/2854 ("Data Act" / "DA") in relation to the connected products and the related services including software provided to the customer, that are the subject matter of the contract between them ("DA-Data"). The purpose of the following provisions is to ensure compliance with the requirements of the DA and to define the conditions under which Instrument Systems (as data owner) may use DA-Data and make readily available DA-Data available to the customer (as user) or a third party (as data recipient). The customer shall be entitled to rights in relation to the DA-Data to the extent and in accordance with the DA.

### **123.2**

The provisions shall serve as a framework agreement for the provision of readily available DA-Data in individual cases. Where necessary, the Parties shall separately agree essential conditions relating to access to or the provision of readily available DA-Data (such as type, format, quality or quantity of the DA-Data to be provided). Instrument Systems may, in good faith, unilaterally change the separately defined specifications of the DA-Data or the access arrangements if this is objectively justified by Instrument Systems' general business activities - for example, by a technical modification due to an immediate security vulnerability in the product line or related services or by a change in Instrument Systems' technical infrastructure. In this case, Instrument Systems shall inform the customer of the change without delay.

### **123.3**

The following provisions shall take precedence over any conflicting contractual provisions with regard to the use of the DA-Data. In particular, any exclusion or limitation of liability for intentional or grossly negligent acts shall not apply to breaches of the Parties' obligations in relation to the use and provision of the DA-Data. Deviating provisions on the protection of personal data and mandatory provisions of the applicable data protection regulations, e.g. Regulation (EU) 20123/679 ("General Data Protection Regulation" / "GDPR"), shall remain applicable and shall take precedence in this respect.

### **123.4**

The customer grants Instrument Systems an irrevocable, geographically and timely unlimited (i.e. extending also beyond the term of this agreement), sub-licensable right to use the DA-Data and the knowledge contained therein in accordance with the following specifications:

a. Instrument Systems shall be entitled to use the DA-Data and the knowledge contained therein for the purposes of the contract, in particular to store, use and combine them with other data in order to provide, maintain, document and/or optimise the contractually owed service to the customer. In particular, this also includes activities in connection with the contract (such as impact assessments or the calculation of remuneration), the assessment of legal claims and the monitoring of the security and protection of the product or the related services. Instrument Systems may aggregate DA-Data for the purpose of selling or otherwise making it available to third parties, provided that such data does not infer specific data transmitted from the connected product to the data owner or enable a third party to derive such data from the data set.

b. Instrument Systems shall be entitled to use the DA-Data and the knowledge contained therein for the purpose of development, improvement and optimisation as well as marketing and distribution of existing and new tangible and intangible services and products, including solutions in the field of artificial intelligence, also in cooperation with other parties ("R&D Purposes"), provided that this does not conflict with any legitimate interests of the customer (such as the protection of its business secrets) or other legal requirements. In this case, Instrument Systems may modify the DA-Data in such a way that the legitimate interests of the customer are adequately safeguarded. Instrument Systems must retain a copy of the unaltered DA-Data.

c. The customer grants Instrument Systems the right to transfer the DA-Data to other companies of the Instrument Systems group of companies for the purposes mentioned under a. and b. above in compliance with the provisions of this Agreement. Instrument Systems shall contractually oblige such recipients not to use the DA-Data for any other purposes.

d. Instrument Systems and other companies of the Instrument Systems group of companies may not use the DA-Data contrary to the prohibitions of use pursuant to Art. 4 para. 13 s. 2 DA.

e. In the event of good cause, in particular if Instrument Systems is in serious breach of its contractual obligations or - despite notices - repeatedly breaches them, the customer shall be entitled to an extraordinary cancellation of the rights to use the DA-Data as granted above. The Parties clarify that any use of the DA data that is necessary for the provision and maintenance of the contractually owed service remains permitted.

123.5 Insofar as appropriate interfaces are available for this purpose, Instrument Systems shall enable the customer to access DA-Data directly via these interfaces to the extent required by

law. If such direct data access is not technically feasible or does not have to be granted, Instrument Systems shall provide the customer or a third party designated or legitimised by the customer, upon request made electronically or in text form, with DA-Data that is readily available in accordance with the following specifications:

a. Access to the DA-Data or the provision of readily available DA-Data shall take place to the extent provided for by law and in accordance with the DA and, if applicable, other applicable regulations, in particular the GDPR, insofar as personal data is concerned.

b. The customer is obliged to refrain from unauthorised use of the DA-Data, in particular not to use the DA-Data obtained to develop a connected product in competition with Instrument Systems' products or to disclose the DA-Data to a third party for this purpose. In addition, the customer shall refrain from disclosing the DA-Data to a third party that is considered a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 or from using the DA-Data obtained for purposes that violate applicable law.

c. No third party may assert or enforce the foregoing provision as a third-party beneficiary against Instrument Systems. Instrument Systems shall enter into a data transfer agreement with the third party as data recipient on fair, reasonable and non-discriminatory terms and in particular reserves the right to make the provision of DA-Data to the third party dependent on the agreement of reasonable remuneration.

d. The customer accepts the appropriate technical and organisational protective measures specified by Instrument Systems in relation to the DA-Data and is obliged to comply with them. Instrument Systems reserves the right to refuse access to or the provision of DA-Data if Instrument Systems can invoke intellectual property rights for this purpose, if the customer does not accept or does not implement the appropriate measures for the confidentiality of trade and business secrets or if the provision of data could compromise legally defined security requirements and thus lead to serious adverse effects on the health or safety of natural persons. Other rights of refusal and suspension under the DA remain unaffected.

123.6 Instrument Systems may at any time apply appropriate technical protection measures to prevent unauthorised access to DA-Data and to ensure compliance with this Agreement. The customer is prohibited from modifying, circumventing or removing such technical protection measures.