

General Terms and Conditions of Licensing for the Use of Computer Programs (Software) of Mitutoyo Europe GmbH

1. Scope of Application, Acknowledgement

1.1. The following Terms and Conditions of Licensing apply supplementarily to the General Terms and Conditions of Supply and Order of Mitutoyo Europe GmbH (hereinafter known as "Mitutoyo") and solely to deliveries made to companies in the sense of Section 14 BGB (German Civil Code).

1.2. The purchaser of the Mitutoyo software (hereinafter known as the "Customer") accepts the application of the license terms and conditions below by using the provided Mitutoyo software for the first time.

2. Subject of License

2.1. Subject of the license is the software provided by Mitutoyo or immanent in the device, software delivered with the device, including user documentation, manuals, etc., and any demo versions.

2.2. The software is in conformity with state-of-the-art technology at the point in time of the market launch of the specific product. Mitutoyo hereby points out that even state-of-the-art technology is not in a position to create software which can be used in any combination with all applications without errors. The subject of the license is therefore the specific software which can generally be used without malfunction in the sense of the software description and the device manual.

3. Reproduction Rights and Access Protection

3.1. Mitutoyo software, including user documentation, manuals, etc., as well as any demo versions, is protected by the German Copyright Act as well as by international copyright treaties.

Moreover, protection is also provided by other laws and agreements regarding intellectual property.

3.2. The Customer may reproduce the software, but solely and exclusively to the extent that the specific reproduction is required for the use of the software. Required reproductions include the installation of the software so that the data of the original data carrier can be used on the mass storage of the hardware in use and so that the software can be loaded into the RAM.

3.3. In addition, the Customer may create and save one reproduction as a backup. This backup copy must be labeled as such.

3.4. If the regular backup of the entire data inventory, including the software being used, is required for data security reasons or to assure the fast reactivation of the computer system after a total crash, the Customer may create as many backup copies as are absolutely essential for this purpose. The relevant data carriers must be labeled accordingly. The backup copies may be used solely for archiving purposes.

3.5. The Customer is obligated to prevent the unauthorized access of third parties to the software and to the documentation and any manuals by implementing suitable precautionary measures. The supplied original data carriers and the backup copy/copies must be kept at a place suitable to prevent unauthorized access by third parties. The Customer's employees shall subsequently be instructed with regard to compliance with these Terms and Conditions of Licensing and to the provisions of copyright laws. If one of the Customer's employees violates the software copyright of the manufacturer or of Mitutoyo, the Customer is obligated to make every possible effort to cooperate in the clarification of the copyright violation; in particular, he shall notify Mitutoyo without delay in writing of the pertinent violation actions.

The above provision shall apply to any access or attempted access to the software, the provided documentation, or other accompanying materials relevant to the license.

3.6. The Customer may not create any further reproductions, which shall be deemed to include the print-out of the program code on a printer and the photocopying of the manual or other accompanying materials. If additional manuals are required for employees, they shall be procured solely and exclusively from Mitutoyo or the seller of the software.

4. Multiple Usage and Network Installation

4.1. The Customer may use the software solely on the hardware which was delivered with the software by Mitutoyo. If, however, the Customer replaces the hardware, he must delete the software from the previously used hardware.

4.2. The simultaneous read-in, storage, or usage on more than only one hardware system is prohibited. If the Customer wishes to use the software on a number

of hardware configurations simultaneously, he must obtain the corresponding number and quality of software licenses from Mitutoyo.

4.3. The use of the provided software within a network or any other multiple-station computer system is prohibited if and when this creates the opportunity for multiple usage of the program simultaneously. If and when the Customer wishes to use the software within a network or other multiple-station computer systems, the user must first obtain network licenses and the necessary access protection mechanisms (network dongle) from Mitutoyo, subject to charge. The usage in networks or on multiple-station computer systems is otherwise prohibited.

4.4. As appropriate, the Customer will receive personal registration keys or other access protection mechanisms (dongle) from Mitutoyo for use in conjunction with access-protected computer programs. The Customer is authorized solely to use the received registration keys or other access protection mechanisms solely in combination with the provided hardware to the extent that the dongle is related to Mitutoyo software.

4.5. The Customer is not authorized to lend, to rent, to lease, or otherwise to transfer registration keys or other access protection mechanisms to other users, unless this occurs as part of a permanent transfer of the software in combination with the hardware pursuant to Clauses 6.1. – 6.4.

5. Decompilation and Software Modifications

5.1. The reverse translation of the provided program code into other code forms (recompilation) as well as other forms of reconstruction of the various production stages of the software (reverse engineering), including any unauthorized modification of the software, are generally prohibited.

The prior written consent of Mitutoyo is required in individual cases.

5.2. Copy protection, copyright marks, serial numbers, or other features serving to identify the software may not be removed or changed under any circumstances.

6. Further Sale, Further Renting and Relinquishment, Authorized Dealers

6.1. The Customer may relinquish the software, including the user manual and the other accompanying material, either permanently or temporarily, to third parties only if and when the acquiring third party declares in writing to Mitutoyo that he is in agreement with the further application of these terms and conditions of contract with respect to Mitutoyo as well. The Customer may relinquish the software solely in combination with the hardware which first contained the software. In the event of a handover, the user must relinquish to the third party any and all original data carriers as well as any backup copies which may have been created. This provision also applies to user manuals and other accompanying materials. Furthermore, the Customer is obligated in the event of a handover to delete the software and any and all files created with its aid on a retained computer unit so completely that they cannot be restored.

6.2. In the event of a handover, the Customer's right to use the handed over software, the user manuals, and the other accompanying materials expires. He is in particular obligated to comply with the following regulations for export control in Clauses 7.1. – 7.8. and with the information obligations in Clauses 9.1. – 9.2. of these Terms and Conditions of Licensing.

6.3. The Customer may not relinquish the software to third parties if there is justified reason to suspect that the third party will violate these Terms and Conditions of Licensing, in particular that he will create prohibited reproductions. This provision also applies with respect to the Customer's employees and the third party's employees.

6.4. Authorized dealers of Mitutoyo who purchase software from Mitutoyo with the intention of selling it in trade are authorized to relinquish the software to customers – "third parties" – provided that the third party accepts these Terms and Conditions of Licensing in favor of Mitutoyo (*contract in favor of a third party*). Verification shall be provided to Mitutoyo upon initial inquiry.

7. Export Control

7.1. The provided software is subject to the requirement that it always remain in the country of delivery agreed with the Customer.

7.2. The use of certain information, software, and documentation may – e.g., due to its nature, its intended use, or its final destination – be subject to approval. The Customer shall comply strictly with the export regulations and embargos pertinent for the software and documentation, in particular of the EU or EU member states or, as applicable, of the USA.

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7.3.

In the event that the Customer plans to export the merchandise himself, he shall determine and insure that

- the provided software and the provided documentation are not designated for arms-related use or use in nuclear or weapon technology;
- no entity or person named in the US Denied Person's List (DPL) will be supplied with goods, software, or technology that originated in the US;
- no entities or persons named on the US Warning List, US Entity List, or US Specially Designated Nationals List will be supplied without authorization with goods originally produced in the US;
- none of these products will be supplied to entities or persons on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists, or the European Union list of terrorist organizations;
- no goods will be supplied to military recipients;
- the early warning signs provided by the relevant German or national authorities of the particular country of origin for the delivery will be observed.

7.4.

Access to and usage of software and documentation from Mitutoyo may occur only if and when they are in compliance with the export provisions / embargo regulations above and the above-mentioned review obligation and security have been fulfilled; otherwise, Mitutoyo is not obligated to fulfill the contract.

7.5.

The Customer promises to obligate further recipients of the software or documentation in the same manner in favor of Mitutoyo and to notify them of the necessity of compliance with these legal statutes.

7.6.

The Customer shall, without waiting for a request, provide to Mitutoyo free of charge all of the relevant information required for a review of a violation of the provisions and regulations mentioned in Clauses 7.2. and 7.3. by Mitutoyo itself prior to the delivery of the software. Mitutoyo shall be entitled to a right of retention of the software or documentation if and when the information from the Customer or a review by Mitutoyo reveals objective grounds for suspicion of a violation of the provisions/regulations mentioned in Clauses 7.2. and 7.3. in the event of the supply of the software.

7.7.

If and when the Customer is culpable of a breach of his obligations mentioned above in Clauses 7.1. – 7.6., he shall indemnify and hold harmless Mitutoyo upon initial request from and against any and all damage or loss, costs, and necessary expenditures which may arise from the breach of obligation and the assertion of claims against Mitutoyo on the basis of a violation of the provisions/regulations mentioned in Clause 7.2. and Clause 7.3.

7.8.

Upon request, Mitutoyo will provide to the Customer the pertinent contact addresses for more extensive information.

8. Duty to Exercise Proper Care, Loss of the Dongle

8.1.

The Customer shall store the supplied original data carriers at a place secured against the unauthorized access of third parties and instruct his employees emphatically regarding compliance with these Terms and Conditions and with the regulations of copyright laws.

8.2.

The user is obligated to observe any and all pertinent statutory regulations within the framework of the use of the software, in particular those of copyright laws.

8.3.

The risk of the loss of a hardware copy protection in the form of a dongle falls within the Customer's sphere of influence. Mitutoyo is not obligated to supply a new dongle in the event of theft or other loss. The dongle embodies the total value of a program protected in this manner and must therefore be especially carefully stored by the Customer and protected from third-party access. As appropriate, the Customer shall himself provide adequate insurance cover.

9. Information Obligation

9.1.

In the event of the further sale of the software and/or of the hardware on which the software is installed, the Customer is obligated to notify Mitutoyo in writing of the name and complete address of the buyer. Express reference is made to Clauses 11.1. – 11.2. of these Terms and Conditions of Licensing.

9.2.

If the relinquished software is software which has been specially customized for the Customer's hardware and has a purchase price in excess of €2,500, the Customer is obligated to notify Mitutoyo in writing in the event of a hardware change as well.

10. Retention of Title

10.1.

Mitutoyo retains title of ownership to the software supplied to the Customer until payment has been made in full for the claims arising from the provision of

the software and the hardware on which the software is installed; if payment is made by order documents such as check or bill of exchange, title is retained until their redemption.

10.2.

In the event of the assertion of the right of retention between Mitutoyo and the Customer, the Customer's right to continue to use the software, the documentation, the manual, and other accompanying materials shall expire. In this case the Customer is obligated – without this action being deemed a cancellation of the contract – to return the original data carriers and any and all copies of the data carriers and to delete the software and any and all files created with its aid on any and all computer units so completely that they cannot be restored.

11. Violation of Licensing Terms and Conditions

11.1.

The acquired license is subject to the condition of compliance with the terms and conditions of licensing contained in Clause 1 to Clause 10.

11.2.

In other respects, the disregard of licensing terms and conditions by the Customer may, without prejudice for damage compensation claims and legal actions by Mitutoyo, result in particular to exclusion from the procurement of software, software updates, or software corrections (patches), and of technical support from Mitutoyo.

12. Final Provisions

12.1.

This license agreement is subject solely and exclusively to the laws of Germany, to the exclusion of the UN CISG.

12.2.

If a current or future provision of the concluded contract should be or become, in whole or in part, invalid/void or unenforceable for reasons other than those of Section 305 – 310 BGB, the validity of the remaining provisions of the contract shall not be affected.

The same applies in the event that oversights or exclusions are found after conclusion of the contract. The Parties shall replace the invalid/void/unenforceable provision or oversight/exclusion with a valid provision that contains the legal and economic import of the invalid/void/unenforceable provision and takes into account the entire content of the contract. The application of Section 139 BGB (Partial Invalidity) is expressly excluded.

12.3.

The change service for these General Terms and Conditions of Licensing for the Use of Computer Programs (Software) of Mitutoyo Europe GmbH is conducted on the Web site www.mitutoyo.de.