# END-USER SOFTWARE LICENSE AGREEMENT ("EULA")

**IMPORTANT NOTE – READ CAREFULLY**:

THIS END-USER SOFTWARE LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU, AS A DESIGNATED SINGLE USER OR AS A REPRESENTATIVE IN THE NAME OF A COMPANY OR AN ORGANIZATION, CALLED IN THE FOLLOWING THE LICENSEE AND THE PEPPERL+FUCHS GMBH CALLED IN THE FOLLOWING THE LICENSER.
BY INSTALLING AND/OR USING THE SOFTWARE, YOU INDICATE YOUR ACCEPTANCE TO THE TERMS OF THIS AGREEMENT.
READ THE WHOLE AGREEMENT CAREFULLY BEFORE YOU CONTINUE TO INSTALL THE SOFTWARE. BY INSTALLING AND/OR USING IT YOU AGREE TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS THEN DO NOT INSTALL AND/OR USE THE SOFTWARE AND RETURN IT TO YOUR PLACE OF PURCHASE. IF YOU HAVE RECEIVED THE SOFTWARE DUE TO A DOWNLOAD INSTEAD, DELETE ALL ALREADY DOWNLOADED DATA.

## 1. Definition

**Licenser:** Pepperl+Fuchs GmbH, Lilienthalstraße 200, D-68307 Mannheim, GERMANY

**Software:** Is defined as Software program 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 the Licensee by the Licenser.

**Basic License:** The Software remains a Basic-Version after installation under the terms of a Basic License that may have limited features. Furthermore a Basic-Version of the Software may only be operable in one instance only within a Framework. The Basic License is delivered free of charge.

**Full License:** The Full-License can only be activated by an individual license key number and transfers a Basic-Version of Software to a full version under the term of a Full-License. The Software under these terms can be installed on more than one workstation simultaneously.

**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. Updates 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. Software upgrades may require a new fee and a new License Key.

## 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 Licenser which is also the manufacturer of the below mentioned groups of devices has developed a Device Type Manager (DTM) for each of its devices or group of devices. The DTM encapsulates all the device-specific data, functions and business rules such as the device structure, its communication capabilities, internal dependencies, and the Human Machine Interface (HMI) structure. The DTMs provide functions for accessing device parameters, configuring and operating the devices, and diagnosing problems

It is based on the FDT (Field Device Tool)-technology. FDT -technology standardizes the interface between field devices and systems.
The DTM is loaded and launched in a FDT-"frame" application (also FDT container program). It defines a set of interfaces between the hosting application and the DTMs. FDT-Frame applications can be device configuration tools, control system-engineering tools, operator consoles or asset management tools.

Therefore the DTM needs Framework like PACTware™ to be operative. The use of a Microsoft Windows Operating System is obligatory. For the list of appropriate Operating systems please refer to the readme file which comes with the Software.

**Assignment of the individual DTMs to the abovementioned License categories:**

2.1.1    DTM-Collection Remote I/O System - RPI :
Basic License, Full License

2.1.2    DTM-Collection Remote I/O System - LB/FB:
Basic License, Full License

2.1.3    DTM-Collection Conventional Interface Technology:
Basic License already includes Full License, no further licenses necessary

2.1.4    DTM-Collection FieldConnex:
Basic License already includes Full License, no further licenses necessary

2.1.5    DTM-Collection HART Multiplexer:
Basic License already includes Full License, no further licenses necessary

2.1.6    DTM-Collection Level Control Technology:
Basic License already includes Full License, no further licenses necessary

2.1.7    DTM Korrosionsüberwachung CorrTran:
Basic License already includes Full License, no further licenses necessary

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

## 3. Grant of License

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

3.1 The installation of the Basic-version Software itself implies a **Basic-License** grant. It gives the Licensee the right to install the software on any workstation and to use it in conjunction with as many devices as the Software allows to. A Basic-License is transferred automatically to a Single-License or Plant-License when the Software is activated by a Licence Key.

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

3.3 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 Licenser 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.

3.4 The Licensee is entitled to obtain and use updates or upgrades to an existing original version granted by the Licenser, 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.

## 4. License Restrictions

4.1 The Licensee is in no way entitled to distribute, to assign, to share through an information network, let, lease or grant any sublicenses of the software to any third parties unless otherwise agreed to in this contract.

4.2 The Licensee may not change, alter, enhance any parts of the licensed Software and may not make any modifications on the data-carrier or insofar he has the permission to make duplicates to keep the contents unchanged during the copy.

4.3 The Licensee is not entitled to de-compile, disassemble or otherwise reverse engineer any of the licensed Software, in whole or in parts or attempt to access or derive the source code of the Software or any algorithms, concepts, techniques, methods or processes embodies therein.

## 5. Infringement of licences

5.1 In the event of violation of the provisions of article 3 to 4 by the Licensee, by his legal representative or vicarious agents, the violator commits himself to pay liquidated damages amounting to the fee for a corresponding license. All other claims for damages are reserved and the violator may be held legally and financially liable for any further damages resulting from the violation of the agreement while this agreement was in effect.

5.2  In the event that any material part of the Software becomes subject of a valid third party claim of copyright, patent or other proprietary right infringement, the Licenser shall, at its option, either (i) replace the Software with a compatible, functionally equivalent, non infringing software product; (ii) modify the Software or take some other action so that it is no longer infringing; (iii) procure the right for the Licensee to continue using the Software; or (iv) if, in the sole discretion of the Licenser, none of the foregoing alternatives is reasonably available, terminate this License Agreement and pay to the Licensee an amount equal to the License Fees paid by Licensee less five percent (5%) of such License Fee for each calendar month elapsed from the effective date hereof to the date of termination of this License.

5.3. The foregoing states the entire liability of the Licenser with respect to claims for copyright or patent infringement and except as provided in this section Licenser shall have no liability to Licensee whatsoever for any loss or damage or infringement claims against Licensee by third parties arising out or related to any allegation or determination that Licensee's use of the Software infringes any proprietary or intellectual property right.

In this case, the Licensee undertakes to return to the Licenser all software including all accompanying material, to destroy all copies and to remove any software installed on workstations.

## 6. Ownership and Intellectual Property Rights, passing of risk

6.1 The foregoing license gives the Licensee the limited license just to use the Software.

6.2 All title and interest to, and intellectual property rights in, the licensed materials and any related documents are and shall remain owned and/or controlled solely and exclusively by the Licenser. The Licenser reserves all rights in the licensed materials not specifically granted to you under this EULA, including Federal and International Copyright.

6.3 Passing of the risk between Licenser and Licensee for the Software begins to run at the time the Software leaves the Licenser's sphere of influence e.g. the data carrier on which the software is stored was dispatched or the Software has left the  server holding the software and the download has been done from.

## 7. Limited Warranty and Disclaimer

7.1 The Licensee expressly acknowledges and agrees that he is installing and using the licensed materials at his own sole risk. The Licenser provides no remedies or warranties, whether express or implied, for the licensed materials. It is provided "as is" without warranty, term or condition of any kind unless otherwise agreed to in this contract.

7.2 Except with respect to any Trial- or Demo-Version of the Software, the Licenser warrants that, for a period of 12 month from the date of delivery (as evidenced by a copy of your receipt):
(a) When the Software is used with a recommended hardware configuration, the Software will perform in substantial conformance with the documentation supplied with the Software; and
(b) the physical media on which the Software is furnished will be free from defects in materials and workmanship under normal use.

This Warranty does only apply for Software which is supplied against payment.

7.3 Except as set forth in the foregoing limited warranty with respect to Software other than any Trial- or Demo-Version, the Licenser and its Suppliers disclaim all other warranties whether express, implied or otherwise, including the warranties of merchantability or fitness for a particular purpose. Also, the Licenser does not warrant that the Software is error-free or will operate without interruption.

7.4 No oral or written information or advice given by the Licenser, its dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of any warranty provided herein.

7.5 There is defect in the Software if it does not have the stipulated qualities and properties on passing of the risk, or if it does not fit for the contractually agreed use. Defects in the Software recognized on the Licensee's side can only be accepted when they are re-constructible, proven or properties extensively differ from those laid down in the corresponding offer of contract or the software product certificate/specifications.

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 Licenser 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 Licenser to be either at the Licenser'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 Licenser 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, arsing out of the breach of any express or implied warranty, term or condition, breach of contract, tort, statue or any other legal theory arsing 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 Licenser 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 Licenser 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 licences assigned to the different groups of devices are listed in the Licenser'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 remains 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 Licenser 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 Licenser unless otherwise provided in this Agreement.