

General terms and conditions for Festo LX (Festo Didactic) FESTO Gesellschaft m.b.H. (FN 38435 y), Linzer Straße 227, 1140 Wien

1. General/introduction

- (1) The Festo LX learning platform (referred to below only as "**Festo LX**") is the digital learning portal of Festo Didactic SE, Germany. Festo LX offers multimedia learning nuggets that can be processed in a modular manner and combined into individual learning paths. Festo LX is a cloud-based learning portal. Use takes place via a subscription that is tailored to the number of users and the period of use.
- (2) The sale of Festo LX subscriptions in Austria is made by FESTO Gesellschaft m.b.H., Linzer Strasse 227, 1140 Wien, (also referred to below as "**Festo**"). Festo acts in its own name and for its own account. These general terms and conditions (also referred to below as "**T&Cs**") from Festo are part of every offer from Festo and apply to every order from and for every contract with Festo in connection with Festo LX.
- (3) Conflicting or deviating general terms and conditions of business, purchase or other conditions (also referred to below as "**conditions**") of the customer (also referred to below as "**contractual partner**") only form part of the contract if Festo and the contractual partner expressly agree to this. Deviating conditions of the contractual partner, which are contained in a counter-confirmation, for example, do not apply even if Festo does not contradict them specifically.
- (4) Individual contractual provisions between Festo and the contractual partner always take precedence over these T&Cs if and to the extent that they deviate from the T&Cs.

2. Scope of features

2.1 Provision of the possibility of using Festo LX

- (1) Festo provides Festo LX to the contractual partner and his/her end users, i.e. people who use the Festo LX training content via the contractual partner's paid subscription, as an SaaS solution in accordance with these T&Cs and the corresponding Conditions of Use for use during the term of the subscription agreement.
- (2) The number of authorized end users of the contractual partner depends on the subscription booked in each case.
- (3) The use of Festo LX from a country that is subject to an arms export restriction and/or arms procurement restriction according to the "EU Sanctions Map" (<https://sanctionsmap.eu/#/main>) is not permitted. The contractual partner must ensure that Festo LX is not used by its end users from such countries.

2.2 Provision of the possibility of using the Classroom Manager

- (1) Instead of Festo LX, the contractual partner has the option of subscribing to the Classroom Manager of Intelligent Media Systems AG (also referred to below as "**IMS**").
- (2) This is an IMS product. In this respect, these Festo T&Cs and the IMS conditions of use apply.

2.3 Provision of Festo training content

- (1) During the term of a subscription agreement, the contractual partner and his/her end users have the right to use the training content made available on Festo LX in accordance with these T&Cs and the Festo LX Conditions of Use.
- (2) Training content is not allowed to be reproduced, changed, adapted, used to produce derivative works, presented, displayed, published, distributed, transmitted, broadcast, sold, licensed or used in any other way without the prior written consent of Festo. The only exception to this is the intended use of the training content within Festo LX by the contractual partner and his/her end users.

2.4 Training content of the contractual partner

- (1) The contractual partner and his/her end users have the option of posting their own training content on Festo LX within the contractual partner's organization there. In this case, the contractual partner or his/her end users grant(s) Festo a simple, free, unrestricted and transferable right of use to store this training content on servers used by Festo, to make it available on Festo LX within the organization of the contractual partner and to issue corresponding sub-licenses for use to the same extent. The contractual partner or his/her end users must ensure that he/she/they is/are entitled to grant the above rights to Festo.
- (2) Festo does not check the respective training content, in particular not for the correctness or legality of the training content posted by the user.
- (3) The contractual partner and his/her end users is/are prohibited from posting training content that contains hate speech, pornography, violence or that is otherwise morally or ethically inappropriate or punishable under criminal law.

- (4) When the subscription is terminated, the contractual partner and his/her end users has/have the option, against payment of a processing fee for technical expenses, to download his/her/their own training content or to have it made available in a standardized format – at Festo's discretion. This option must be exercised within 30 days of the end of the subscription. All training content from Festo is expressly excluded from this.

3. Availability and maintenance

- (1) Festo endeavors to provide permanent access to Festo LX and the training content available there. However, availability at all times is expressly not guaranteed.
- (2) In particular, access can be temporarily restricted for technical reasons, such as necessary maintenance and repair work. Festo will inform users in good time about the implementation of planned maintenance and repair work and its scope by means of a message on Festo LX.

4. Activation of access

- (1) After concluding the subscription agreement, the contractual partner will receive an *access code* to activate the subscription in his/her account on Festo LX.
- (2) After activation, the contractual partner can add end users to his/her organization on Festo LX in order to enable them to use the offering in accordance with these T&Cs and the Festo LX Conditions of Use.
- (3) The organization is managed via the "Organization" area on Festo LX.

5. Festo LX account

- (1) The contractual partner and all end users need a Festo LX account in order to be able to access Festo LX. Registration at <https://lx.festo.com> is required for this. In any case, the use of Festo LX is prohibited unless the Conditions of Use have been accepted.
- (2) The contractual partner is obliged to provide truthful information when registering and to adequately protect the access data to his/her account from unauthorized access by third parties.
- (3) The contractual partner is responsible for all sessions of Festo LX with his/her access data and is liable in accordance with general laws.

6. Term and settlement (terms of payment)

- (1) The subscription agreement is concluded with a fixed term. The term begins at the time the contract is concluded.
- (2) The remuneration is based on the number of access rights booked for end users in accordance with the current Festo price list.
- (3) Invoice amounts are due within 30 days of receipt of the invoice without deduction.

7. Technical prerequisites

The following technical requirements are required to use Festo LX:

- Device: desktop PC, notebook, tablet, or smart phone
- Operating system: Windows, Linux, MacOS, Android, iOS
- Web browser: Chrome (79 or higher), Firefox (73 or higher), Edge (42 or higher), Safari (12 or higher)
- CPU speed: min. 1 GHz
- Memory: min. 512 MB
- Disk storage: min. 1 GB
- Internet connection speed: min. 50 Mbit/s

8. Usage rights

- (1) For the term of the subscription agreement, the contractual partner and his/her end users receive the non-exclusive, non-transferable, non-assignable right of use to Festo LX and the training content provided there, restricted by the provisions of these T&Cs or the Conditions of Use.
- (2) Any use of Festo LX and the training content provided there that is not expressly listed in these T&Cs or in the Conditions of Use is prohibited. The Festo LX source code is not licensed by these terms and conditions, the Conditions of Use or a subscription agreement.
- (3) If the contractual partner has subscribed to the Classroom Manager, the IMS conditions of use apply accordingly.

9. Warranty

- (1) Festo solely warrants that Festo LX is provided professionally and with appropriately qualified personnel.
- (2) Festo does not warrant that the information provided in the training content is up-to-date and complete, or that it will lead to the desired success in practical application.
- (3) Festo also does not warrant that interactive processes will reach the user correctly or that the dial-in process via the Internet is warranted at all times. In addition, Festo does not warrant that data will be exchanged at a specific transmission speed.
- (4) Festo does not accept any warranty or guarantee beyond the this.

10. Privacy policy

- (1) Within the framework of the contractual relationship between Festo and the contractual partner, Festo processes the contractual partner's personal data required for contract initiation, implementation and termination as the data controller within the meaning of Art. 4 no. 7 of the EU General Data Protection Regulation (GDPR). Festo processes all personal data of the contractual partner exclusively in accordance with the applicable data protection laws, in particular in compliance with the requirements of the GDPR. Further information on data processing can be found in the Festo data protection information, available at <https://lx.festo.com/de/terms-of-use-and-conditions/privacy-policy/personal>.
- (2) If necessary, Festo and the contractual partner will conclude an order processing agreement within the meaning of Art. 28 of the GDPR.
- (3) If the contractual partner has subscribed to the Classroom Manager, the information on joint responsibility between Festo and IMS also applies, available at https://www.festo-didactic.com/didactic/mm/download/C2C%20Vertrag_FD-IMS_signed%2024062020.pdf

11. Limitations on liability

- (1) Claims for damages by the contractual partner, irrespective of the legal basis, are excluded in the case of merely slightly negligent behavior on the part of Festo, unless they relate to the breach of an essential contractual obligation, i.e. an obligation the fulfillment of which is necessary to achieve the purpose of the contract and compliance with which the contractual partner does and is entitled to expect in the normal course of events. In the event of a breach of essential contractual obligations through simple negligence, Festo's liability is limited to the typical damage that was foreseeable when the contract was concluded.
- (2) The above limitation of liability and the above exclusion of liability do not apply to blatantly grossly negligent or willful action, to claims from a guarantee, to injury to life, limb or health or to claims under the Product Liability Act.
- (3) Festo accepts no liability for damage or impairment of use for which it is not responsible.
- (4) Insofar as Festo's liability is excluded or limited, this shall also apply to the personal liability of Festo's employees, workers, staff, representatives and vicarious agents.

12. Liability and warranty for Classroom Manager

As Festo is not the manufacturer of the Classroom Manager, but only sells it in cooperation with IMS, Festo assigns to the contractual partner any warranty claims it may have against IMS in the event of defects. The contractual partner accepts the assignment. The contractual partner is prevented from asserting claims directly against Festo to the extent of the assigned warranty claims, as long as he/she has not initially unsuccessfully asserted the assigned claims against IMS in writing out of court. The period of limitation vis-à-vis Festo is suspended for the duration of the enforcement of the warranty claims against IMS. If the contractual partner is unsuccessful in asserting warranty claims against IMS out of court, he/she can assert his/her own warranty claims directly against Festo. In this case, the assigned warranty claims against IMS are transferred back to Festo; the assignment is conditional to this extent. The aforementioned limitation to subsidiary liability does not apply to claims for damages by the contractual partner due to an intentional or blatantly grossly negligent breach of duty or due to injury to body, health or life.

13. Third-party property rights / indemnification

- (1) The contractual partner is obliged not to violate any third-party rights when using Festo LX.
- (2) In the event that a third party claims towards Festo that his/her rights have been violated, the contractual partner shall indemnify and hold harmless Festo from all related claims of the third party and from any damage that Festo incurs due to the third party's rights, including any court and legal fees. This does not apply if the contractual partner can prove that he/she is not responsible for the infringement.

14. Termination

- (1) If a fixed term without automatic renewal has been agreed, the contracting party shall not have the right to terminate the subscription agreement.
- (2) The right of both parties to terminate for good cause remains unaffected.
- (3) Any notice of termination must be given at least in writing.

15. Force majeure

- (1) Festo is not liable for the partial or complete failure to fulfil its obligations if such failure is due – in whole or in part – to circumstances that were not foreseeable at the time of conclusion of the contract and which cannot be overcome by Festo by reasonable means ("Force Majeure"). In any case the following events shall be deemed cases of Force Majeure: Strike, riot and civil unrest, war (whether declared or not), piracy, terrorist threats, sabotage, fire, flood, earthquake and natural catastrophe, plagues (including epidemics and pandemics), acts of government, or any of the above circumstances affecting Festo's sub-suppliers.
- (2) In case of Force Majeure, Festo's obligation under the respective Purchase Order is suspended for the period during which the impact of the Force Majeure event circumstances last, plus a reasonable start-up period thereafter. If the circumstances persist for a period of more than 90 days, Festo is entitled to terminate the subscription agreement/contract.

16. Changes to these T&Cs

Festo is entitled to change these T&Cs with future effect if this is necessary due to changes in legislation or case law, or other significant changes to the underlying framework conditions. Changes which impair the equivalence ratio between performance and counter-performance to the detriment of the contractual partner are accordingly not permissible. In this case, Festo will inform the contractual partner of the change in writing, by e-mail or by notification in Festo LX at least six weeks before the intended entry into force. The change is deemed to have been accepted if the contractual partner does not object in writing by the time it comes into effect. The contractual partner is expressly informed of this legal consequence when notice is given of the change.

17. Final provisions

- (1) These T&Cs and the concluded subscription agreement are governed by the laws of Austria, excluding its (i) conflict of law rules and (ii) the United Nations Convention on the International Sale of Goods (CISG).
- (2) The place of jurisdiction for all disputes is the court competent for commercial matters in Vienna. The above place of jurisdiction is an exclusive place of jurisdiction for the contractual partner. Alternatively, Festo is also entitled to take legal action against the contractual partner at his/her general place of jurisdiction.
- (3) Should any provision of these general terms and conditions be or become invalid or unenforceable, this shall have no effect on the validity of the remaining provisions. Instead of the ineffective or unenforceable provision, the corresponding statutory provisions apply.