

Festo Didactic SE ("Festo")

## **License contract**

Conditions of Festo for the use of software packs

### **I. Industrial rights and extent of use**

The product contains data processing programs and the associated program specifications. These are listed below as a "SW Pack". Festo or third parties have industrial rights over these SW Packs. Insofar as third parties have rights, Festo has pertinent rights of use. Festo permits usage to the Licensee exclusively under the following preconditions:

#### 1. Extent of use

- a) The SW Pack may be used on or in connection with just one machine (i.e. one computer with just one CPU and one user monitor). This right of use consists exclusively of the right to run the SW Pack on the machine.
- b) Insofar as the SW Packs are combined with other programs, they may similarly only be used on one machine.
- c) The customer may make copies for back-up purposes only.
- d) Any further use, in particular duplication for other purposes, as well as onward transmission to third parties beyond the regulation in Clause 3, as well as any editing, alteration, etc., or some other type of use, is not permitted.
- e) The Licensee receives, against payment, a non-exclusive, non-transferable and unlimited right of use on one specific machine for the SW Pack and the associated documentation. Festo shall remain the owner of the copyright as well as of all other industrial property rights.
- f) During tuition (including seminars), every participant/student is authorized to use the SW Pack exclusively for the period of the course, insofar as the college/seminar organizer has the pertinent licenses and insofar as the SW Pack is used for tuition.
- g) In the event of an infringement against these conditions, the Licensee shall be liable to pay a contractual penalty amounting to 10 times the value of the contract. This contractual penalty shall be taken into account in the event of a claim for damages. In this event, the software and the associated documentation shall be returned immediately upon request.
- h) For multiple or network licenses, the above regulations only apply insofar as nothing to the contrary is specified herein under item h). Insofar as licenses are supplied with a key number, every computer must be individually activated via a license server on the internet by means of the provided methods. Their use, activation and operation is restricted, in this case, to the number of licenses purchased by the Licensee.

Where licensing as a network license takes place via a supplied dongle on a license server in the network of the Licensee, then the Licensee must ensure that usage of the license is restricted to members of staff and users according to item f). For network licenses, where the Licensee permits

usage for this specified user group beyond the local network via internet connections, the Licensee must ensure through appropriate technical procedures, that the above conditions are complied with and that usage, in particular for third parties, is excluded.

## 2. Copyright statements

Every program is subject to copyright. This copyright statement must be included in every copy, every amendment and every part of the program that is combined with other programs. Any statements of copyright may not be removed.

## 3. Transferring the right of use

Only the complete SW Pack may be made available for onward sale. In any event, this is subject to permission from Festo as well as acceptance of these conditions by the third party. Both of these requirements must be ensured by the Licensee. Inasmuch, the Licensee can permanently transfer his right of use to a third party by the extent and subject to the restrictive conditions according to Clause I.1 and I.2. The transfer and onward transmission of the SW Pack can only take place through the simultaneous erasure of the SW Pack on the machines of the Licensee and is subject to handing over the complete documentation as well as all data and licensing media. Upon transfer, all the rights of use of the Licensee expire; this also applies to the copies, amendments and connections. Insofar as these are not provided to the third party, they are to be destroyed. No alterations are permitted. Transfers within the company to staff of the Licensee are permissible without the permission of Festo, insofar as it is ensured that the number of machines on which the SW Pack will be used does not exceed the number of licenses of the Licensee. Rental of the software to third parties is not permissible.

4. Any other conditions that may possibly be included in this SW Pack from other manufacturers, do not apply.

## II. Exporting the SW Pack

When exporting the SW Pack, the Licensee will observe the export and import regulations of the pertinent countries. Resultant losses shall be borne exclusively by the Licensee.

## III. Warranty

1. Festo warrants that the software programs that it has prepared, tallies with the application and program specification, although it does not give any warranty that the functions included in the software will run totally free of interruptions and errors, or that the functions included in the software can be executed in all the combinations and conditions of use chosen by the Licensee, respectively will comply with the requirements.

2. Festo is to be immediately notified of defects when these are detected. Defects in the SW Pack that are the responsibility of Festo, of which the Licensee gives written notification within the warranty period, will be rectified by Festo within a suitable period, to the exclusion of all further warranty claims.

3. The Licensee shall allow Festo the time and opportunity to carry out the repair, respectively to make a replacement delivery. Where Festo fails to comply with its obligation to remedy the defects within an appropriate period, or where the repair shall finally fail, the Licensee is entitled to demand a suitable reduction in the usage fee or to withdraw from the contract.

4. The warranty lasts for 24 months and begins upon transmission/handover of the SW Pack.

5. The warranty does not apply where errors are caused due to alterations to the program carried out by the Licensee and to the conditions of use as listed in the documentation/specification. In addition, Festo accepts no liability for damage arising for the following reasons:

- Unsuitable and improper use, respectively storage,
- deficient installation by the Licensee or by a third party,
- unauthorized attempts at repairs and alterations,
- natural wear and tear,
- faulty or negligent handling,
- chemical effects, electrical effects, etc., beyond the control of Festo.

In addition, the warranty shall be voided if the Licensee or a third party has modified the control/software without the prior written consent of Festo and without any other authorization (Festo being in default when remedying errors), even where the error occurs in an unchanged component. Where the error is not evident during a

review, or where the defect is due to circumstances that are beyond the control of Festo, the Licensee shall bear the costs of Festo.

6. Other claims shall be lodged exclusively in accordance with Clause IV. of these conditions.

#### IV. Liability/limits of liability

1. Claims for compensation by the Licensee and, in particular, for consequential losses are excluded, irrespective of the legal basis; this applies for all claims from impossibility, non-performance, positive contractual infringements, tort and delay.
2. In addition, Festo is not liable for a lack of commercial success or for damages or claims by third parties, with the exception of claims from an infringement of the industrial rights of third parties due to the unchanged use of the SW Pack.
3. The restricted liability according to Paragraphs 1 and 2 does not apply, insofar as these concern cases of malice or gross negligence, a culpable violation of life, body and health, where Festo has maliciously maintained silence or where Festo has given a warranty as to their absence, as well as for deficiencies in the SW Pack, insofar as liability applies according to the German law on product liability for personal injury or property damage on privately used objects.
4. Claims for compensation expire within 12 months as of the time of the Licensee's knowledge or negligent ignorance of the incidence of loss.

#### V. Safety regulations/documentation

Warranty and liability claims according to the requirements of the above-mentioned regulations (Clauses III. and IV.) only apply, where the

user has observed the safety regulations in the documentation, in connection with the use of the machine and its safety regulations. The customer is responsible for the compatibility of our SW Pack with the machine used by the customer.

#### VI. Applicable law/jurisdiction

German law applies to the exclusion of all bilateral and/or multilateral treaties. Where the Licensee is a registered trader, a legal entity under public law or a public sector special asset, or where the registered office of the Licensee is not in the Federal Republic of Germany, the place of jurisdiction is at the registered office of Festo in D-73734 Esslingen, Germany.