

General terms and conditions of licensing and use for XMP-BABYLON

1. Scope

1.1 These general terms and conditions of licensing and use govern the provision and use of the software "XMP-BABYLON" including corresponding modules, extensions, documentation, updates and other software components (hereinafter jointly "software").

1.2 The software is provided by AUTEC Gesellschaft für Automationstechnik mbH, Bahnhofstraße 57 + 61b, 55234 Framersheim, Germany.

1.3 The general terms and conditions of licensing and use apply with regard to traders, legal persons under public law and special funds under public law. While use by consumers is not actively offered, it may occur within the scope of distribution chains through integrators or distribution partners.

1.4 Deviating or supplementary conditions of the customer or third parties do not apply unless AUTEC explicitly agrees to their application in writing.

1.5 Integrators, resellers, project partners and other distribution partners are obliged to pass these general terms and conditions of licensing and use on to end customers and to ensure their inclusion.

2. Object of the contract

2.1 XMP-BABYLON is an on-premise software solution, in particular for access control, time recording, time management and building automation, and for associated functions and integrations.

2.2 The software is generally supplied as a download version and operated on infrastructure owned or provided by the customer.

2.3 The software is intended for operation on Microsoft Windows systems.

2.4 The licensee assumes responsibility for operation of the software in virtual environments. AUTEC does not guarantee compatibility with specific virtualisation platforms unless this is explicitly stated in writing.

3. Formation and inclusion

3.1 These general terms and conditions of licensing and use constitute part of all offers, deliveries, licenses and uses of the software.

3.2 Inclusion is realised in particular by means of an offer, order confirmation, provision of the software, download, installation, license activation, provision of a license dongle, use of the software or comparable acts.

3.3 These general terms and conditions of licensing and use are deemed to be accepted at the latest upon installation or use of the software.

4. Granting of a license

4.1 AUTEC grants the respective licensee a simple, non-exclusive, permanent and non-transferable usage right for the respective licensed version of the software.

4.2 The concrete scope of the license is defined by the offer, order confirmation, license certificate, license file, dongle configuration, module activation or other licensing documents.

4.3 Licensing is always installation-specific for a particular end customer.

4.4 The scope of the license can in particular be limited to a number of users, persons, workstations, clients, functions, modules, devices, locations, servers or comparable technical or organisational parameters.

4.5 Any use outside the agreed scope of the license is prohibited.

5. License management and dongle

5.1 A USB or LAN dongle provided by AUTEC may be required for operation of the software.

5.2 The dongle is for license verification and to protect against unauthorised use.

5.3 AUTEC must be informed promptly if a dongle is lost. AUTEC has the right to block lost or misused dongles for future software versions or systems.

5.4 A replacement dongle may be provided for a fee.

5.5 Circumventing, manipulating or interfering with technical security measures in any way is prohibited.

6. Permitted use

6.1 The licensee is only permitted to use the software as agreed.

6.2 Installation on physical or virtual systems, preparing necessary backup copies, configuration within the intended functions and integration in overall solutions or bundles by authorised integrators or distribution partners are permitted in particular.

7. Prohibited use

7.1 Reverse engineering, decompiling, disassembling, circumventing technical security measures, unauthorised multiple use, removing proprietary notices and unauthorised dissemination of the source code are prohibited in particular.

7.2 Mandatory legal rights according to Sections 69d, 69e of the German Copyright Act (UrhG) remain unaffected.

8. Open source software

8.1 The software may include open source components.

8.2 The respective open source license terms and conditions of the respective rights holders apply in addition for such components.

8.3 Information on included open source components is provided separately.

9. Updates, upgrades and maintenance

9.1 Error corrections and updates may be provided during the statutory or contractually agreed warranty term.

9.2 There is no right to updates, upgrades or support services after the end of the warranty term, except with a separate software support or maintenance contract.

9.3 Maintenance and support services are regularly provided by integrators, distribution partners or under separate agreements.

9.4 AUTEC has the right to make changes for security or technical reasons to the extent this is required and reasonable.

10. Support

10.1 Support services are provided exclusively under separate agreements.

10.2 The scope, response times and availability are governed by the respective maintenance or support contract.

11. Proprietary rights

11.1 All rights to the software, including copyrights, trademark rights, know-how and other proprietary rights, remain with AUTEC and/or the respective rights holders.

11.2 The licensee only acquires the usage rights that are explicitly granted in these general terms and conditions of licensing and use.

11.3 There is no transfer of ownership rights or source code.

12. Cooperation, operational, data protection and cybersecurity obligations of the contractual partner

12.1 The contractual partner shall provide AUTEC with all information, documents, contact persons, access and technical prerequisites required for contractual performance, in a timely manner. AUTEC will not bear the burden of delays or additional costs caused by incomplete, incorrect or late information.

12.2 The contractual partner is responsible for the provision, proper operation and maintenance of its own IT, network, server and communication infrastructure.

This includes in particular, but not exclusively, providing suitable hardware and system environments, the network infrastructure, power supply, data backup and restore concepts, user and rights administration, monitoring and maintenance of the systems used and protection against unauthorised access.

AUTEC assumes no liability for the availability, security or functionality of systems provided by customers or third parties.

12.3 The contractual partner is responsible for secure integration, configuration and secure operation of software provided by AUTEC and the products supplied by AUTEC within its system and network environment.

The contractual partner undertakes to implement appropriate technical and organisational measures according to the state of the art in order to protect the systems against cyberattacks, malicious software, data loss, manipulation and unauthorised access.

This includes in particular, but not exclusively, network segmentation and security, using secure authentication methods, assigning appropriate user, role and administration rights, using up-to-date security mechanisms, installing available security updates for operating systems, databases, virtualisation platforms and other components used, and monitoring events that are relevant for security.

The contractual partner and/or the integrator commissioned by the contractual partner is responsible in particular for the security-related configuration of the software provided by AUTEC and the products supplied by AUTEC. This includes, among other things, altering factory standard configurations, changing standard keys and standard access data, assigning secure passwords, securing communication connections, configuring network and system interfaces, and implementing additional security measures recommended by AUTEC.

Insofar as AUTEC provides software or supplies products with factory standard values, standard keys, standard passwords or other preconfigured security settings, these are to be checked by the contractual partner or the integrator commissioned by the contractual partner prior to production operation and adapted according to the requirements of the respective operating environment.

The responsibility for the selection, implementation, documentation and ongoing review of the security-related configuration rests exclusively with the contractual partner and/or the integrator commissioned by the contractual partner.

12.4 Insofar as AUTEC provides security functions, configuration options, documentation or system hardening recommendations, the contractual partner or the integrator commissioned by the contractual partner is responsible for their implementation, monitoring and ongoing updating.

AUTEC has no responsibility for the ongoing monitoring, hardening or safeguarding of customer systems unless this was expressly agreed by contract.

12.5 Data protection and personal data

The contractual partner is responsible for the use of the software provided by AUTEC and the products supplied by AUTEC in accordance with data protection requirements and for compliance with the respective applicable data protection laws and regulations.

This includes in particular, but not exclusively, the lawful processing of personal data, complying with obligations to inform data subjects, the data protection compliant design of access and authorisation concepts, establishing erasure and retention periods, performing required data protection impact assessments and complying with legal retention and documentation obligations.

To the extent required by law, the parties shall conclude a separate agreement on commissioned data processing according to Art. 28 GDPR. This applies in particular insofar as AUTEC obtains access to personal data within the scope of support, maintenance, remote maintenance or other services.

12.6 Without prejudice to the preceding provisions, the contractual partner is responsible for all configurations, parametrisations, assignments of rights, integrations, interface connections and other changes by the contractual partner or by third parties to the software provided by AUTEC or the products supplied by AUTEC.

AUTEC is not liable for any damage or adverse effects caused by faulty configurations, improper use, insufficient security measures, failure to change standard keys or standard access data, or changes made by the contractual partner or third parties.

12.7 The software provided by AUTEC and the products supplied by AUTEC are intended for access control, time recording, time management and building automation. They do not replace any safety, escape route, fire protection, emergency or personal protection facilities prescribed by law.

The responsibility for the planning, implementation, testing and operation of corresponding safety, protection and emergency concepts rests with the operator and/or the integrator responsible for the overall system.

12.8 The contractual partner undertakes to comply, under its own responsibility, with all legal, regulatory and normative requirements applicable for its field of application.

This applies in particular for requirements in the areas of data protection, information security, cybersecurity, working time and time recording law, access and building security, critical infrastructure (KRITIS), NIS2 and comparable national and international rules and standards.

13. Warranty

13.1 AUTEC warrants that the software essentially functions in accordance with the respective valid documentation.

13.2 No responsibility is assumed for interruption-free operation, complete freedom from defects, unrestricted compatibility and continuous availability.

13.3 Defects must be reported promptly in writing.

13.4 In case of legitimate defects, AUTEC is free to choose rectification or replacement delivery.

14. Liability

14.1 AUTEC is liable without limitation according to the applicable legal regulations in case of intent, gross negligence, loss of life, physical injury or the impairment of health and according to the regulations of product liability law.

14.2 In case of simple negligence, AUTEC is only liable if essential contractual obligations ("cardinal obligations") are breached; its liability in this case is limited to the foreseeable, typically occurring damage.

14.3 In terms of amount, its liability is limited to the respective contract value or license value.

14.4 Liability for indirect damage, subsequent damage, lost production, business interruptions, data loss or lost profits is excluded to the extent permitted by law.

14.5 The licensee is obliged to implement suitable data backup measures.

15. Distribution partners, integrators and white label

15.1 AUTEC may grant rights for marketing the software to distribution partners, integrators or resellers.

15.2 Integrators may use supplementary contract terms and conditions insofar as they do not contradict these general terms and conditions of licensing.

15.3 White label, OEM or bundled solutions are permitted to the extent agreed between AUTEC and the respective distribution partner.

16. Confidentiality

16.1 Non-public technical, economic and organisational information must be kept confidential.

16.2 This applies in particular for licensing mechanisms, system architectures, interfaces, documentation, security concepts and other know-how.

17. Export control

The licensee undertakes to comply with all applicable export, foreign trade and sanction regulations.

18. Final provisions

18.1 The laws of the Federal Republic of Germany apply; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

18.2 As far as legally permissible, the exclusive place of jurisdiction for all disputes arising from or related to these general terms and conditions of licensing is Mainz, Germany.

18.3 Should individual provisions of these general terms and conditions of licensing be or become ineffective, the effectiveness of the remaining provisions shall remain unaffected.