

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.

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1. Definitions

- Licenser:** Pepperl+Fuchs GmbH, Lilienthalstrasse 200, D-68307 Mannheim, GERMANY
- 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.
- 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 statically 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.
- Diagnostic Manager:** Is the graphical user interface for HD2-DM-As. It implies functions like visualization, diagnosis and analysis of the fieldbus physical layer data provided and it serves the commissioning of the modules.
- FDS:** FieldConnex Device Service, a Microsoft® Windows service managing the queuing, storing and forwarding of the diagnostic

messages between the Diagnostic Manager and the connected HD2-DM-A modules.

2. Subject matter of the Agreement

2.1 The Licensee is provided with the Software by making the Software available for download on the Internet.

The Software is an extension to the ordinary Diagnostic Manager software and the FDS and runs on Microsoft®'s Windows 2000 or XP as Operating System. It enables the provision of fieldbus diagnostic data from HD2-DM-A modules in Emerson's AMS® Suite.

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 Licensee has to pass a product registration service before downloading the Software. In registering and providing data to use this product, the Licensee warrants that the given information is true, accurate, current, and complete. The personal data is properly and carefully stored and managed according to the applicable laws. The Licenser does not pass the personal data on to any third party, neither for advertising, marketing, nor for any other purposes, without the Licensee's approval.

3.2 The Licensee is authorized to install the Software unlimited times and use it in conjunction with as many Diagnostic Manager installations as needed.

3.3 The Licensee has the right to activate the Software simultaneously with the Diagnostic Manager. Herewith the Licensee gets automatically bound to the terms of the Diagnostic Manager End-User Software License agreement.

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

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

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4.4 The Licensee is not entitled to sell or re-sell the Software.

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7.2 Except with respect to any Trial- or Demo-Version of the Software, the Licensor 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 Licensor 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 Licensor 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 Licensor, 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 reconstructable, 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 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 Licensor 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 Licensor 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 Licensor'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 Licensor 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 Licensor 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.