

## **End User License Agreement**

### **Miele Diagnostic Support Program**

#### **§ 1 - Scope of application**

(1) This license agreement applies for the use of the Miele Diagnostic Support Program (the "Software") made available by the Miele & Cie. KG, Carl-Miele-Straße 29, 33332 Gütersloh, Germany ("Miele") to the licensee ("you"). Usage of the Software provided by Miele is solely permitted on the basis of the terms and conditions defined below.

(2) The Software is exclusively made available to professional repairer, who are entrepreneurs within the meaning of § 14 BGB or legal entities under public law or rather natural persons who use the Software in the execution of their professional activity for an entrepreneur within the meaning of § 14 BGB or for a legal entity under public law (e.g. employees) –, however, in no case, for consumers within the meaning of § 13 BGB.

(3) During the ordering and/or installation process you will be asked to accept this license agreement. By clicking the acceptance button, you acknowledge and agree to the following license agreement in full. If You are an individual representing a company, organization or other legal entity ("Entity"), You represent and warrant that You have the legal authority to accept the Terms on behalf of such Entity and to bind it to the Terms. If You are not authorized, you may not accept the Terms and must not use the Software.

#### **§ 2 - Object of license agreement**

(1) This license agreement solely relates to your use of the Software. No other services are owed to you under this license agreement.

(2) Miele grants you a limited single-use, non-exclusive, revocable and non-transferable right to use the Software for the agreed period, subject to your proper payment of the respective license fees and strict compliance with all applicable laws, this license agreement and any applicable terms and conditions available through the Store. No additional rights are granted to you. Miele is the sole and exclusive owner of the rights to the Software. Any form of sub-licensing, rental and/or distribution of the Software or usage rights to the Software may not be granted by you.

#### **§ 3 - Updates**

(1) The Software is provided as a dynamic, developing product. Miele may extend, update or modify the Software, in particular add, modify or remove individual functions, at any time and at its own reasonable discretion unless this is unreasonable for you. We shall inform you about any changes and/or supplements to the scope of the Software. You can find such information to an update in the release notes. This license agreement shall also apply to updates or revisions thereto. To ensure the correct and stable functionality of the Software, you need to install the latest version/update of the Software. Miele is not obliged to maintain support for older versions/updates and does not warrant the compatibility of older versions/updates with newer hardware operating systems. However, you are not entitled to claim for any update of the Software which extends the functions of the Software.

(2) Furthermore, we regularly provide updates for the data displayed in the software ("Data Update"). Data Updates will be automatically installed when the Software is connected to the internet. Due to the fact that Data Updates do not modify the scope of the Software or individual functions, we do not provide release notes or any further information related to a Data Update.

## § 4 – Offline Mode

The Software can be used online (using an active internet connection) and offline, without internet connection (“Offline Mode”). If you intend to use the Offline Mode, you must ensure that you have received the latest Data Update for the Software at least ten (10) days before the intended use of the Offline Mode in order to ensure that the Software and the data displayed in the Software are up-to-date and for a proper use of the Software. Please note, that the Software cannot be used in the Offline Mode unless you have received the latest Data Update.

## § 5 – Restrictions

You acknowledge and agree to the following restrictions and warrant that You will not encourage or facilitate any third party to violate these restrictions:

- a) You shall not distribute, sell, rent or otherwise license or sub-license the Software;
- b) You shall not install or use the Software on more devices as you are allowed to;
- c) You shall not use the Software for any illegal purposes or in any way which could violate these Terms or any applicable law, in particular but without limitation to applicable data protection law or any other third party rights;
- d) You shall not use the Software to interfere with, try to gain unauthorized access to, or otherwise disrupt any other Software and/or services made available by Miele or any servers or networks connected with any Software and/or services made available by Miele;
- e) You shall not transmit any malware, defects or any other items of destructive nature or any other items which could threaten the Software or any other Software and/or services made available by Miele, to any servers or networks connected with any Software and/or services made available by Miele;
- f) You shall not translate, decompile, copy, reverse engineer, create derivative works or otherwise modify the Software unless You are explicitly entitled to do so under applicable mandatory law;

## § 6 - Availability

You shall not make any changes to the Software. In particular, but without limitation, you are not entitled to translate, decompile, reverse engineer or create derivative works, unless you are explicitly entitled to do so under applying mandatory law.

The foregoing limitation does not apply to individual components of the Software that are subject to an open source license and whose use is therefore governed by the respective open source license.

## § 7 - Property rights

- (1) By accepting this license agreement, you acknowledge Miele’s and all other third party property rights to the Software in their entirety, and you are obliged to their preservation. These rights include, among others, copyrights, patents, trademarks and trade secrets.
- (2) You agree to undertake all necessary steps to prevent possible damage or injury to these rights, to stop said damage or injury, and to prosecute third parties if a third party has wrongfully accessed or come into the possession of the Software from you.

## § 8 - Liability and guarantee

**(1) MIELE MAKES NO REPRESENTATIONS OR GUARANTEES OF ANY KIND WHATSOEVER AS TO THE SOFTWARE OR FUNCTIONALITY OF THE SOFTWARE, UNLESS EXPLICITLY STATED OTHERWISE.**

**(2) MIELE DISCLAIMS ALL LIABILITY AND WARRANTY FOR VERSIONS OF THE SOFTWARE WHICH ARE NOT INTENDED FOR USE BY END USERS (TEST, PILOT, ALPHA, BETA VERSIONS OR SIMILAR). YOU AGREE THAT YOU ARE AWARE OF AND ACCEPT THE RISKS INVOLVED IN USING SUCH PROGRAMS; IN PARTICULAR, THAT MALFUNCTIONS OR DATA LOSS MAY OCCUR. THE USE OF SUCH PROGRAMS IS AT THE SOLE RISK OF YOU AND ANY CLAIMS RELATING TO WARRANTY AND LIABILITY SHALL BE EXCLUDED.**

**(3) MIELE SHALL BE LIABLE FOR DAMAGES CAUSED BY INTENT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE GERMAN PRODUCT LIABILITY ACT WITHOUT LIMITATION. IN THE EVENT OF SLIGHT OR MINOR NEGLIGENCE, MIELE SHALL ONLY BE LIABLE WITHOUT LIMITATION FOR DAMAGES TO LIFE, HEALTH OR PERSONAL INJURY. IN ALL OTHER CASES OF SLIGHT OR MINOR NEGLIGENCE, MIELE SHALL BE LIABLE INsofar AS MIELE BREACHES OR VIOLATES AN OBLIGATION WHICH IS ESSENTIAL FOR THE PROPER IMPLEMENTATION OF THIS LICENSE AGREEMENT AND OF WHICH YOU RELY ON OR MAY REGULARLY RELY ON – IN SUCH EVENT, MIELE’S LIABILITY TO YOU SHALL BE LIMITED TO THE TYPICAL FORESEEABLE DAMAGE UNDER THIS LICENSE AGREEMENT. FURTHER CLAIMS FOR DAMAGES CAUSED BY SLIGHT OR MINOR NEGLIGENCE ARE EXCLUDED.**

**(4) YOU ARE NOT ENTITLED TO CLAIM FOR DAMAGES CAUSED BY SOFTWARE DEFECTS, INsofar AS YOU FAIL TO APPLY ONLINE SOFTWARE UPDATES PROVIDED BY MIELE AND THE DAMAGE COULD HAVE BEEN AVOIDED IF THE UPDATE HAD BEEN APPLIED. THIS ALSO APPLIES TO SECURITY VULNERABILITIES, WHICH ARISE PROVIDED THAT THE SOFTWARE UPDATE WAS NOT INSTALLED BY YOU OR THE UPDATE WAS ABORTED DURING INSTALLATION.**

**(5) YOU ARE AWARE THAT NO CLAIMS FOR DAMAGES CAN BE MADE AGAINST MIELE RESULTING FROM YOUR NEGLIGENT, UNAUTHORIZED OR ILLEGAL SECURITY MECHANISMS, ESPECIALLY WITHIN YOUR OWN LAN OR DEVICE, OR AS A CONSEQUENCE OF YOU USING THE APP CONTRARY TO THE TERMS OF THIS LICENSE AGREEMENT. YOU MUST ALSO MAKE SURE THAT THE SOFTWARE CANNOT BE MISUSED BY THIRD PARTIES.**

**(6) IF YOU LOSE YOUR DEVICE ON WHICH THE SOFTWARE IS ACCESSIBLE (E.G. THROUGH LOSS, THEFT, ETC.) THEN YOU ARE RESPONSIBLE FOR IMMEDIATELY REVOKING ANY ACCESS PERMISSIONS WITH APPROPRIATE MECHANISMS IN ORDER TO ENSURE THAT UNAUTHORIZED ACCESS TO THE SOFTWARE IS PREVENTED.**

**(7) IF YOU KNOW OR HAVE REASON TO BELIEVE OF ANY POTENTIAL DAMAGE TO MIELE IN CONNECTIONS WITH YOUR USE OF THE SOFTWARE, YOU ARE OBLIGATED TO INFORM MIELE OF ANY SUCH DAMAGE OR LOSS SCENARIOS.**

## § 9 – Duration and Termination of License Agreement

**(1) This License Agreement come into effect with your acceptance and is closed for the specific period as You or Your Entity and Miele agreed on in the context of the ordering process.**

**(2) The Parties statutory right to terminate this license agreement for a compelling reason without a notice period shall remain unaffected. In Particular, Miele is authorised to immediately terminate this license agreement without a notice period in the event of a material breach of this license agreement or any term set forth in this license agreement by you or if you or your entity is in delay for payment for more than two (2) months.**

(3) Termination of this license agreement shall lead to withdrawal of your authorization to use the Software, and you must immediately stop such use.

#### **§ 10 - Final provisions**

(1) This license agreement is subject to German law, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction for all disputes arising from or in connection with this license agreement shall be the courts responsible for Gütersloh, Germany.

(2) You are not permitted to transfer or assign your rights and duties arising from this license agreement to a third party.

(3) Any changes to this license agreement must be agreed between the parties. In case Miele wishes to make changes to this license agreement Miele shall notify you of the changes and you may object to the changes within a reasonable period of time as specified by Miele ("Objection Period") within the notification. If you do not object to the changes within the Objection Period it will be deemed that you accept the changes. In case you object to the changes Miele may terminate the license agreement with a two weeks' notice. Miele will also inform you about the Objection Period and the legal effect of objecting or non-objecting separately within the notification.

#### **§ 11 - Effectiveness clause**

In the event of invalidity or ineffectiveness of individual terms, the effectiveness of other license terms remains unaffected. Invalid or ineffective provisions shall be replaced by effective terms that best approximate the economic purpose of the ineffective or invalid terms.