

# Software License Agreement

Fisher-Rosemount Systems, Inc., an Emerson Process Management company ("Emerson") provides this computer program and related materials for your use. You assume responsibility for the acquisition of a machine and associated equipment compatible with the program, and for installation, use, and results obtained from the program.

Emerson grants to you a non-transferable, non-exclusive license to: (a) use all fully paid up licensed programs provided to you to run on a single machine; (b) copy the program for backup or modification for the sole purpose of installing and configuring the program on the single machine. A single machine may consist of a single physical machine with a single operating system or a single virtual machine running in a host computer. You must reproduce and include the copyright notice on any copy or modification. **YOU MAY NOT REVERSE ENGINEER, USE, COPY OR MODIFY (EXCEPT AS NOTED ABOVE) ANY PROGRAM OR RELATED MATERIALS OR ANY COPY OR MODIFICATION, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS LICENSE. IF YOU TRANSFER POSSESSION OF ANY COPY OR MODIFICATION OF THE PROGRAM OR RELATED MATERIALS TO ANOTHER PARTY, YOUR LICENSE IS AUTOMATICALLY TERMINATED.** Unless otherwise expressly permitted, you may not use the program to provide subscription services, training services, consulting services, service bureau, time sharing, or rental use to third parties. No license, express or implied, is granted under any intellectual property directly or indirectly owned by Emerson which does not specifically read on the program as provided hereunder, nor shall any license, except the license specifically granted herein, be implied in law, implied in equity, or exist under the doctrine of patent exhaustion.

**TITLE:** Title to and ownership of the program and related materials shall at all times remain with Emerson or its licensors. Your right to use the same is at all times subject to the terms and condition of this Agreement. Emerson may, from time to time, revise or update the program and/or related materials and, in so doing, incurs no obligation to furnish such revisions or updates to you.

**TERM:** You may terminate this license at any time by destroying the program and the related materials together with all copies and modifications in any form. This license will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy the program and the related materials together with all copies and modifications in any form.

**LIMITED WARRANTY:** Emerson warrants the media on which the program is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your invoice. However, Emerson does not warrant that the functions contained in the program will meet your requirements or that the operation of the program will be uninterrupted or error free. **THE PROGRAM AND RELATED MATERIALS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH YOU. SHOULD THE PROGRAM PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.**

**LIMITATIONS OF REMEDIES:** Emerson's entire liability and your exclusive remedy shall be: (1) the replacement of any media not meeting Emerson's "Limited Warranty" and which is returned with a copy of your invoice to Fisher-Rosemount Systems, Inc., 1100 W. Louis Henna Blvd., Bldg. I, Round Rock TX 78681-7430, or (2) if Emerson is unable to deliver a replacement media which is free of defects in materials or workmanship, you may terminate this Agreement by returning the program and your money will be refunded. **IN NO EVENT WILL Emerson BE LIABLE TO YOU FOR ANY DAMAGES ARISING OUT OF ANY CAUSES WHATSOEVER (WHETHER SUCH CAUSES BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, PATENT INFRINGEMENT, OR OTHERWISE), INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH PROGRAM EVEN IF Emerson HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR OF ANY CLAIM BY ANY OTHER PARTY.**

# Software License Agreement

**GOVERNING LAW:** This Agreement, and all matters concerning its construction, interpretation, performance or validity, shall be governed by the laws of the State of Texas, excluding its conflict laws.

**EXPORT RESTRICTIONS:** Licensee shall comply fully with all laws, regulations, decrees and orders of the United States of America that restrict or prohibit the exportation (or reexportation) of technical data and/or the direct product of it to other countries, including, without limitation, the U.S. Export Administration Regulations.

**U.S. GOVERNMENT RIGHTS:** The program and related materials are provided with "RESTRICTED RIGHTS." Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in the Federal Acquisition Regulations and its Supplements.

**GENERAL:** You may not sublicense, assign, or transfer the license or the program and related materials without the prior written consent of Emerson. Any attempt otherwise to sublicense, assign or transfer any of the rights, duties, or obligations hereunder without such consent is void.

**THE PROGRAM IS NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS.** You accept the program with the foregoing understanding and agree to indemnify and hold harmless Emerson from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that Emerson's liability is based on negligence or strict liability.

To the extent that a third party owns and has licensed to Emerson any portion of the program, such third party owner shall be a beneficiary of this Agreement, and shall have the right to enforce its rights under this Agreement independently of Emerson.

Should you have any question concerning this Agreement, please contact your Emerson representative or sales office.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, UNLESS THE SITE AT WHICH THE PROGRAM IS TO BE USED IS COVERED BY A MASTER LICENSE AGREEMENT BETWEEN YOU AND Emerson, OR ANOTHER FISHER-ROSEMOUNT COMPANY, IN WHICH CASE THE PROGRAMS AND YOUR USE OF THEM SHALL BE EXCLUSIVELY GOVERNED BY THAT MASTER LICENSE AGREEMENT. YOU AGREE THAT Emerson MAY AUDIT YOUR FACILITY TO CONFIRM COMPLIANCE WITH THE FOREGOING PROVISIONS.**