

SALTO SYSTEMS

ProAccess SPACE Software License -General Terms and Conditions-



SALTO SYSTEMS

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ProAccess SPACE Software License -General Terms and Conditions-

Applicable as of ProAccess SPACE 6.4 version

1. Defined terms

For the purposes of this Agreement:

- (i) **"Affiliates"** means any of the affiliates of the Licensor from time to time.
- (ii) **"Agreement"** means, jointly, these general terms and conditions, as amended, supplemented or restated from time to time pursuant to the terms hereof, and the Instructions.
- (iii) **"Authorized Distributors"** means either an Affiliate or the Licensor's authorized partners, dealers and distributors.
- (iv) **"Download Tickets"** has the meaning attributed to this term in clause 3.
- (v) **"Hardware"** means the access-control system hardware developed by Salto or by any other Salto Group entity, as well as third-party hardware integrated with Salto's systems that may be used in connection with the Software, which has been previously acquired by the Licensee.
- (vi) **"Instructions"** means the instructions received by the Licensee from the Licensor or an Authorized Distributor, either by email, in hand or otherwise, regarding the download and installation of the Software.
- (vii) **"License"** has the meaning attributed to this term in clause 3.

(viii) **“Licensee”** means the legal entity accepting the Agreement.

(ix) **“Licensor”** or **“Salto”** means Salto Systems, S.L. a Spanish company, with corporate registered address located at C/ Arkotz 9, Polígono Lanbarren, 20180 Oiartzun (Gipuzkoa-Spain) and tax identification number B-20.708.517, which is duly registered in the Commercial Registry of Guipuzcoa, at volume 1850, sheet 101, page DD-18081.

(x) **“Location”** means the Licensee’s premises where the Hardware is installed.

(xi) **“Salto Group”** means Salto and all its Affiliates from time to time.

(xii) **“Software”** means the access control software named SALTO ProAccess SPACE, together with all its components, underlying source codes and the documentation or materials delivered or made available to the Licensee in connection thereto, as well as any upgrades, updates, developments or add-ons related or linked to the Software. The type of subscription of the Software and applicable add-ons contracted by the Licensee shall be those detailed in the [Software’s specifications included in the “SALTO Software Area” or any equivalent area of Salto’s commercial website or in the “About” section of the Software].

(xiii) **“Software Technical Requirements”** has the meaning attributed to this term in clause 7.

(xiv) **“Systems”** has the meaning attributed to this term in clause 7.1.

(xv) The term **“use”** means downloading, installing, accessing and employing the Software as permitted under this Agreement.

Other capitalized terms of the Agreement shall have the meaning attributed to such terms in the definition contained throughout the Agreement.

2. Download, Acceptance and prevalence of the Agreement

2.1 Download

In order to correctly download the Software, the Licensee must follow the Instructions provided for this purpose

2.2 Acceptance

By clicking the “Agree” box at the end of this Agreement, the Licensee is fully and irrevocably accepting the terms and conditions of this Agreement and is undertaking to comply with such terms and conditions.

The Licensee is requested to read and review carefully this Agreement before clicking such box and downloading the Software.

If an individual accepts this Agreement on behalf of a legal entity, such individual represents and warrants to the Licensor that he or she is duly authorized to bind such legal entity to this Agreement. In any case, the individual accepting this Agreement on behalf of a legal entity shall hold harmless the Licensor in the event of any dispute with such or legal entity for any claim arising from lack of capacity or authority.

2.3 Entire and sole agreement

This Agreement constitutes the sole and entire agreement among the parties in connection with the License and the Software and supersedes any previous agreements or terms agreed by the Licensee in connection therewith.

The Licensee understands that, if the License to the Software was purchased from an Authorized Distributor in the context of the acquisition of the Hardware, such Authorized Distributor is not acting as Licensor’s agent and therefore is not authorized to make any representations, conditions or warranties, statutory or otherwise, on the Licensor’s behalf or to vary any of the terms or conditions of this Agreement. The Licensor is not bound by the agreements reached by the Licensee with Authorized Distributors.

3. License of use

By virtue of this Agreement, the Licensor grants to the Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable and limited license to use the Software for the sole purpose of managing the Hardware installed at the Location (the “License”).

The Licensee is entitled to make a maximum of three (3) downloads of the same version of the Software (the “Download Tickets”). In case new versions or updates of the Software, the counter of the Download Tickets will reset to zero (0) and the Licensee may make three (3) new downloads of such new version or update of the Software.

4. Permitted and restricted uses

The only permitted use of the Software is described in section 3 above. The Licensee shall restrict the access to the Software to those employees or contractors of the Licensee which, due to their duties and offices, are in charge of the management of the supervision of the access-control systems of the Location.

Any other use is expressly prohibited and shall be deemed as a software piracy act in breach of the intellectual and industrial property legislation. The Licensor reserves its right to claim the Licensee for the damages caused by a breach of this provision pursuant to the applicable legislation.

Without prejudice of the generality of the above, the Licensee shall not and shall not attempt to:

- (i) use the Software in any way that is unlawful, illegal, fraudulent or harmful, or in connection with or to conduct any unlawful, illegal, fraudulent or harmful purpose or activity, or for any purpose that infringes any third parties’ rights;
- (ii) use the Software to interface or interact with hardware other than the Hardware or with systems that are not integrated with the Software;
- (iii) use the Software together with other computer programs that may affect the proper functioning of it or otherwise use the Software in any way that causes, or may cause, damage to the Software or impairment of the availability or accessibility of it;
- (iv) use the Software in a way that could be detrimental to the Licensor, its Affiliates or Authorized Distributors;
- (v) use the Software for monitoring its availability, security, performance or functionality or for any other benchmarking or competitive purposes;
- (vi) copy or in any way reproduce or duplicate the Software;
- (vii) modify, translate, make derivative works based on the Software, manipulate in any manner or make changes to the Software directly from the database, access the source code or make any alteration to it; or
- (viii) decompile, decrypt, reverse engineer or disassemble the Software or create derivative works of the Software.

5. Conditions of the validity of the License

The validity of the License is subject to the following conditions:

- (i) The valid acceptance by the Licensee of the terms and conditions of this Agreement in the terms provided for under section 2 above.
- (ii) The prior acquisition and maintenance of the Hardware by the Licensee from the Licensor or any of its Affiliates or Authorized Distributors for the Location. In case the Licensee ceases to hold legal title to use the Hardware, the License shall automatically cease to be in force.
- (iii) The fulfillment by the Licensee of all the terms and conditions set forth herein as amended from time to time, as well as the applicable legislation.

6. Upgrades, updates and add-ons

The Licensor does not assume any undertaking or obligation whatsoever to develop new versions, upgrades or updates of the Software or offer new add-ons or functionalities to the Licensee.

Notwithstanding the foregoing, in the event that new versions, upgrades, updates or add-ons of the Software are developed and released, the Licensor shall make them available to the Licensee through the “SALTO Software Area” or any equivalent area of Salto’s commercial website or through the installed Software, as applicable.

The download and use of any new version, upgrade or update of the Software shall require the prior acceptance by the Licensee of the terms and conditions of the Agreement (as amended, should that be the case, in accordance with section 17 below).

The download and use of any add-on of the Software shall be governed by the specific terms and conditions accepted by the Licensee when downloading the relevant add-on of the Software or, in its absence, by the terms and conditions of the last version of the Agreement accepted by the Licensee when downloading the Software or any of its new versions, upgrades or updates.

All intellectual and/or industrial property rights over the new versions, upgrades, updates or add-ons of the Software shall exclusively belong to the Licensor or its licensors.

7. Nature of the Software

7.1 On-premise software

The Software is an on-premise software that requires its installation in Licensee’s compatible computing systems (the “Systems”) which must comply with the necessary minimum specifications set out in the Instructions (the “Software Technical Requirements”). It is the Licensee’s sole responsibility that the System complies with said requirements. The Licensor disclaims any liability for any incidence or malfunction of the Software that may arise as a consequence of the Systems or the integration of the Software thereto. The Licensee acknowledges and accepts that some of the features of the Software may not be fully operational due to the characteristics of the Systems.

The Licensee shall be solely responsible for adopting appropriate security measures to protect the Software at the Location. The Licensor shall in no event be liable for the adequacy of such measures and the impact they may have on the Software. In any case, the Licensee shall immediately notify the Licensor of any security incidents relating to the Software of which it may become aware and keep the Licensor harmless of any damages or prejudices arising therefrom.

7.2 Open source software

In the event that the Software contains components provided by third parties under an open source software licensing model, these will be identified following the terms set therein.

8. Consideration

The fees for the License of the initial version of the Software shall be those separately agreed by the Licensee and the Licensor or any of its Authorized Distributors, considering the specific subscription contracted by the Licensee.

The Licensor reserves the right to introduce in the future any consideration it may deem appropriate for the download and/or use of new versions, upgrades, updates or add-ons of the Software. In such case, the Licensor shall notify the Licensee sufficiently in advance the applicable terms and conditions.

9. Intellectual and industrial property rights

Any and all intellectual property rights over the Software exclusively belong to Salto and/or its licensors, as applicable.

The Licensee expressly acknowledges and agrees that by virtue of this Agreement no intellectual or industrial property rights of any nature relating to the Software or the Open Source Software are transferred, assigned or made available to the Licensee.

The Licensee shall not, either directly or indirectly, take any action to jeopardize, limit, interfere with, or dispute in any manner, the intellectual and industrial property rights of the Licensor's and/or its licensors over the Software or the Open Source Software. In particular, the Licensee shall not apply for or register, directly or through any third party, anywhere in the world, any industrial or intellectual property rights relating to the Software.

The Licensee undertakes to perform adequate measures to ensure that its directors, managers, employees, advisors and any other third party related to the Licensee respect Licensor's intellectual and industrial property rights over the Software, being jointly and severally liable towards the Licensor for any breach by such parties.

The Licensee must inform the Licensor of any circumstances of any nature of which it becomes aware that may affect the intellectual or industrial property rights associated to Software or the Open Source Software.

Should the Licensee breach this undertaking, the Licensor may be entitled to be indemnified for all damages and losses (including loss of profits) caused to the Licensor or any of its Affiliates or Authorized Distributors without limitation whatsoever.

10. Warranty

The Licensor hereby warrants, for a period of thirty (30) calendar days following the download of the Software or of any of its updates, upgrades, or add-ons, that the Software will substantially conform to the specifications contained in the Agreement. If, within that warranty period, the Licensee notifies the Licensor or the relevant Authorized Distributor a nonconformance and the Licensor or the relevant Authorized Distributor validates the existence of such nonconformance due to reasons solely attributable to the Licensor, the Licensor shall repair or replace the nonconforming Software. The aforementioned warranty shall not apply if the Licensee has breached, breaches or in any manner is in breach of, any of the provisions set forth in this Agreement.

Except for the limited warranty set forth in the preceding paragraph, the Software is delivered "as is", without the Licensor granting any type of warranty over the Software and the Licensee acknowledges and accepts such condition. Therefore, to the maximum extent permitted by law, the Licensor hereby disclaims all implied warranties with regard the Software and makes no other warranty or condition, express or implied, statutory or otherwise, regarding this Software, including without limitation the implied warranty of merchantability, reliability, suitability, quality, adaptability, availability, accuracy fitness for a particular purpose, title and non-infringement. The Licensor does not warrant that the use of the Software will be secure, uninterrupted or that it will operate without errors.

This section contains the sole liability regime applicable to the Software in terms of warranty, with express exclusion, to the maximum extent permitted by law, of any other legal or contractual regime that could be applicable. The Licensee expressly and irrevocably waives any action towards the Licensor in connection with the foregoing.

11. Liability

11.1 Liability of the Licensor

The Licensor shall be liable towards the Licensee for the damages and losses caused as a direct and necessary consequence of a material breach of the obligations assumed by the Licensor under this Agreement in the following terms:

(i) The Licensor's total maximum aggregate liability towards the Licensee shall be equal to the MSRP (manufacturer's suggested retail price) indicated in the Licensor's price list applicable at the time of the damages, corresponding to the geographic area where the Licensee is located, save for in case of fraud (dolo) or wilfull misconduct (culpa grave).

(ii) The Licensor shall not be liable towards the Licensee in cases where the claims of third parties are caused by errors made by the Licensee, the integrator or any third persons or attributable to its Systems.

(iii) The Licensor shall not be liable towards the Licensee in case of force majeure or fortuitous events.

(iv) The Licensor assumes no liability whatsoever in connection with the integration of the Software with third parties' hardware or systems.

(v) In no case will the Licensor be liable for indirect, incidental, exemplary, punitive, consequential or special damages (including, among others, loss of profits, business interruption or loss of business information), whatever their nature or origin, arising out of or in connection with this Agreement, even if the Licensor has been advised of the possibility of such damages or could reasonably have foreseen the possibility of such damages.

11.2 Liability of the Licensee

The Licensee shall be liable towards the Licensor for the damages and losses (including loss of profits) caused as a direct and necessary consequence of a material breach of the obligations assumed by the Licensee or any of its directors, managers, employees, advisors or contractors under this Agreement without any limitation whatsoever.

12. Term and termination

12.1 Term

This Agreement, and therefore the License granted hereunder, enters into force upon the acceptance by the Licensee of the terms and conditions of this Agreement pursuant to section 2 above and shall remain in force indefinitely provided that all the conditions under section 5 above are met.

Nevertheless and without prejudice to other termination rights available for the parties under the applicable legislation, any party may terminate this Agreement at any time upon a material breach by the other Party of any of the provisions of this Agreement without such breach being remedied (to the extent remediable) within fifteen (15) calendar days.

12.2 Consequences of termination

Upon termination of the Agreement for any reason: (i) the License shall be deemed automatically cancelled and the Licensee shall lose any and all rights in connection with the Software; (ii) the Licensee shall immediately cease to use the Software; and (iii) the Licensee shall within three (3) calendar days after termination uninstall the Software and destroy all the information related thereto. The Licensor may require the Licensee to certify in writing the compliance with the foregoing obligations.

The Licensor reserves the right of blocking the Software or adopting other technical measures to make the Software unusable for the Licensee. The Licensee expressly waives any actions or claims towards the Licensor for the damages or prejudices that such actions may cause to the Licensee.

The provisions of the Agreement which by their terms or nature survive termination, will survive any termination of the Agreement.

12.3 Suspension

Notwithstanding the foregoing, the Licensor reserves the right to temporarily suspend the access or functioning of the Software when:

- (i) The Licensee is in breach of any of its obligations under this Agreement.
- (ii) The Licensee is in breach of any of its obligations under the supply or purchase contract by virtue of which acquired the Hardware and/or Software to the Licensor or to any of its Authorized Distributors.
- (iii) The Licensee is in breach of any other agreement, including, among others, support services agreements, executed with the Licensor, any of its Authorized Distributors, or any entity of the Salto Group.
- (iv) Technical difficulties exist that, at Licensor's criteria, may reduce the security measures for the proper functioning or protection of the Software.

13. Support services

The Licensee shall benefit from the support services related to the Software in accordance with the terms and conditions that may agree with the Licensor, its Affiliates or any of its Authorized Distributors.

14. Audit

The Licensor reserves the right to carry out, either directly or through the advisors it considers fit, an audit on the performance by the Licensee of the provisions of this Agreement.

The Licensee shall allow access to the Licensor and/or its advisors to the Location and the Systems, provide all the information required for the purposes of the audit and, in general, cooperate in good faith with the Licensor and/or its advisors.

15. Confidentiality

The Software constitutes valuable, sensitive and confidential business information and intellectual property of the Licensor.

The Licensee hereby undertakes to take such actions as may be necessary or desirable to preserve the strictest confidentiality of all and any data or information related to the Software. The same duty shall apply to all and any information of the Licensor, its activity or business to which the Licensee may have had access from time to time.

The Licensee shall be jointly and severally liable for any breach of this confidentiality obligation by any of its directors, managers, employees or contractors.

16. Assignment

The Licensee may not license, sublicense, loan, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to third parties the Software and/or its contractual position, rights or obligations under this Agreement; nor permit the use of the Software by third parties, without having obtained the prior written consent of the Licensor.

As an exception to the above:

(i) The Licensor is entitled to assign the rights and obligations deriving from the Agreement to any company of its group (within the meaning of article 42 of the Spanish Commercial Code) without requiring the consent of the Licensee.

(ii) In case the Licensee transfers the property of the Location, the Licensee and the new owner of the Location may request to the Licensor to assign the rights and obligations deriving from the Agreement, including the License, to the new owner by means of a joint communication. Where appropriate, the Licensor may request supporting documentation about the Location property transfer.

17. Amendment

The Licensor reserves the right to amend, totally or partially, this Agreement, as well as the right to add new terms and policies complementing the same. The version in force of this Agreement from time to time can be found at [the Software settings].

Notwithstanding the above, no amendment of this Agreement will be binding to the Licensee unless accepted pursuant the provisions set forth in section 2 and 6 above.

18. Language

The official language of this Agreement is English. In case of any discrepancy between the English version and any other version the Agreement could be translated to (for the exclusive purposes of facilitating the Licensee's understanding), the content of the English version shall prevail.

19. Partial invalidity

Any finding by a court or administrative body that one or more clauses of the Agreement are unlawful, null and void, invalid or unenforceable in whole or in part shall not render unlawful,

null and void, invalid or unenforceable the other clauses or the remaining parts thereof, which shall remain fully valid wherever applicable, all of the foregoing provided that the clauses or part thereof found to be unlawful, null and void, invalid or unenforceable are not essential. The clauses or parts thereof found to be unlawful, null and void, invalid or unenforceable shall be deemed to have been removed from the Agreement or not applicable in that circumstance, as the case may be, and it shall be replaced by a new clause or interpreted in a manner that is acceptable in law, whose contents is as similar as possible to the clause that the Licensor would have included had it known about the lack of validity or effect of this clause.

20. Personal Data

For the use of the Software, the individual representing the Licensee shall provide the Licensor with some personal data. For further information, including exercise of the rights of the individual representing the Licensee, the Licensee could see the Privacy Policy of the Licensor.

In addition, the use of the Software shall also eventually involve the processing by the Licensee of personal data owned as controller or, in some situations, as data processor. The Licensee is responsible for processing such data in compliance with the applicable data protection law. The Licensor shall not access nor otherwise process Licensee's personal data, unless specifically requested by the Licensee for receiving certain technical support services. Only in such event, the Licensor shall exclusively process the referred personal data on behalf of the Licensee and following its instructions, for the rendering to the Licensee of the corresponding technical support services. For such purposes, the Licensee and the Licensor shall sign an appropriate data processor or sub-processor agreement, in accordance with the applicable legislation.

It will be the Licensee's sole responsibility, to have previously informed the data subjects of how their personal data will be processed by the Licensee and its processors and, to ensure that the Licensee has a legitimate legal basis to carry out such data processing.

21. Governing Law and jurisdiction

This Agreement and any claim arising out or relating to this Agreement or its subject matter shall be governed by and construed under the laws of Spain. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. The Licensor and the Licensee expressly waive any other jurisdiction to which they may be legally entitled, and expressly submit the resolution of any disputes or claims arising over the interpretation or performance of this Agreement, including those relating to any non-contractual obligations arising from or related to them, to the jurisdiction of the courts and tribunals of Donostia-San Sebastián (Gipuzkoa-Spain).