



**LICENSE AGREEMENT**  
**„PACTware Consortium e.V. OSL License”**  
**Version 1.07**  
**for the Computer Program PACTware**

**Licensor**

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

**Licensee**

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.....  
.....

License agreement  
„PACTware Consortium e. V. Open Source License, Version 1.0.7“  
for the computer program  
PACTware

between

PACTware Consortium, Panoramastr. 16, 76327 Pfinztal, Germany

- hereinafter called „Licensor“ -

and

.....

- hereinafter called “Licensee” -

- both hereinafter called „the Parties“ -

**Preamble**

1. The Licensor has developed the computer program „PACTware “ which serves the configuration and parameterization of field devices and field buses. PACTware has the following characteristics and capabilities:
  - a. PACTware interface “PW2-IDL” according to the implementation of the PACTware Edition 2 Version 1.3.0 and followers.
  - b. Field Device Tool (FDT) interface according to the PNO-specification FDT 1.2 and coming Versions implemented in the PACTware Edition 2 Version 1.4.0 and followers.
  - c. Functions for the configuration and parameterization of field busses and field devices
  - d. Look-and-feel:
    - Menu rail according to VDI/VDE 2187
    - Conforming to FDT DTM Style guide
    - Main window parted into

### **Navigation window**

Left side (also dockable), reversible via tabulator folders between different views Project-View, TAG-View, Plant-View, Service-View or other Plug-In-Views (e.g. as tree view or grid, e. g. as in the case of Microsoft Visual Studio) and

### **Processing window**

Right side (dockable at project window: main window), depending from selected project window used e.g. in the

PROJECT-View for the representation of the

- user interface (UI: Device-DTM or Communication-DTM) of the field devices and the communication devices (generally: DTMs: device type manager according to FDT wording),
- devices catalogue, which displays the DTMs similar to the windows explorer,
- unchanged PACTware -Signets (obligatory) as centered background picture of the processing window.

TAG-View for the representation of the

- gauging point designation and parameter
- unchanged PACTware -Signets (obligatory) as centered background picture of the processing window.

PLANT-View for the representation of the

- gauging point designation and parameter
- unchanged PACTware -Signets (obligatory) as centered background picture of the processing window.

SERVICE-View for the representation

- of the gauging point designation and parameter
- unchanged PACTware -Signets (obligatory) as centered background picture of the processing window.

Plug-In View for the representation of

- any other device or field bus management module
- without the need to display the PACTware -Signets in the processing window.

The PROJECT-View is obligatory, the other views can be dropped, insert further views acc. to the same principle.

PACTware has the following registration number at Licensor: PW2-SH-OS

Scope of this License Agreement is the source code of the PACTware shell (frame system for the integration of PW2-IDL device and communication DTMs and FDT device and FDT communication DTMs as well as of PACTware Plug-In´s) as well as the source code of the FDT implementation as well as the source code of the plug-in interface (hereinafter called “Computer Program”).

The computer program does not cover the source code of FDT device or communication DTMs nor of PACTware Plug-In modules. The copyright for such software modules remains at the manufacturer of these software modules.

2. The Licensor will make the Computer Program PACTware available for the Licensee by email or download after reception of this written License Agreement signed by the Licensee.
3. The name „PACTware“ and its logo are registered trade marks of the Licensor in Europe (Community Trade Mark), Canada and USA.
4. The Parties agree that the Computer Program “PACTware” is protected by copyright-law.
5. The Parties are members of the PACTware Consortium e.V. The statutes of PACTware Consortium e.V. define the aims of PACTware Consortium e.V. The present Agreement has to be interpreted considering the aims of PACTware Consortium e.V. as the present Agreement is deemed to contribute to the achievement of such aims.

Therefore, the Parties conclude following

**LICENSE AGREEMENT**  
**“PACTware Consortium e. V. Open Source License, Version 1.0.7”**

**§ 1**

**Nature of the License, Objective and Territorial Scope of Application**

1. The Licensor grants the Licensee a non-exclusive license regarding the use of the Computer Program within the scope of this Agreement.
2. The license includes the use, alteration and free of charge passing on of the Computer Program within the Licensee’s usual course of business with the exception of such restrictions as regulated in § 6.1 of the present Agreement.

3. The Licensor grants the non-exclusive license for the whole world.
4. Licensor warrants that it has sufficient rights to enter into this agreement.

## **§ 2**

### **Royalty**

The license is granted free of charge. However, the Licensor may charge the Licensee for the manufacturing cost of the media on which the Computer Program is stored.

## **§ 3**

### **Transferability, Sublicenses**

1. The Licensee shall not transfer the license without the expressive prior written consent of the Licensor.
2. The Licensee shall not grant sublicenses without the expressive prior written consent of the Licensor. If the consent is granted the Licensor shall grant the sublicense free of charge and shall oblige the sublicensee to agree on the terms and conditions of this License Agreement.

## **§ 4**

### **Alterations and amendments by the Licensor**

Upon request of the Licensee the Licensor shall grant the Licensee besides the granted license also non-exclusive licenses under alterations of the Computer Program, such as new program versions, updates (e.g. for downloading in the internet).

## **§ 5**

### **Alterations by the Licensee**

1. The Licensee has the right to execute the following alterations of the Computer Program without the prior written consent of the Licensor:
  - a) Compilation of the Computer Program;

- b) Compilation of the Computer Program after its alteration whereby the alteration shall not include the aspects mentioned in the preamble under sec. 1.a), 1.b), 1.c) and 1.d) in order to secure that the end user always finds the identical look-and-feel irrespective of which edition of which Licensee he has;
  - c) Connection of the Computer Program with an independent module.
2. The Licensee shall not have the right to separate parts from the Computer Program and/or use such parts.
  3. The Licensee grants the Licensor a non-exclusive license under the new Computer Programs mentioned in section 5 paragraph 1 of this Agreement and the right to grant sublicenses under these new Computer Programs. This also applies for improvements made by the Licensee, such as e.g. new program versions, updates or internet-browser compatible versions. The licensor has the right to reject such license.
  4. The Licensee agrees not to violate any intellectual property rights, copyrights or other rights of third parties by any modification of the Computer Program. Nevertheless, if such violations arise for which the Licensee is responsible the Licensee shall release and indemnify the Licensor and hold harmless from any claims and demands of the third party including necessary costs of the defense.

## **§ 6**

### **Obligations of the Licensee**

1. The licensee shall not pass the source-code to third parties who are not member of the PACTware Consortium e. V. The licensee is free to pass a compilation to any third party, provided that he uses an End user License Agreement identical or similar to such as prepared in ***Attachment 1.***
2. Upon reception of this license the Licensee shall replace the authorized designation of the PACTware Consortium information in the <HELP><ABOUT> menu by the Licensee's information which must be unequal to the PACTware Consortium information.

Other combinations are not permitted. The Licensee shall not compile any version containing PACTware Consortium information in the <HELP><ABOUT> menu or a 3<sup>rd</sup> party information. He shall replace such version texts by his information text and the logo by his own logo.

3. The main window of PACTware must contain in the left of the window title the PACTware logo with picture and script signet. The window title mustn't contain other information or pictures beside this.
4. The Licensee shall keep up the „look and feel“ and the design of the main screen of the Computer Program as mentioned in the preamble. However, the Licensee shall replace the edition designation.
5. The Licensee shall check the Computer Program before its first startup with a current anti-virus-program and report any difficulties immediately to the Licensor. This obligation also applies for later modifications of the Computer Program, such as e.g. new program versions and updates.
6. In case of any violation (subject to the cure provision of Section 10) of any of the Licensees obligations, the licensee upon the licensors request is obliged to immediately retribute the license to the Licensor.
7. In case of combining the source code with any other Computer Program, such combination cannot be marketed, published or used in any other way in which third parties will be involved, unless it indicates the use of PACTware.
8. In any single case of violation (subject to the cure provision of Section 10) of the Licensees obligation against § 6.2 , § 6.7 or any single case of violation of the Licensors trademark rights by the Licensee, the Licensee agrees to pay the Licensor a penalty amounting to Euro 50.000,--, renouncing on the objection of a continued violation (“Fortsetzungszusammenhang”). Such penalty is not to be computed on any indemnity which the Licensor is entitled to demand in connection with such violation.

## **§ 7**

### **Obligations of the Licensor**

The Licensor will keep the Computer Program available for downloading or in machine-readable form. The installation of the Computer Program is executed by the Licensee at his own risk.

## **§ 8**

### **Liability**

1. The liability of the Licensor is limited to typical foreseeable damages.
2. The Licensor does not guarantee that the Computer Program runs and can be used, especially for a certain purpose.

Without any prejudice to the qualification of the present Agreement, the description of the characteristics and abilities in paragraph 1 of the preamble is no warranty (“Beschaffenheits- und Haltbarkeitsgarantie”) pursuant to section 443 of the German Civil Code.

3. Licensor warrants that it has no knowledge of any third parties’ intellectual property rights which would be infringed by the making, using, selling or offering to sell the Computer Program. However, the Licensor does not guarantee that the granted licenses do not infringe upon third parties’ intellectual property rights or copyrights or do not cause any damages for third parties.
4. The Licensor is not liable for damages arising from alterations of the Computer Program pursuant to section 5 paragraph 1 of this Agreement.
5. The Licensor is not liable for damages arising from the combination of the Computer Program with other programs.
6. The Licensor is not liable for damages arising from the fact that the Licensee did not check the Computer Program with an anti-virus-program.
7. The liability of the Licensor for the breach of essential duties of this Agreement or by intense or gross negligent behavior is not affected by above-mentioned provisions.

## **§ 9**

### **Data protection**

The Parties shall obey the provisions of the valid data protection acts in force at any place where the parties perform duties or exercise rights arising out of the present Agreement. The Parties shall oblige all their employees, suppliers and other persons who have contact with the Computer Program accordingly.



## **§ 10**

### **Duration, Termination**

1. This Agreement shall come into force not before the Licensee is a Full Member and after signature by the Parties.
2. This Agreement shall be valid as long as the Licensee is a Full Member of the PACTware Consortium e. V.
3. Notwithstanding the above mentioned term, any Party due to substantial reasons can terminate this Agreement. A substantial reason for the Licensor is especially if the Licensee passes on the Computer Program or parts hereof not free of charge, changes the authorization designation or the registration number of the Computer Program, breaches any provision of this Agreement if the Licensor has prior given the Licensee the opportunity to restore the situation within 30 days after the reception of a and the written warning; the Licensee's admission of insolvency, the institution of voluntary or involuntary proceedings in bankruptcy or other similar insolvency proceedings according to foreign law by or against the Licensee. A substantial reason for the Licensee is especially if the Licensor after receiving the signed License Agreement does not make available the Computer Program for downloading, in machine-readable form or by means of another electronic medium or if he does not make available alterations of the Computer Program although the Licensee had made an according request or when the Licensee withdraws from PACTware Consortium.

## **§ 11**

### **No waiver**

Failure of either party to enforce at any time any of the provisions of this agreement shall not be deemed to be a waiver of such provision or of the right of either party thereafter to enforce each and every provision.

## **§ 12**

### **Miscellaneous**

1. This Agreement shall be construed and governed by and in accordance with the laws of the Federal Republic of Germany.

2. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement shall be referred to and finally determined in accordance with the Arbitration Rules of the World Intellectual Property Organization (WIPO) without recourse to the ordinary courts of law.
3. Unless otherwise agreed by the Parties, the number of arbitrators shall be 3 (three).
4. The place of arbitration shall be Karlsruhe, Germany. The arbitral tribunal may hold one or more arbitral meetings in any other place in Switzerland.
5. The language to be used in the arbitral proceeding shall be English.
6. If any provision of this Agreement is determined to be ineffective, invalid or illegal or if a gap arises all other provisions of this Agreement shall remain effective and valid, and the Parties shall negotiate amicably such amendments to this Agreement as may be reasonably required to overcome such an ineffective, invalid or illegal provision or gap.
7. At the time of conclusion of this Agreement there are no collateral clauses existent. Should other circumstances arise which call for modifications or supplements of this Agreement - including this provision- these shall be made by mutual written consent or in case of an online contact by mouse-click and a printout of the modification of the Agreement.

PACTware Consortium e.V.

Chairman of the Board:

.....  
(Date, Signature)

Board Member:

.....  
(Date, Signature)

<Licensee>

.....  
(Date, Signature)