

END-USER SOFTWARE LICENSE AGREEMENT (“EULA”)

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1. Definitions

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- Software:** Is defined as an installed copy of this software package as all or in part including the main and all its auxiliary programs and the related media on which the Software is stored and as far as such are matter of the contractual agreement including the corresponding documentation, the electronic and online guidebooks and finally printed material, supplied by Licenser. Software for purpose of this Agreement covers also updates and upgrades that have been provided to you by the Licenser.
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- Update:** Software or a piece of it having the same, minor improved or corrected functionality, mainly generated under the condition to resolve found software problems. Update-Changes in the software are expressed by an increased minor digit in the version number. Software updates available on the internet are free of charge.
- Upgrade:** Software or a piece of it with an expanded and major improved functionality typically generated at a time when old technology is discontinued or a software generation jump is necessary in general. Upgrade-Changes in the software are expressed by an increased major digit in the version number. Software upgrades require paying a new fee and requiring a new License Key.
- HD2-DM-A:** Advanced Diagnostic Module hardware device installed in a FieldConnex® Power Hub/Stand-alone System used to analyse and diagnose the Fieldbus network of either Fieldbus Foundation or Profibus-PA segments.

DM-AM: Mobile Advanced Diagnostic Module hardware device designed as handheld device used to analyse and diagnose the Fieldbus network of either Fieldbus Foundation or Profibus-PA segments at any possible/legal network access point.

2. Subject matter of the Agreement

2.1 The Licensee is provided with the Software specified in the offer of contract or Software product certificate/specifications on a data carrier or by making the Software available for download on the Internet. A printed version of the user documentation is not automatically part of the Software except it is expressly a part in the offer of contract and in the scope of delivery.

The main program of the Software builds the graphical user interface for the Advanced Diagnostic Modules HD2-DM-A and DM-AM and implies functions like visualization, diagnostics, analysis of the Fieldbus data and the commissioning of the Diagnostic Modules. It will be delivered as a DTM (Device Type Manager) requiring a FDT (Field Device Tool) Framework like PACTware™ to be operative, a standalone program, an ActiveX Control or any other software format.

2.2 A Service Contract for the Software is not due and remains subject of a separate Agreement with the Licensor.

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Subject to the terms and conditions set forth in this agreement, the Licensor grants the Licensee a personal, non-exclusive and non-transferable license according to the following provisions:

3.1 By installing the Software the Licensor grants the Licensee a **Basic-License**. The Basic-License allows to install the software on any workstation and to use it in conjunction with as many DM-AM or HD2-DM-A devices as the Basic-Version of the Software allows to. A Basic-License grant can be transferred to a Single-License grant (chapter 3.2) or Production Process Plant-License grant (chapter 3.3) by purchasing the respective license and paying its fee.

3.2 By purchasing the license **DTM-FC.ADM** a **Single-License** is granted which admits the Licensee the right to install the Software on any workstation but to use it in conjunction with just **ONE SINGLE** dedicated DM-AM device only. The Licensee may not operate further DM-AM devices for which he has not received a license for. If, however, the Licensee wants to operate additional DM-AM devices he has to purchase for each DM-AM device a separate DTM-FC.ADM license.

3.3 By purchasing the licenses **DTM-FC.AD** or **DTM-FC.AD.1 Production Process Plant-Licenses** are granted which admit the Licensee the right to install the Software on multiple workstations to operate **MULTIPLE** HD2-DM-A devices. He is furthermore entitled to make as many simultaneous installations of the Software on any workstation as needed to get a designated Production Process Plant monitored and diagnosed. Two different license versions are available for purchase with following grants:

- A License named **DTM-FC.AD** which allows the operation of up to 100 (≤ 100) fieldbus segments at a time.
- A License named **DTM-FC.AD.1** which allows the operation of more than 100 (> 100) fieldbus segments at a time.

Each of both Licenses is applicable for a single designated Production Process Plant only and **not** applicable plant wide. The term Production Process Plant in this context means a facility that is considered to be responsible for the production of one or multiple designated end products. Thus one separate License has to be purchased for each Production Process Plant asset or installation where the use of Advanced Diagnostic Module HD2-DM-A is intended.

The type of Software license is printed in the offer of contract or the software product certificate/specifications the Licensee received in his delivery.

3.3 The Licensee is entitled to make one copy of the data-carrier of the Software if necessary, but for backup-purposes only clearly marked.

3.4 The Licensee is only entitled to sell the Software and to assign the License which he has acquired under the terms of this agreement when he has bought it specifically for purposes of reselling. In this case the Software has to be handed over in its original data carriers and all documentations including the license certificate under the condition that the Licensee informs the Licensor which third party will acquire the Software before reselling it and under the condition, that the third party accepts to enter into the terms and conditions of this agreement in written form. In the event the Software requires a piece of hardware to be operative, it is obligatory that the Software is re-sold along with the hardware. In cases of reselling the reseller shall refrain from using the resold Software.

3.5 The Licensee is entitled to obtain and use updates or upgrades to an existing original version granted by the Licensor, only if the original Version of the Software is already owned by the Licensee and be used in accordance to the provisions of this agreement.

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7.6 There is no defect if the Software is used on hardware or on an operating system which does not meet the requirements which have been laid down in the offer of contract or the Software product certificate/specifications.

7.7 If there is any defect, the Licensor is entitled to choose the option of remedying the defect by (a) refund of license fee or (b) delivering a substitute for the Software or the media or (c) offering a subsequent performance.

7.8 The location for a subsequent performance is selected by the Licensor to be either at the Licensor's side or at the Licensee's one.

7.9 Subsequent performance is considered to have failed after the third unsuccessful attempt. If the subsequent performance fails, the Licensee is entitled to withdraw from the contract or negotiate a price reduction.

8. Limitation of Liability

8.1 The maximum aggregate liability of the Licensor or its officers, directors, employees, agents, distributors and resellers under these licenses for all losses or damages, expenses or injuries either direct, indirect, incidental or otherwise, arising out of the breach of any express or implied warranty, term or condition, breach of contract, tort, statute or any other legal theory arising out of, or related to, this agreement or your use of any of the licensed materials shall be limited to the license fee paid by the Licensee hereunder.

In no event shall Licensor be liable to Licensee or any third Party for (a) loss of profits, loss of revenue, (b) indirect, incidental or consequential losses even if advised of the possibility of such (c) loss of data and loss of use of the product or any associated equipment down time.

8.2 The limitation of liability does not apply when the Licensor is liable for intentional breach of duty or gross negligence on the part of his legal representative or other vicarious agents,

regardless of the legal ground and according to the statutory regulations as provided in the Product Liability Act.

8.3 No action or proceeding relating to this license may be commenced by Licensee more than one year after the cause of action arises.

9. Damages arising out of the Licensee actions

The Licensee is liable for and shall defend and hold the Licenser harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of his use of the licensed materials, his negligent or wrongful acts, his violation of any applicable laws or regulations, and/or his breach of any provision of this EULA. Particularly defects in the Software have to be indicated to the Licenser immediately after the defect has been noticed to prevent anyone from harm.

10. Fees and payment terms

The ruling prices for the different licence types are listed in the Licencer's current price list. The total amount of license fee for ordered Software is indicated in the confirmation of the order. The payment terms are specified within the invoice. Late payments are subject to late payment charge of one per cent per month or part thereof.

11. Term and termination

The Licenses in this Agreement are granted without time limit. The Licenser may terminate this agreement at any time at his own discretion in the event of a material breach of the terms and conditions of this agreement by the Licensee by a written notice of termination to the Licensee. Upon termination of this agreement for any reason the sections 1. Definitions , 7. Limited Warranty and Disclaimer, 8. Limitation of Liability, 9. Damages arising out of the Licensee actions, 12. Governing Law and place of jurisdiction, 13. Severability, 15. No Assignment remain in effect. In case of termination the Licensee has to delete the Software from his workstations. In case of termination for Licensees material breach of the Agreement all other rights of the Licenser remain reserved.

12. Governing Law and place of jurisdiction

11.1 The validity, interpretation and legal effect of this EULA shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany. The courts of Mannheim, Germany shall have sole jurisdiction of any controversies regarding this agreement. Any action or other proceeding which involves such a controversy shall be brought in those courts in Mannheim and not elsewhere.

13. Severability

13.1 Should any provision of this Agreement be determined to be overly broad, ambiguous or otherwise unenforceable, such provision shall be redrafted in order to narrow its scope to the extent necessary to make the provision reasonable and enforceable. If the scope of the provision cannot be narrowed to such an extent that the provision will become enforceable, such provision shall be severed from this Agreement.

13.2 In all cases the remainder of the Agreement shall continue in full force and effect.

14. Written Form

14.1 This Agreement may not be modified or amended except by written amendments duly executed by the Licensor and the Licensee. The requirement of written form can only be waived in written form.

15. No Assignment

15.1 This Agreement and any rights hereof may not be assigned by the Licensee without the prior written consent of the Licensor unless otherwise provided in this Agreement.