



## License Agreement

### for the software FDTengine

(FDTengine License Agreement Version 1.0 of September 29, 2004)

between

PACTware Consortium e.V., Panoramastraße 16, 76327 Pfinztal, Germany

- hereinafter called "Licensor" -

and

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- hereinafter called "Licensee" -

- both hereinafter called "the Parties" -

### Preamble

1. The Licensee is full member of PACTware Consortium e. V.
2. On \_\_\_\_ the parties have signed a License Agreement for the computer program "PACTware" which has been developed by the Licensor (LICENSE AGREEMENT "PACTware Consortium e. V. OSL License"). The present License Agreement for the software FDTengine shall be an additional Agreement to the LICENSE AGREEMENT "PACTware Consortium e. V. OSL License". The characteristics and capabilities of PACTware are described in the LICENSE AGREEMENT "PACTware Consortium e. V. OSL License".

## **License Agreement for the software FDTengine (V1.0)**

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3. FDTengine is the FDT-heart of PACTware as from version 3.1. It consists of a number of software modules (Schedule A) as a part of PACTware, which implement the FDT-interface. FDTengine has in detail following characteristics and capabilities:

FDTengine is a library, which implements the FDT 1.2 Frame interface following the FDT 1.2 specification and which offers an integration interface (hereinafter called "FDTengine Frame-API") for the frame system. It is planned to modify the FDTengine according to subsequent releases of FDT specification. By integrating FDTengine into application software using the FDTengine Frame-API such frames can be extended by FDT 1.2 interface and so become a FDT 1.2 frame. Application software means especially frames for device management (i. e. frames for configuration, parameterisation and diagnosis of field devices and field buses), frames for asset management and DCS frames.

4. The Licensor will make FDTengine available for the Licensee by download or by e-mail and will grant the license of FDTengine for the integration of FDT into his own system and for the distribution in connection with his own system.

Therefore, the parties conclude the following

### **License Agreement**

#### **§ 1**

#### **License**

1. The Licensor grants to the Licensee a non-exclusive license of FDTengine for the integration of FDT into his own system and for the distribution in connection with his own system in line with the provisions of this Agreement, in particular with the limitations regulated in sec. 4.
2. The non-exclusive license is not limited regionally.

#### **§ 2**

#### **Royalty**

The FDTengine license is granted free of charge. However, the Licensor may charge the Licensee for the manufacturing costs of the media on which the software is stored.

**§ 3**

**Transferability, Sublicenses**

1. The Licensee shall not transfer the license without prior written consent of the Licensor.
2. The Licensee shall not grant sublicenses without prior written consent of the Licensor. If the Licensor agrees to grant a sublicense, the Licensee shall grant the sublicense only strictly according to the terms of the present License Agreement.

**§ 4**

**Rights and duties of the Licensee**

1. The Licensee shall not divide FDTengine into different parts nor use such parts nor change nor undertake any reverse engineering of the FDTengine.
2. The Licensee has the right to integrate or have integrated the FDTengine with frames which he distributes as his own products. The Licensee may distribute such own frames with the integrated FDTengine exclusively as his own product using his own trademark. The Licensee is obliged to assure that any license agreement on his own products does not infringe the present Agreement.
3. With regard to his own products with the integrated FDTengine and before putting them on the market, the Licensee is obliged to carry through quality-control measures, especially concerning the FDT-interoperability – as well as to carry through product release procedures, in order to assure and prove a product quality according to the latest state of the art. As far as PACTware Consortium's development team elaborates and releases implementation standards for the FDT-integration within a frame through the FDTengine, such implementation standards are to be considered as the latest state of the art.
4. In case that the Licensee infringes any of the stipulations under the present § 4.1 and/or § 4.2 and/or § 4.3, the Licensor has the right to an extraordinary termination of the present License Agreement without need of a reminder according to sec. 7 no. 4 a). Furthermore, the Licensee shall indemnify the Licensor for the loss. A refund of member fees or other compensations of the Licensee are excluded.
5. During the validity of the present agreement, the Licensor may use the FDTengine trademark (including logo) as part of the documentation, publicity and distribution activities of his own products, as far as such products include the integration of the FDTengine.

6. When using FDTengine in his own products, the Licensee shall put following explicit information in the frame in INFO-About and in the setup as well as in the product information of the frames:

Powered by FDTengine, PACTware  
FDTengine Version <version number>

7. The Licensee shall inform the Licensor immediately and directly about all defects of FDTengine.
8. The Licensee shall check FDTengine before its first start-up with a current anti-virus-program and communicate any difficulties immediately to the Licensor. This obligation also applies for a later modification of FDTengine (new release, upgrades and updates).
9. In case of violation of on of the Licensee's duties, regulated in the present section 4 or a violation of the Licensor's trademark rights by the Licensee, the Licensee agrees to pay a penalty amounting to EUR 50.000,-- in any single case, renouncing on the objection of a continued violation ("*Fortsetzungszusammenhang*").

### § 5

#### Obligations of the Licensor

1. The Licensor shall make the first release of FDTengine available for the Licensee as library compilation, at the latest three months after the PACTware release 3.1 is available.
2. The Licensor shall upon request make available subsequent versions of FDTengine (releases, updates and upgrades) to the Licensee at the same time he releases such PACTware versions. The present License Agreement also applies for such subsequent versions.

### § 6

#### Liability

1. The Licensor does not give a warranty for defaults of the FDTengine. In particular, the Licensor does not guarantee that FDTengine can be used for the special purposes of the Licensee. Without any prejudice to the qualification of the present Agreement, the description of the characteristics and abilities in no. 3 of the preamble is no warranty ("Beschaffenheits- und Haltbarkeitsgarantie") pursuant to sec. 443 of the German Civil Code ("BGB").
2. The Licensor acknowledges that he is not aware of copyrights or other rights of third parties, which can be violated by using, selling or offering FDTengine. However, the Licensor does not guarantee that the grant of licenses for FDTengine does not violate copyrights or other rights of third parties or does not cause damages to third parties.
3. The Licensor is not liable for damages of the Licensee or third parties, which are caused by the integration of FDTengine according to sec. 4 no. 2.
4. The Licensor is not liable for damages arising from the combination of FDTengine with other programs.
5. The Licensor is not liable for damages arising from the fact that the Licensee did not check FDTengine with an anti-virus-program.
6. Without any prejudice to the provisions in no. 1-5 the Licensor is liable for fatal or personal injuries caused intentionally or negligently and for other damages caused by a breach of any material term or condition of this Agreement that is absolutely necessary for attaining the purpose of this Agreement or which are caused intentionally or by gross negligence. In this case the liability of the Licensor is limited to typical foreseeable damages.

**§ 7**

**Duration, Termination**

1. This agreement shall not come into force before the Licensee is full member of the Licensor and after signature by the parties. The agreement is valid for an indefinite time.
2. This Agreement ends as far as the Licensee is no longer full member of the Licensor.
3. Until 30 September of each year any party can terminate the present Agreement with effect from the following year.
4. Notwithstanding the above mentioned terms, any party due to substantial reasons can terminate this Agreement without having to comply with a term. A substantial reason is especially, if
  - a) one party breaches any provision of this Agreement and has not restored the situation within 90 days after reception of a written warning,
  - b) the admission of insolvency of one party, the institution of voluntary proceedings in bankruptcy or other similar insolvency proceedings according to foreign law by or against one party,
  - c) the Licensee breaches any provision of the LICENCE AGREEMENT „PACTware Consortium e. V. OSL-Licence“,
  - d) the Licensee infringes the goals of the Licensor or
  - e) the Licensee transfers the License without authorization.

**§ 8**

**Miscellaneous**

Additionally, the provisions of the License Agreement “PACTware Consortium e.V. OSL License” signed by the parties on \_\_\_\_\_ as well as PACTware Consortium’s stipulations „Regulation about the rights of PACTware members after having left PACTware Consortium e. V.“ as well as PACTware Consortium’s statutes are applicable as far as this Agreement does not contain dissenting rules.

PACTware Consortium e.V.

Chairman of the Board

\_\_\_\_\_  
Date, Signature

Board member

\_\_\_\_\_  
Date, Signature

[Licensee]

\_\_\_\_\_  
Date, Signature

Schedule A