



# Supplementary General Terms and Conditions for Light Management Systems/Digital Services "LMS-T&C"

of TRILUX GmbH & Co KG, Heidestraße 4, 59759 Arnsberg, Germany, hereinafter referred to as "TRILUX".

The following regulations apply accordingly to the light management systems distributed via Oktalite Lichttechnik GmbH, Matthias Brügggen Straße 73, 50829 Cologne, Germany "Oktalite" with the proviso that "Oktalite" takes the place of "TRILUX" as the supplier.

## 1. Scope of Application, contract components

1.1. For the provision of light management systems for light and/or energy management depending on the service description ("Light Management System") to corporate Customers "Customer", the following contractual parts shall apply in the following order of priority:

- Offer including performance description;
- these LMS T&C;
- The respective current terms and conditions of delivery and service of TRILUX under [www.trilux.com](http://www.trilux.com) under Legal Notices/T&C; or Oktalite under [www.oktalite.com](http://www.oktalite.com) under T&C;
- Commissioned Data Processing, at [www.trilux.com/monitoring/conditions](http://www.trilux.com/monitoring/conditions);

together hereinafter referred to as "the **contract**".

1.2. The Customer has tested the light management system and found it to be fully suitable for its tasks and business processes.

## 2. Definitions

2.1. **Performance description:** Details on the functional scope of the respective light management systems result from the order confirmation, supplementary from the offer of TRILUX and the respective current performance description, which TRILUX or the Licensor provides on its website in its respective current version for download or which are provided by TRILUX upon request of the Customer. Further information on the download or provision of the performance description is stated in the offer.

The service description for TRILUX Digital Services is provided under [TRILUX Digital Services Service Description](#).

- 2.2. **Luminaires:** controllable lighting products specified by TRILUX as compatible with the Application and Hardware.
- 2.3. **Application:** the web-based hosted software elements for browser Applications or mobile devices required for the remote management of luminaires, depending on the service description.
- 2.4. **Hardware:** the Hardware required for the light management system depending on the service description, e.g. controllers connected to the luminaires or installed in the luminaires, sensors and Connection Hardware for controlling the luminaires.
- 2.5. **Connection Hardware:** the Hardware required to establish the connection, depending on the service description, e.g. gateway with or without SIM card and/or GPS box or router.

## 3. Scope of services for lighting management, Digital Services

- 3.1. The Customer acquires the luminaires as well as the Hardware directly from TRILUX, the Application is made available to the Customer by TRILUX or by a third party named by TRILUX in the offer. If TRILUX is only a licensee of a third party ("Licensor") with regard to the Application itself, the obligation of TRILUX with regard to granting access to the Application is limited to granting a sublicense.
- 3.2. The Customer receives via his account the technical possibility and authorization to access the Application by means of his own internet connection and to use the functionalities of the Application within the scope of this contract within the operating hours agreed upon in this contract.
- 3.3. The Customer may use the Application for its own purposes to monitor and control the luminaires, as well as process and store corresponding data. An administrator of the Customer manages the Application and can provide the Application to any number of end users for use.
- 3.4. TRILUX is not obliged to provide installation, set-up, consulting, adaptation and/or training services unless this has been expressly agreed in writing between the parties.
- 3.5. The Customer is generally obliged to conclude mobile phone/connectivity contracts required for the operation of the Hardware itself; TRILUX is not obliged in this respect to maintain contractual relationships or to supply SIM cards. Insofar as TRILUX is exceptionally obliged to supply Hardware including SIM cards to the Customer, TRILUX shall conclude the necessary mobile telephony/connectivity contracts for the Customer and invoice the associated costs in accordance with the remuneration agreed in each case in the offer. TRILUX is not obliged to establish or maintain a mobile radio connection/connectivity to the Hardware; TRILUX shall not



be liable for mobile radio connections/connectivity to the Hardware.

#### **4. Performance obligations with regard to Application**

- 4.1. Insofar as TRILUX offers the Application itself, the provisions of clause 4. shall apply.
- 4.2. TRILUX sets up an account for the Application for the Customer or the Customer sets up an account himself.
- 4.3. TRILUX shall provide the Application during the operating hours. Operating hours are generally 24 hours a day, 7 days a week, with an availability of 96% on an annual average, except however for (i) planned downtimes announced to the Customer (inter alia for maintenance, updating and correction purposes) within the specified period, or (ii) other unplanned downtimes without prior notice, caused by an unexpected or unplanned unavailability of the Application which is not due to TRILUX's willful misconduct or gross negligence, including but not limited to system failures, connectivity problems with the Customer's internet access or mobile connections, and due to force majeure or other circumstances reasonably beyond TRILUX's control.
- 4.4. TRILUX or the Licensor shall provide the Customer with the storage space required for the use of the Application and shall take over the backup of the transferred data. TRILUX will ensure that the data can be retrieved via the Internet during the operating time, provided that the Customer has a fully functional Internet connection.
- 4.5. TRILUX or the Licensor uses virus scanners and firewalls in order to prevent or stop unauthorized access to the Customer's data and the transmission of harmful data, in particular viruses, insofar as this is possible with reasonable economic and technical effort. However, the Customer is aware that complete protection against harmful data is not possible.
- 4.6. TRILUX or the Licensor shall assume the maintenance of the Application, in particular the diagnosis and elimination of defects within a reasonable period of time. Defects are significant deviations from the performance specification.
- 4.7. The Application has a comprehensive support function. Documentation going beyond this is provided to the Customer on separate request.
- 4.8. TRILUX is entitled to make use of third parties for the fulfilment of the obligations with regard to the Application. This also applies to obligations according to clause 4.7, insofar as such are owed in the individual case.
- 4.9. The services (setup/maintenance) may be performed by way of remote access. The customer shall grant TRILUX and its subcontractors the remote/remote access rights required for performance of the contract. TRILUX shall announce the start of remote access and comply with the agreed security measures. The customer shall cooperate in this respect and support TRILUX.

#### **5. Rights of use data**

- 5.1. TRILUX has the right to anonymize the personal data covered by this contract and to carry out the processing steps required for anonymization beforehand. While maintaining anonymity, TRILUX may process and use all Customer data thus created, i.e. usage, location and device data of the light management system components created within the scope of the use of the Application, for its own purposes such as statistical evaluations, benchmarking, product improvements, new product developments, commercial and other comparable purposes. The original data is not affected by this anonymization.
- 5.2. The right to compile such statistical or analytical data relating to the performance, use or operation of lighting management components or their functionalities is exclusively vested in TRILUX.

#### **6. Rights of use Application**

- 6.1. TRILUX grants the Customer the fee-based, simple, non-exclusive, non-transferable right, limited in time to the term of this agreement, to use the Application for the purpose of the light management system in accordance with this agreement.
- 6.2. If the Application contains software or services of Licensors, the terms of use or end user license conditions of the Licensor ("EULAs") shall apply in addition to the provisions of this contract. If the Licensor requests the Customer to conclude a EULA, the Customer undertakes vis-à-vis TRILUX to implement all necessary steps to conclude a EULA. TRILUX shall inform the Customer without delay and establish the necessary contact should the Licensor demand the conclusion of an EULA.
- 6.3. Any use beyond this is only permitted with the written consent of TRILUX. The Customer may not sublicense, sell, pass on, lease, rent, lend or otherwise distribute or pass on the Application in any other way.
- 6.4. Insofar as TRILUX provides new versions, updates or upgrades of the Application during the term of this contract, or such are provided to TRILUX by the Licensor, the rights of use granted above shall apply to these in the same way. However, TRILUX is not obliged to provide new versions, upgrades or updates unless this is absolutely necessary for the elimination of defects or agreed otherwise elsewhere in the contract.
- 6.5. Beyond the purposes of the contract, the Customer is not entitled to use, reproduce, download or make the Application available to third parties outside the agreed circle of users or purpose of use. The Customer undertakes to use the Application exclusively in accordance with the documentation provided by TRILUX or the Licensor, in particular in accordance with the user manual. All copyright and other proprietary notices are to be observed.



- 6.6. If the contractual use of the Application is impaired by property rights of third parties through no fault of TRILUX, TRILUX is obliged to make all reasonable efforts to (i) modify the Application in such a way that it does not infringe any property rights of third parties without significant impairment of function or (ii) to acquire a right of use from the right holder which enables the continued use of the Application. Only if neither a modification nor the acquisition of a right of use is possible is TRILUX entitled to refuse the services affected thereby. TRILUX shall inform the Customer of this immediately upon gaining knowledge thereof and shall enable him to access his data in a suitable manner. In this case, the Customer is no longer obliged to pay the remuneration on a pro rata basis.
- 6.7. Without prejudice to the other provisions of this clause 6. , the right of use ends at the moment TRILUX loses the entitlement to further licensing on the part of the Licensor. TRILUX is not obliged to acquire a new license from the Licensor or from a third party. A liability of TRILUX for damages according to clause 11. remains unaffected by this regulation.

## 7. Performance changes

- 7.1. TRILUX, respectively the Licensor, may change the performance and functionality of the Application at any time in a manner that is reasonable for the Customer. The change is reasonable in particular if it becomes necessary for an important reason and the performance features of the Application continue to be essentially fulfilled. TRILUX shall notify the Customer of the changes in text form at least six (6) weeks before they come into force.
- 7.2. Irrespective of clause 6.1, TRILUX, respectively the Licensor, is entitled to change or supplement the Application at any time. TRILUX shall notify the Customer of the change or addition in text form at least six (6) weeks before it takes effect. The Customer may object to the changes in text form with a period of two (2) weeks from receipt of the change notification. If the Customer does not object, the amendments and supplements shall become part of the contract. TRILUX shall inform the Customer of the consequences of his conduct in the amendment notification. If the Customer objects to the amendment in due time, TRILUX may terminate the contract with effect from the next possible date.

## 8. Obligations of the Customer

- 8.1. The Customer shall make the access data for the Application available exclusively to authorized persons, to keep it secret from unauthorized third parties and to store it in such a way that access to this access data by unauthorized third parties is modified in order to prevent misuse of the access by third parties. The Customer shall instruct the authorized persons accordingly.

The Customer undertakes to inform TRILUX immediately as soon as it becomes aware that unauthorized third parties have gained access to the access data and/or other misuse of the access data becomes apparent.

- 8.2. The Customer shall name a responsible contact person vis-à-vis TRILUX who possesses all decision-making powers and authority required and relevant for the execution of the contract, as well as carefully selecting all employees intended by the Customer for the use of the services under the contract and obligating them in a suitable form to comply with the terms of use specified in this contract and other obligations of the Customer.
- 8.3. The Customer is responsible for ensuring that he and his users have an Internet connection and suitable software and hardware equipment or configuration in accordance with the system requirements specified in the service description of the Application in order to be able to use the Application via an Internet browser. The operation and maintenance of these technical requirements is the sole responsibility of the Customer.
- 8.4. When using the Application, the Customer must observe all applicable laws and other legal provisions of the Federal Republic of Germany and local law. In particular, the Customer is prohibited from posting data or content that violates legal provisions, infringes third-party property rights or copyrights or other third-party rights. The Customer is responsible for the data and contents provided by him. TRILUX does not check the contents for their correctness, freedom from viruses or their technical processability.
- 8.5. The Customer alone is responsible for compliance with retention periods under commercial and tax law for data transmitted by TRILUX.
- 8.6. In all other respects, the Customer is obliged to perform all relevant cooperation services without delay and free of charge, in particular if TRILUX requests it to do so and the necessary measures do not exceed a reasonable expense.
- 8.7. In the event of serious violations by the Customer of its obligations under this contract and in the event of repeated violations, TRILUX is entitled, at its discretion, to temporarily discontinue the use of the Application by the Customer in whole or in part or to terminate the contractual relationship for good cause and without notice. If the Customer is responsible for the infringement, he is obliged to compensate TRILUX for the resulting damage.
- ## 9. Remuneration and terms of payment
- 9.1. The obligation to pay remuneration begins with the first booking or commissioning of the Application.
- 9.2. Unless otherwise stated in the offer, the fee for the Application is due annually in advance on the date of the first registration.

9.3. TRILUX reserves the right to increase the remuneration for the Application for the first time after the expiry of twelve (12) months and at most once a year with a notice period of three (3) months to the end of the month and to adjust to internal cost increases caused by an increase in material, license or personnel costs or by third parties. As soon as the annual remuneration increases by more than five (5) percent, the Customer shall be entitled to terminate the contract extraordinarily at the time the increase takes effect with a notice period of six (6) weeks after receipt of the request for increase.

#### **10. Defect rights**

10.1. The Customer shall immediately notify TRILUX in writing of any defects occurring. The Customer is obliged to provide TRILUX with appropriate support in analyzing the defect and rectifying the defect (in particular specification of the defect by a competent person) and to immediately grant access to the documents from which more detailed circumstances regarding the occurrence of the defect can be ascertained. Only reproducible defects can be recognized as such.

10.2. If there is a defect for which TRILUX is responsible, TRILUX shall be entitled to rectify the defect or make a subsequent delivery at its own discretion. Before asserting further claims or rights such as termination or reduction of the contractually owed remuneration, damages or reimbursement of expenses, the Customer shall give TRILUX the opportunity for subsequent performance within a reasonable period of time. Subsequent fulfilment may also consist of TRILUX providing the Customer with a workaround temporarily or, insofar as reasonable for the Customer, permanently, in order to eliminate the fault. If the subsequent performance fails, the Customer may demand a reduction of the contractual remuneration or terminate the contract without notice if the statutory requirements are met.

10.3. The warranty shall not apply if the Customer makes changes or deviations to the light management system or individual components itself or through third parties without the consent of TRILUX, unless the Customer can prove that the defect is not related to the changes or deviations. A temporary deviation of the performance description from the actually existing functionality in the course of an adjustment is not a defect within the meaning of this contract.

10.4. In the event of defects in components from other manufacturers which TRILUX cannot rectify for licensing or actual reasons, TRILUX shall, at its own discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer with debt-discharging effect. Warranty claims against TRILUX exist in the case of such defects under the other conditions and in accordance with the provisions of this contract only if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency.

#### **11. Liability**

11.1. In the event of simple negligence, the liability of TRILUX is limited to compensation for the foreseeable, contract-typical damage, however, to a maximum of fifty (50) percent of the net annual remuneration per case of damage, and per contract year to the sum of the net annual remuneration.

11.2. The strict liability of TRILUX for damages for defects already existing at the time of conclusion of the contract in accordance with § 536a Para. 1 BGB (German Civil Code) is excluded.

11.3. In the event of loss of data, TRILUX shall only be liable for the expenditure required for the recovery of the data in the event of proper data backup carried out by the Customer in accordance with the state of the art pursuant to clause 4.6.

#### **12. Termination of use of the Application**

12.1. Unless otherwise agreed, the following shall apply: The contract on the use of the Application shall enter into force upon conclusion of the contract and shall run for an indefinite period. Unless otherwise agreed, it may be terminated by either party in text form with three (3) months' notice to the end of the calendar year, but for the first time effective twelve (12) months after conclusion of the contract (minimum term).

12.2. The termination for good cause remains unaffected. An important reason for TRILUX exists in particular if TRILUX loses the main license of the Licensor for a reason for which TRILUX is not responsible.

12.3. Upon termination of the contract, for whatever reason, the Customer shall immediately cease using the Application. TRILUX is entitled to block the Customer's access to the Application from then on. From this point in time, the Customer is no longer obliged to pay a fee charged for the use of the Application. Section 12.4 remains unaffected by this.

12.4. At the end of the contract, TRILUX shall enable the Customer to access its data still available at TRILUX upon request within a period of three (3) months after the end of the contract. Should expenses arise for this, the Customer shall pay an appropriate remuneration. Thereafter, TRILUX is entitled to delete the data at any time.