



## General license conditions for usage of software of Mitutoyo Europe GmbH

### Preamble

These conditions shall apply within the framework of the contractual relationship between Mitutoyo Europe GmbH ("MITUTOYO") and the Customer, who is exclusively an entrepreneur within the meaning of § 14 BGB ("Customer"). The software shall not be sold and distributed to consumers within the meaning of § 13 BGB (German Civil Code).

The Customer purchases standard software from MITUTOYO for use as a measuring and testing program. The software is a copyrighted computer program which is legally protected according to §§ 69a ff. UrhG (German Copyright Act).

### § 1 Subject matter of the contract

- 1) The subject of these conditions is the permanent transfer of the computer programs distributed by MITUTOYO including any demo versions in object code ("software") including the relevant user documentation - if available - in paper form or as pdf format, and the granting of the rights of use described in § 2. The hardware and software environment within which the software is to be used is not part of these conditions. The Customer is responsible for checking the compatibility of the software with his own hardware.
- 2) MITUTOYO makes the software available to the Customer by handing over a copy of the software on a data medium (CD-ROM, USB, etc.) or by downloading it from its own website as well as a printed or downloadable version of the associated user documentation.
- 3) For the use of the software, the Customer receives personal registration keys or other access protection mechanisms (dongle) or an activation code from MITUTOYO. The Customer is exclusively entitled to use this dongle or activation code only in connection with the delivered software.
- 4) The characteristics and functionality of the software are conclusively stated in the user documentation. The information contained therein is to be understood as performance descriptions and not as guarantees. A guarantee is only granted if it has been expressly designated as such.
- 5) Installation and configuration services are not included in the purchase of the software and are not subject to these conditions.

### § 2 Granting of rights

- 1) Upon full payment of the remuneration pursuant to § 3 of these license conditions, the Customer shall be granted a non-exclusive, unlimited right to use the software within the scope of these license conditions. If the software is made available free of charge, the Customer shall be granted the aforementioned right by making it available in accordance with § 1 para. 2.
- 2) For the use of a demo version, the Customer is granted a non-exclusive, non-transferable and temporally limited right of use for the duration of the test period without payment of a remuneration.
- 3) The software can only be used on the computer on which the download was made or on which the software was transferred using a data medium. The software may only be used simultaneously by a maximum number of natural persons equal to the number of licenses purchased by the Customer. The number of licenses as well as the type and scope of use are determined by the purchase contract. In all other respects, the permissible use includes installation, loading into the working memory as well as the intended use by the Customer. Under no circumstances shall the Customer have the right to rent or otherwise sublicense the software, to publicly reproduce or make available it by wire or wireless means, or to make it available to third parties against payment or free of charge, e.g. by way of Application Service Providing or as "Software as a Service". Paragraph 6 remains unaffected.



## General license conditions for usage of software of Mitutoyo Europe GmbH

- 4) The Customer is entitled to make a backup copy if this is necessary to secure future use. The Customer shall visibly affix the note "backup copy" as well as a copyright note of MITUTOYO on the backup copy made.
- 5) The Customer shall only be entitled to decompile and copy the software if this is provided for by law. However, this shall only apply under the condition that MITUTOYO has not made the necessary information available to the Customer within a reasonable period of time upon request.
- 6) The Customer is entitled to permanently transfer the purchased copy of the software to a third party and hand over the user documentation. In this case, he will completely give up the use of the software, remove all installed copies of the software from his computers and delete all copies on other data media or hand them over to MITUTOYO, unless he is legally obliged to a longer storage. At MITUTOYO's request, the Customer shall confirm in writing that the above measures have been carried out in full or, if applicable, state the reasons for longer storage. Furthermore, the Customer shall expressly agree with the third party to observe the scope of the granting of rights in accordance with this § 2. A splitting of acquired license volume packages is not permitted. With the resale the right of use of the Customer expires according to § 2 Abs. 1 of these license conditions.
- 7) In the event of resale of the software, the Customer is obliged to notify MITUTOYO in writing of the name and full address of the buyer. If the software provided is software specially adapted to the hardware of the Customer with a purchase price of more than € 2,500.00, the Customer is obliged to notify MITUTOYO in writing of any sale of the hardware as well.
- 8) If the Customer uses the software to an extent which exceeds the acquired rights of use qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of licenses acquired), he shall immediately acquire the rights of use necessary for the permitted use. If he fails to do so, MITUTOYO will assert the rights to which it is entitled. Irrespective of these rights, MITUTOYO is free to exclude the Customer from further acquisition of software, software updates, etc.
- 9) Copyright notices, serial numbers and other features serving to identify the program may not be removed or modified from the software.

### § 3 Remuneration, maturity, retention of title

- 1) The purchase price is determined according to the purchase contract. All prices are net, i.e. excluding any statutory value added tax. Demo versions and free software are provided free of charge.
- 2) Payments are due upon delivery of the software to the Customer or availability for download and notification of the access data to the Customer.
- 3) Until full payment of the remuneration in accordance with § 3 para. 1 of these license conditions has been made, all data media and the user documentation handed over shall be subject to retention of title.
- 4) Separate remunerations are due for updates, unless expressly agreed otherwise in the purchase contract.

### § 4 Warranty

- 1) MITUTOYO warrants the agreed quality and that the Customer can use the software without violating the rights of third parties. The warranty for material defects does not apply to defects which are based on the fact that the software is used in a hardware and software environment with which it is not compatible, or for changes and modifications which the Customer has made to the soft-



## General license conditions for usage of software of Mitutoyo Europe GmbH

ware without being entitled to do so by law, these conditions or on the basis of a prior written consent of MITUTOYO.

- 2) The Customer has to check the software immediately after receipt for obvious defects and to inform MITUTOYO of these immediately; otherwise a warranty for these defects is excluded. The same shall apply if such a defect becomes apparent at a later date. § 377 HGB (German Commercial Code) applies.
- 3) In the event of a material defect, MITUTOYO is initially entitled to subsequent performance, i.e. at its own discretion to remedy the defect ("subsequent improvement") or replacement delivery. Within the scope of the replacement delivery, the Customer will, if necessary, adopt a new version of the software, unless this leads to unreasonable impairments. In the event of legal defects, MITUTOYO will, at its own discretion, provide the Customer with a legally flawless right to use the software or modify it in such a way that no rights of third parties are infringed.
- 4) MITUTOYO also fulfils its obligation to subsequent improvement by making updates with an automatic installation routine available for download on the homepage.
- 5) The Customer's right to reduce the purchase price or to withdraw from the contract at his discretion in the event of two failures of the subsequent improvement or replacement delivery remains unaffected. A right of withdrawal does not exist in the case of insignificant defects. If the Customer claims damages or compensation for futile expenses, MITUTOYO is liable according to § 5.
- 6) With the exception of claims for damages, warranty claims based on material defects become statute-barred after one year. The statute of limitations begins in the case of the sale of the software on a data medium with the transfer of the data medium, in the case of the download after notification of the dongle or activation code. For claims for damages and claims for reimbursement of futile expenses § 5 applies.

### § 5 Liability

- 1) MITUTOYO is liable without limitation in the event of intent or gross negligence, for injury to life, body or health, in accordance with the provisions of the Product Liability Act and to the extent of a guarantee assumed by the seller.
- 2) In the case of a slightly negligent breach of a duty which is essential for achieving the purpose of the contract (cardinal duty), MITUTOYO's liability is limited in amount to the damage which is foreseeable and typical for the type of business in question.
- 3) MITUTOYO is not liable for further damages, especially consequential damages.
- 4) The above limitation of liability also applies to the personal liability of MITUTOYO's employees, representatives and organs.

### § 6 Miscellaneous

- 1) In addition to these license conditions, the General Terms and Conditions of Delivery of MITUTOYO apply. General terms and conditions of the Customer do not apply.
- 2) The Customer is aware that the software may be subject to export and import restrictions. In particular, the use of the software or associated technologies may be subject to restrictions in other countries. The Customer shall observe and comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and other relevant countries. MITUTOYO's performance of the contract is subject to the condition that there are no obstacles to performance due to national and international regulations of export and import law or any other statutory regulations.



## **General license conditions for usage of software of Mitutoyo Europe GmbH**

- 3) German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980 (CISG).
- 4) Place of performance and exclusive jurisdiction for all obligations is the head office of MITUTOYO.
- 5) Should individual provisions of these conditions be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision which comes as close as possible to the economic meaning of the invalid provision.