

## **END-USER SOFTWARE LICENSE AGREEMENT (CALLED IN THE FOLLOWING “EULA”)**

### **IMPORTANT NOTE – READ CAREFULLY:**

THIS END-USER SOFTWARE LICENSE AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU, AS A DESIGNATED 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, MANNHEIM, GERMANY CALLED IN THE FOLLOWING THE “LICENSER”.

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### **1. Definitions**

**Licensor:** Pepperl+Fuchs GmbH, Lilienthalstr. 200, 68307 Mannheim, Germany

**Software:** Means the Licensor software program(-s) as all or in part including the main and all its auxiliary programs and the related information which are offered for download on the Licensor's internet homepage or on a data carrier and which are defined in Section 2 of this EULA.

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**Product:** Means each product of the Licensor needing the Software for the purpose of discovering and configuring of Pepperl+Fuchs Ethernet based products.

### **2. Subject matter of the EULA**

**2.1** The Licensor provides the Software which is subject to the following terms and conditions of use called “Pepperl+Fuchs Discovery and Configuration Tool”.

The Software needs an environment as described in the related documentation to be operative.

**2.2** A Service Contract for the Software is not available.

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#### **5. Infringement of licences**

In the event of breach of Section 3 to 4 of this EULA by the Licensee, the Licensee commits himself to pay a penalty to be determined by the Licensor as appears just and equitable and which in case of dispute shall be reviewed by the competent court. All other claims for damages shall remain unaffected thereby; however the penalty shall be offset against said claims.

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**8.2** The Licensor warrants that at the date of passing of risk, that when the Software is installed in the hard- and/or software configuration in which it is delivered to the Licensee, the Software will perform in substantial conformance with the performance described in the related information.

**8.3** Except as set forth in the forgoing limited warranty the Licensor disclaims 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.

**8.4** No additional 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 above.

**8.5** Licensor and Licensee agree that there is a defect in the Software if it does not have the above stipulated qualities and properties defined in Sec. 8.2 on passing of risk. Defects in the Software recognized on the Licensee's side can only be accepted when they are reconstructable or proven.

**8.6** 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 corresponding documentation. There is either no defect in the following cases:

- damages resulting from faulty or negligent handling of the Software not caused by the Licensor,
- damages resulting from particular external influences not assumed under this EULA,
- any modifications made by the Licensee or third parties, and any consequences

resulting there from,

- incompatibility of the Software with the data processing environment of the Licensee.

**8.7** If there is any defect, the Licensor is entitled to choose the option of remedying the defect at its own sole discretion by (a) delivering a substitute for the defect Software or (b) offering a subsequent performance. The warranty period shall be governed by the purchase contract of the Product.

## **9. Limitation of Liability**

**9.1** The maximum aggregate liability of the Licensor or its officers, directors, employees, agents, distributors and resellers under this License 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 EULA or the use the Software shall be limited to 5% of the purchase price for the Product paid by the Licensee.

**9.2** 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 OR ANY ASSOCIATED EQUIPMENT DOWN TIME.

**9.3** The limitation of liability does neither apply when the Licensor is liable for intentional breach of duty or gross negligence regardless of the legal ground nor when a higher liability is asked according to compulsory statutory regulations such as but not limited as provided in the Product Liability Act.

**9.4** No action or proceeding relating to this EULA may be commenced by Licensee more than three month after the cause of action arises.

## **10. 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 Software, 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.

## **11. Termination**

The Licensor may terminate this EULA at any time at his own discretion in the event of a material breach of the terms and conditions of this EULA by the Licensee by a written notice of termination to the Licensee. Upon termination of this EULA for any reason the Sections 1, 8, 9, 10, 13 and 14 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. Third party software**

Not applicable

## **13. Governing Law and place of jurisdiction**

**13.1** 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 under the exclusion of German conflict law.

**13.2** The courts of Landgericht Mannheim, Germany, shall have sole jurisdiction of any controversies regarding this EULA. Any action or other proceeding which involves such a controversy shall be brought in those courts in Mannheim and not elsewhere.

## **14. Severability and inconsistencies**

**14.1** Should any provision of this EULA 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 EULA.

**14.2** In all cases the remainder of the EULA shall continue in full force and effect.

## **15. Alterations**

Alterations and changes of as well as amendments to this EULA are only valid when they were made in writing and signed by both parties; this requirement of written form can be waived only in writing.