

# **TROVIS DTM Software**

## **License Agreement**

This License Agreement (“Agreement”) is entered into between SAMSON AKTIENGESELLSCHAFT, Weismuellerstrasse 3, 60314 Frankfurt am Main, Germany (“SAMSON”) and the entity or the individual person, as the case may be, that accepted this Agreement (“User”).

This Agreement may be accepted by manual signature, electronic signature, or through an electronic system specified by SAMSON. In the electronic system, the User will be prompted to accept these terms by clicking a button. Clicking the button indicates that the User has read, understood and accepted these terms.

### **1. General**

- 1.1. The TROVIS DTM (“Software”) enables various SAMSON field devices to be configured and parameterized within an FDT frame application using a uniform operator interface.
- 1.2. The safety and operating information as given in the Mounting and Operating Instructions for the SAMSON field devices ([www.samsongroup.com/en/service-support/downloads/documentation/](http://www.samsongroup.com/en/service-support/downloads/documentation/)) must be observed.
- 1.3. After downloading the Software, SAMSON shall grant the User the royalty-free, non-transferable, non-exclusive, non-sublicensable right for its internal purposes to install and use the executable form of the Software on a computer device owned by the User or in its possession, on which the Software is able to run in accordance with the system requirements which the User is able to view prior to concluding these conditions. The license granted is limited to the purpose specified under Clause 1.1 of this Agreement.
- 1.4. The right of use shall not include the provision of the Software via a network for simultaneous use on several user terminals.
- 1.5. The User may copy the Software only as required to support the authorized use.
- 1.6. The User shall not be permitted to distribute or otherwise make the Software available to third persons (including renting, leasing, loaning).
- 1.7. The User shall not be authorized to change the program code of the Software or parts thereof, to perform reverse engineering, to decompile, to disassemble, or determine the source code in any other way, or prepare derivative works from it. The mandatory, non-modifiable provisions of Articles 69d, 69e UrhG [German Copyright Act] shall, however, remain unaffected thereby.
- 1.8. SAMSON reserves all rights not expressly granted herein. SAMSON reserves the right to all other rights in the Software (including any existing copyrights and the right to apply for industrial property rights such as patents, utility model patents etc.).
- 1.9. The aforesaid provisions shall also be valid for all updates/upgrades and program modifications for the Software provided to the User by SAMSON, if any.

## **2. Third-Party Technology**

- 2.1. The Software may contain third-party technology, including open source software (“Third-Party Technology”). Third-Party Technology may be licensed to the User under separate license terms if specified in the Documentation, “read me” or similar files.
- 2.2. If any applicable third-party license requires SAMSON to furnish a source code to the Third-Party Technology, SAMSON will provide it upon written request and payment of the shipping charges.

## **3. Obligation to cooperate**

- 3.1. When using the Software, the User shall observe the necessary due diligence in the use of the Software and the SAMSON field devices. The aspects of operational safety (e.g. backup of user data in the event of a loss) shall be taken into account particularly when using the Software.
- 3.2. The results generated by the Software shall be validated prior to their use. Similarly, the User shall be obliged to create a backup of data at regular intervals, in order to ensure that it can be reproduced in the event of loss.
- 3.3. The User is responsible for the prevention of security issues with regard to its systems and data.
- 3.4. The User acknowledges that SAMSON does not control the User’s processes or the creation, validation, sale or use of the User’s products. SAMSON will not be liable for any claim or demand made against the User by any third party, except for SAMSON’s obligations to indemnify the User against infringement claims as expressly set forth herein.

## **4. Data Protection**

The Software neither collects nor uses any personal data.

## **5. Disclaimer**

SAMSON MAKES NO WARRANTIES EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS AGREEMENT. REPRESENTATIONS ABOUT THE SOFTWARE IN ANY COMMUNICATION WITH THE CUSTOMER CONSTITUTE TECHNICAL INFORMATION ONLY, NOT A WARRANTY OR GUARANTEE. SAMSON DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SAMSON DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE

## **6. Warranty**

For defects in rem, irrespective of any legal basis, SAMSON shall be liable only insofar as SAMSON has fraudulently concealed the respective defect.

## **7. Intellectual Property Infringement Indemnity**

- 7.1. SAMSON will indemnify and defend, at its expense, any action brought against the User to the extent that it is based on a claim that the Software infringes any copyright, any trade secret, or a patent or trademark issues or registered by the United States, Japan, or a member of the European Patent Organization, and will pay all damages finally awarded against the User by a court of competent jurisdiction or agreed in settlement, provided that the User gives SAMSON (i) prompt written notice of the claim, (ii) all requested information and reasonable assistance related to the claim, and (iii) sole

authority to defend or settle the claim. SAMSON will not admit liability or incur obligations on the User's behalf without the User's prior written consent.

- 7.2. If a permanent injunction is obtained against the User's use of a Software, SAMSON will obtain for the User the right to continue using the Software or will replace or modify the Software to become non-infringing. SAMSON, in its sole discretion, may provide the remedies specified in this Section to mitigate infringement prior to the issuance of an injunction.
- 7.3. Notwithstanding anything to the contrary herein, SAMSON will not have any liability or indemnification obligation to the User to the extent that an infringement claim arises out of: (i) use of a version of the Software to the extent that a current version is non-infringing, (ii) failure to use a correction, patch or new version of the Software offered by SAMSON that performs substantially the same functions; (iii) use of the Software in combination with software, equipment or products not provided by SAMSON, (iv) use of any Software for which SAMSON has ceased to offer maintenance services to customers generally; (v) any change to the Software not made by SAMSON, or (vi) compliance with specifications provided by the User.
- 7.4. This Intellectual Property Infringement Indemnity Section represents the sole and exclusive liability of SAMSON to the User for infringement of third-party intellectual property rights.

## **8. Liability for Compensational Claims**

Unless expressly provided to the contrary hereunder, SAMSON does pay damages on account of a violation of contractual or non-contractual obligations only in case of (i) intent or gross negligence, (ii) negligent or deliberate fatal injury, physical injury or injury to health, (iii) on account of assuming a quality or durability guarantee or (iv) on account of compulsory statutory liability pursuant to the German Product Liability Act or on account of any other compulsory liability. Liability for damages exceeding that provided for in the preceding sentence is excluded irrespective of the nature of the claim.

## **9. Term, Termination of Use**

- 9.1. This License Agreement shall be valid for an indefinite term.
- 9.2. The User may terminate this Agreement at any time by providing written notice to SAMSON. SAMSON may terminate this Agreement or any license granted hereunder immediately on notice (i) for reasonable cause, including without limitation the User's filing or being filed in bankruptcy; or (ii) the User ceasing to do business, or (iii) for any breach of this Agreement by the User that remains uncured after thirty (30) days' notice thereof.
- 9.3. In the event of termination of this Agreement, the license granted hereunder automatically terminates and use of the Software shall be discontinued immediately and the Software, as well as any copies thereof, shall be permanently deleted.

## **10. Taxes**

The User agrees to pay, and to reimburse SAMSON for the payment of, any applicable taxes and or duties including, but not limited to, sales taxes, value added taxes, goods and services taxes, consumption taxes or any other fee that is imposed by any governmental authority on the User's use of the Software.

## **11. Transfer, Assignment**

Insofar as the User relinquishes its device on which the Software is installed, temporarily and gratuitously to a third person, the User shall remain responsible for the observance of the provisions of this License Agreement. Any other transfer of the rights of use shall require SAMSON's express consent.

## **12. Applicable Law, Jurisdiction**

- 12.1. The substantive law of the Federal Republic of Germany shall be valid, with the exclusion of the provisions of the UN Convention on the International Sale of Goods. This choice of law does not exclude the user from the protection afforded to him by the provisions which, under the law of the country in which he has his habitual residence, may not be derogated from by agreement.
- 12.2. Insofar as the User is not a consumer or has no regular place of jurisdiction in Germany, the exclusive place of jurisdiction for all disputes arising due to or in connection with this agreement shall be Frankfurt am Main, Germany.

## **13. Miscellaneous**

Should individual provisions or parts of this Agreement be invalid, the remaining provisions and parts shall remain in force.