

General Terms and Conditions for the Supply and Maintenance of Software and Hardware Products

For use in legal transactions with entrepreneurs, public law institutions and public law special funds, hereinafter referred to as "Customer".

1. General Provisions

- 1.1 Our deliveries and services shall exclusively be governed by the conditions set forth hereunder. Customer's general terms and conditions shall not apply (although they may not have been objected explicitly by us), unless we have expressly agreed to their applicability.
- 1.2 Oral agreements made prior to or upon execution of a contract must be confirmed in writing to be valid. Changes to a contract shall require written form. The same applies to changes made to the requirement of written form itself.
- 1.3 Unless otherwise stated, our quotations shall be valid for a period of two (2) weeks commencing upon receipt of the quotation by the Customer.
- 1.4 Price indications are non-binding and may be subject to charge, unless expressly agreed otherwise.
Pending the coming into force of new terms and conditions for supply, these General Terms and Conditions shall also apply to all future software and hardware deliveries to the Customer.

2. Prices and Terms of Payment

- 2.1 The Customer shall name a designated contact person as a receiver of software deliveries, who shall also be the sole authority for making representations and/or reporting complaints or deficiencies to us.
- 2.2 In the absence of any special agreement, prices and delivery shall be "FCA (Free Carrier)", Incoterms 2010®, with packaging included.
- 2.3 We reserve the right to modify our prices appropriately if costs rise after a contract has been entered into, in particular due to changes in wage costs, e.g. in response to collective bargaining agreements, or to changes in the price of materials, provided an interval of more than four (4) months elapses between the date of contract signing and delivery. We shall provide proof of such changes to the Customer upon request.
- 2.4 For spare part deliveries and return shipments of defective merchandise that are not subject to warranty, we shall levy a reasonable flat rate carriage and packaging charge in addition to the remuneration for the performance rendered by ourselves.
- 2.5 Except as otherwise agreed upon in writing, invoices shall be due upon issuance of the invoice. Payment shall be effected within 30 days of the invoice date without deduction. In the case of late payment, we shall be entitled to charge default interest at the statutory rate. Our right to claim additional damages shall remain unaffected.
- 2.6 We shall be entitled to make delivery dependent upon concurrent payment (e.g. through cash on delivery or direct debit) or advance payment.
- 2.7 Moreover, we shall be entitled to offset payments against the oldest outstanding amount receivable.
- 2.8 The Customer shall be entitled to hold back payments or offset with counterclaims only to the extent that its counterclaims are undisputed or recognized by final and binding judgment or becomes ready to be decided in a pending law suit.
- 2.9 If, after the contract has been entered into, we become aware of circumstances that may result in our claims appear to be in jeopardy due to Customer's inadequate ability to pay, we shall have the right to perform outstanding deliveries only against pre-payment or against the provision of security and, following the expiry of a deadline set to this effect, to terminate or rescind from the contract.

3. License

The following provisions apply to software products and network lists (description of connections between modules contained in an integrated circuit, such as logic gates and memory blocks):

- 3.1 The allocation of software or net lists may be effected by means of a license for a limited or an unlimited time period. In both cases the Customer shall be granted a simple (non-exclusive) right to use the software/net lists in accordance with the license model stipulated in the contract. Unless otherwise agreed, a temporary license shall authorize the Customer to use the software/net lists for one (1) year after receipt of same, and then terminate automatically.
- 3.2 Licensing models
 - (1) A license per instance (Machine-Named License) enables any desired user to use software/net lists on exactly one uniquely identified workstation or server.
 - (2) Under a centrally administered, personal user license (User-Named License), the Customer may use software/net lists on a single workstation and, with special written permission, also on several workstations which must, however, be connected to a license server.
 - (3) A concurrent user license (Floating License) allows the contemporaneous use of software/net lists by no more than the number of the Customer's employees indicated in the order or sales contract. The usage by third parties (including affiliated companies) requires an explicit agreement.
 - (4) In the case of a corporate license, software/net lists may be used simultaneously by any desirable number of the Customer's employees and/or Customer's servers. The transfer or use of the software (e.g. by means of sublicensing) by third parties requires an explicit agreement.
 - (5) In the case of a volume license, the use of software/net lists is limited to a contractually agreed amount of reproductions (embedded software/network lists) or production of keys, certificates, electronic signatures, etc. per project and/or within a specific period.
 - (6) In the case of product and/or project licenses the use of software/net lists is granted for a specific product/project at the Customer. The product/project will need to be identified by means of an unambiguous designation, the processor type used, as well as the development and production years.
 - (7) A combination of license models is possible.
- 3.3 Unless otherwise agreed upon in writing, software will be delivered in binary code.
- 3.4 The Customer shall activate the software/network list by means of a license key provided by Escrypt. For the purpose of license control in the cases described in Article 3.2 Subs. (1), the Customer shall additionally provide us with a unique identification of the workstation (e.g., MAC address). In the cases described in Subs. (2) and (3), the Customer shall be obligated to equip a license server with an appropriate Escrypt-supplied license checking software.
- 3.5 Copies of the software may be created and installed exclusively for the purpose of authorized use (this includes the creation of a backup copy which may be used only for backup purposes).
- 3.6 Except with the applicability of Section 69e of the German Copyright Act (UrhG), the Customer shall not be entitled to modify, reverse engineer, translate or fragment parts of the software provided by us. The Customer may not remove alphanumeric or other identification from the data media and shall transfer the data onto the back-up copy without modification.
- 3.7 Unless explicitly agreed upon in writing, the Customer shall not have the right to adapt the software.
- 3.8 The licensing models described in Article 3.2, Subs. (1) - (3) permit, in principle, the permanent passing on of the

software and the associated license to third parties as long as the Customer informs us of such transaction without delay. If licenses are obtained as bundles (especially in the case of concurrent user licenses according to Article 3.2, Subs. (3)), the Customer may only pass the complete license bundle. Splitting the bundled licenses is not permitted. The Customer shall ensure that the passing of the software into the custody of a third party does not allow for any kind of multiple use, and shall be responsible for the deletion of the software from any system remaining in its possession. The Customer must reach a written agreement with the third party in which the said party accepts the license and liability provisions of these General Terms and Conditions for the Delivery of Hardware and Software Products. The Customer shall present a copy of the relevant parts of the agreement upon request. Insofar as the software is covered by a service contract, the same shall remain with the Customer and shall not be transferable. Upon request, we will offer a service contract to the assignee.

- 3.9 The use of software for the purpose of service provision for the benefit of a third party is prohibited and shall be subject to our prior written approval.
- 3.10 If the Customer has acquired software together with a piece of equipment, the Customer may only transfer the software together with the same piece of equipment for use by a third party.
- 3.11 If the software is passed on or in the event of a change in the workstation or licensed server on which the software or license check is run, it may become necessary to change the license key(s). We reserve the right to charge a fee for such service.
- 3.12 Unless expressly agreed otherwise, updates and up-grades of software shall not be considered part of the software delivery. We reserve the right to make the availability of updates, upgrades, and new releases conditional upon the existence of a valid service contract.
4. Software Maintenance
- 4.1 Software maintenance is provided only if this has been offered and contractually agreed upon.
- 4.2 If not agreed otherwise, software maintenance will only be provided in favor of the Customer. The transfer of software maintenance to third parties, in particular to end users which are not employees of the Customer, requires an explicit agreement
- 4.3 Unless otherwise agreed upon, software maintenance will be provided for a period of one (1) year as of the delivery/provision of the software.
- 4.4 The maintenance period shall automatically be renewed by a further year, unless terminated upon written notice of at least two (2) months prior to the end of the then current maintenance period.
- 4.5 Maintenance fees are calculated on the basis of the license fees for the software to be maintained. If during a maintenance period the license volume is increased, we shall be entitled to adjust the maintenance fees accordingly. If the Customer permanently ceases to use individual licenses, the Customer may request an adjustment of the maintenance fees for the following maintenance period, provided that the Customer has notified us thereof with two (2) months written notice prior to the end of the current maintenance period.
- 4.6 A reinstatement maintenance fee shall be due, if software maintenance is resumed after (a) a license has initially been acquired without software maintenance or (b) software maintenance has previously been terminated by the Customer. The reinstatement fee shall be equal to the amount of maintenance fees that would have been accrued during the maintenance-free period.
- 4.7 Customer's obligations to cooperate shall also apply to software maintenance services; in particular the Customer

shall remain responsible for the results achieved with our software and services.

- 4.8 If and to the extent required for the provision of software maintenance, the Customer shall provide additional information and material, program code, such as configuration, protocol data, etc. as well as necessary resources and shall enable (remote) access to its system. The exchange of confidential information shall be subject to a separate confidentiality agreement.
5. Customer's Obligation to Cooperate
- 5.1 The Customer shall be obligated to fully inform us of any and all facts relevant to the performance of our deliveries and/or services. We shall not be obligated to verify data, information or other performances supplied to us by the Customer, with regard to completeness and correctness, unless such verification has been expressly agreed upon between the parties as being a contractual duty. In the event that information or documentation supplied by the Customer proves to be faulty, incomplete, ambiguous or objectively non-executable, the Customer shall, immediately upon notification by us, effect the required corrections and/or amendments. The Customer shall remedy or cause to be remedied any faults or malfunctions of Customer-supplied components of which he has been notified by us without delay.
- 5.2 The Customer shall be responsible for the correct integration of the Escrypt products and shall validate them prior to any productive use.
- 5.3 Moreover, the Customer shall validate the results obtained from the use of our products and shall appropriately secure them, i.e. to validate the correct functionality (e.g. with respect to functional safety).
- 5.4 To the extent that work is performed on the Customer's premises, infrastructure such as required workstations, working materials and tools shall be provided to our personnel free of charge. In such cases, the Customer shall be responsible for taking care of all legal duties to maintain safety, unless other arrangements arise from the nature of the matter or a prior arrangement with the Customer. We shall have the right to refuse delivery and/or performance of service if the required measures are not taken.
- 5.5 The Customer shall name a designated contact person as a receiver of software deliveries, who shall also be the sole authority for making representations and/or reporting complaints or deficiencies to us.
6. Compliance Verification
- 6.1 We shall have the right to verify the contractually authorized use of the software by the Customer, and thus Customer's adherence to the agreed licensing conditions, at all sites and for all environments in which an installation is made and/or used by the Customer. We shall have the right to delegate such verification to associated companies and/or independent auditors, provided that they have been bound to observe confidentiality on the basis of a written confidentiality agreement.
- 6.2 The Customer undertakes to create, retain, and make available to us or our auditors records, system outputs and other system data (including log data from production facilities in case of product licenses) sufficient to provide auditable proof for a contractually agreed installation and utilization of the supplied software. In the event that the verification identifies discrepancies and/or indications that the Customer is failing to adhere to his obligations, we will inform the Customer thereof without delay.

7. Delivery, Delivery Deadlines, Default
- 7.1 The commencement of and adherence to agreed delivery dates is predicated upon the fulfillment of the Customer's cooperation obligations, in particular for the supply of equipment, documents, permits, investigations, releases, and compliance with agreed payment conditions. In the event that the Customer's obligations to cooperate are not fulfilled properly or in a timely manner, delivery deadlines shall be extended appropriately.
- 7.2 In the event that non-compliance with delivery deadlines is resulting from force majeure and other disturbances for which we cannot be held liable, such as war or similar conflicts, terrorist attacks, import and export restrictions, including events of the same nature that affect our suppliers and subcontractors, the delivery dates agreed upon shall be extended for the period of such hindrance. The same applies to labor disputes, which we or our suppliers may be concerned with.
- 7.3 Claims made by the Customer for compensation due to delayed delivery shall be governed by Article 12.
8. Complaints and Notices of Defect
- 8.1 The Customer shall immediately, however no later than 15 days after receipt of the software and/or hardware product, inform us in writing, about any obvious defect, incorrect deliveries or quantities (whereas the date on which we receive the notice shall be decisive). As regards to other complaints and/or quality defects, the Customer shall provide us with a written notification immediately upon their discovery. Adhesive box labels, content labels and any tally sheets or control slips enclosed with the consignment shall be submitted with the notice. Claims for quality defects shall be excluded if the notice of defect is not received by us within the time period stipulated above.
- 8.2 If a complaint is unjustified, we shall have the right to demand compensation for incurred expenses from the Customer.
- 8.3 Claims for damage in transit, shall be made within the limitations governed by applicable law and/or the respective freight contract.
- 8.4 The Customer shall not have the right to refuse acceptance of deliveries due to minor defects and/or deviations.
9. Quality Defects
- 9.1 The limitation period for claims on account of quality defects shall be 12 months after delivery of the products (passing of risk). The foregoing provisions shall not apply insofar as longer limitation periods are prescribed by statute pursuant to Section 438 para. 1 No. 2 (Construction Work and Objects for Construction Work), Section 479 para. 1 (Right of Recourse) and Section 634a (Construction Defects) of the German Civil Code (BGB).
- 9.2 In the event that a quality defect arises within the limitation period, the cause of which already existed at the time of the passing of risk, we may at our discretion elect to render subsequent performance either by repairing the defect or delivering a defect-free product. With software, the warranty claim shall be conditional upon the error being reproducible and that it occurs in the last revision level accepted or adopted by the Customer.
- 9.3 In case of subsequent performance by repairing the defect, the defect shall be remedied at our discretion either at the Customer's premises or our own facilities. The Customer shall provide us with the documentation and information available to him that is necessary to remedy the defect. In case of defect remedying through delivery of a defect-free product, we shall be entitled to deliver a new revision level or version of the software.
- 9.4 The limitation period does not begin anew by virtue of subsequent performance.
- 9.5 If subsequent performance fails, the Customer may – without prejudice to possible claims for damages – rescind from the contract or reduce the remuneration in accordance with statutory provisions.
- 9.6 Claims by the Customer on account of necessary outlays for the purpose of subsequent performance, in particular the costs of transportation, travel, labor and materials, shall be governed by statutory provisions. However, they shall be excluded to the extent by which such outlays are increased due to the fact that the product supplied was subsequently removed to a place other than the Customer's branch operation, unless such removal is in accordance with the designated use of the product.
- 9.7 Claims for subsequent performance shall not be excluded in case of a minor deviation from the quality agreed upon or in case of a minor impairment in usability. Further rights and claims shall remain unaffected.
- 9.8 The following shall not be deemed to constitute a defect as to quality:
- natural wear and tear;
 - characteristics of the product or damages caused after the passing of risk due to improper handling, operation, storage or assembly, non-compliance with installation or handling instructions, and excessive strain or use;
 - characteristics of the product or damage caused due to force majeure, special external influences which are not foreseen under the terms of the contract or which arise due to the use of the product in a manner not presupposed in the contract or not in accordance with normal use;
 - non-reproducible errors in software products.
- 9.9 With respect to software products that the Customer or a third party has extended via a designated interface, we shall only be liable for quality defects up to the interface. We shall in no way be liable for compatibility or interoperability of the software with Customer's data processing environment, in particular with the software and hard-ware products implemented by the Customer.
- 9.10 The Customer shall undertake all action which is necessary and may be reasonably expected to prevent or limit the consequences of damage resulting from quality defects in the software; in particular, the Customer shall ensure that backups of all programs and data shall be conducted on a reasonable and regular basis.
- 9.11 Customer's right of recourse shall exist only to the extent that the claims are not based on any agreement with its own customer exceeding statutory claims in respect of defects, e.g. ex gratia or goodwill regulations.
- 9.12 In all other respects, our obligation to compensate for damages and/or for futile expenditures as contemplated by Section 284 BGB (German Civil Code) on account of quality defects shall be governed by the terms of Article 12. Claims made by the Customer concerning quality defects other than those covered by this Article 10 shall be excluded.
- 9.13 For any defects of title that do not arise from a violation of the property rights of third parties, the provisions of this Article 10 and its Subsections shall apply mutatis mutandis.

10. Copyright and Related Protective Rights
- 10.1 We shall not be liable for claims arising from an infringement of industrial property rights or copyright of third parties (hereinafter referred to as Protective Rights) if the Protective Rights are or were owned by the Customer or by an enterprise in which the Customer holds, directly or indirectly, a majority of the shares or voting rights.
- 10.2 We shall not be liable for claims arising from an infringement of Protective Rights unless at least one Protective Right from the protective rights family has been published either by the European Patent Office (EPO) or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria, or United States.
- 10.3 The Customer shall notify us immediately of (alleged) infringements of Protective Rights and of risks of infringement in this respect which become known and, at our request – to the extent possible – allow us to conduct the litigation (including non-judicial proceedings).
- 10.4 For a product that infringes a Protective Right, we shall be entitled, at our discretion, to obtain a right of use or modify the product so that it no longer infringes the Protective Right, or to replace it by an equivalent substitute product which no longer infringes the Protective Right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the Customer shall be entitled to the statutory rights of termination. Subject to the aforementioned preconditions we too shall have a right of termination. The provision set forth in Article 9.12 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of Sentence 1 of this Article 10.4, even if the infringement of the Protective Rights has not yet been recognized by final and valid judgment or acknowledged by us.
- 10.5 Claims by the Customer shall be excluded insofar as the Customer is responsible for the infringement of the Protective Right or if the Customer fails to support us to a reasonable extent in the defense against claims by third parties.
- 10.6 Claims by the Customer shall also be excluded if the products were manufactured in accordance with the specifications or instructions of the Customer or if the (alleged) infringement of the Protective Right arises from use of our product in conjunction with another product not originating with us, or if the products are used in a manner that we were unable to foresee.
- 10.7 In all other respects, our obligation to pay damages in case of infringements of Protective Rights shall be governed by Article 12.
- 10.8 Articles 9.1 apply mutatis mutandis to the limitation period for claims based on infringements of Protective Rights.
- 10.9 Claims other than those made by the Customer on account of an infringement of third party Protective Rights governed by this Article 11 shall be excluded.
11. Compensation for Damages, Product Liability
- 11.1 We shall be liable for damages and compensation of futile expenditures as defined in Section 284 of the German Civil Code (BGB) (hereinafter referred to as Compensation) on account of a breach of contractual or non-contractual obligations only in case of
- (i) deliberate acts or gross negligence,
 - (ii) fatal or physical injury or damage to health,
 - (iii) the assumption of a guarantee with respect to quality or durability,
 - (iv) breach of material contractual duties,
 - (v) compulsory liability pursuant to the German Product Liability Act or
 - (vi) any other compulsory liability.
- 11.2 The material contractual duties is, however, limited to the foreseeable damage typical of the type of contract, except in cases of deliberate acts or gross negligence or in the event of liability due to fatal or physical injury or damage to health or due to the assumption of a quality guarantee.
- 11.3 We shall not assume liability for damages caused by improper operation or by use in a manner other than that intended.
- 11.4 We shall not assume liability for effects or impairment of our products with regard to performance, usability and safety ensuing from the use of the Customer's own soft-ware or hardware parts or from access to our products via interfaces released by us.
- 11.5 In the event that a defect or fault in the licensed soft-ware causes a loss or damage to data and programs at the Customer, our liability shall not include any expenditures resulting from their recovery. The Customer shall therefore be obligated to affect data backups on a regular basis.
- 11.6 The foregoing provisions shall not be construed as reversal of evidence.
- 11.7 Insofar as liability on our part is excluded or limited, such exclusion or limitation shall apply for the benefit of our employees, representatives or vicarious agents as well.
12. Retention of Title
- 12.1 We shall retain title to the goods delivered, pending full performance of all claims to which we are entitled on the basis of the business relationship now and in future.
13. Rescission/Termination
- 13.1 In case the Customer does not comply with its contractual duties, e.g. in case of default of payment, after expiration of a reasonable grace period we shall be entitled to rescind from or terminate the contract. Any other right given by contract or law shall remain unaffected.
- 13.2 We shall be entitled to rescind from or terminate the contract immediately (without any grace period), if the Customer suspends payment, or insolvency or similar proceedings for the purpose of debt relief have been filed.
- 13.3 Without providing a grace period, we shall be entitled to withdraw from or terminate the contract, if,
- (i) an impairment of the Customer's financial situation occurs or is threatening to occur and if as a result thereof Customer's ability to fulfill its payment obligations toward us be at risk, or
 - (ii) the Customer should become insolvent.
- 13.4 Immediately after Customer's receipt of our declaration to withdraw from or terminate the contract, the Customer shall be obliged to provide us with access to the products to which we have reserved title and shall render them to us or any designated representative. Upon advance notice we shall be entitled to take possession of the products to which we retained title for purposes of recovery of our due claims
- 13.5 The rights mentioned in this Article 12 shall be in addition to any statutory right, which shall not be affected thereof.

14. Export Control

- 14.1 Should it transpire prior to delivery or service providing that fulfillment of the contract on the part of the provider is obstructed on account of national or international export control provisions, in particular embargos or other sanctions, the provider shall be entitled to withdraw from the contract. Delays due to export inspections or licensing procedures shall be deemed to obstruct observance of the delivery deadline unless the licensor is responsible for these delays. In case of continuing obligations the provider shall be entitled to terminate the contract without notice if these obstructions occur during execution of the contract. In the case of termination as per this Article 14.1, the Customer shall not be entitled to claim for damages or assert other claims in relation to the termination.
- 14.2 The Customer undertakes to provide all information and documentation which is required for export and provision of the contractually agreed products and/or services and which originate within Customer's ambit. When passing on the products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and work and services performed by us (including technical support of all kinds) to third parties in Germany and abroad, the Customer must comply with the respectively applicable provisions of national and international (re-) export control law.
- 14.3 The contractual services to be delivered must not be used for military purposes or in the service of nuclear technology

15. Confidentiality

- 15.1 All of our business and technical information (including the purchase price of our products, characteristics which can be derived from any items or software which may be delivered, and other knowledge or experiences) shall be kept secret with regard to third parties as long and insofar as it is not provably public knowledge; in the Customer's own operation such information may only be made available to those persons in the Customer's own enterprise who must necessarily be involved for its deployment and who are also subject to a confidentiality obligation; the subject business and technical information shall remain our exclusive property. Without our prior written consent, such information may not be duplicated or used commercially. At our request, all of the information originating with us (including any copies and recordings made, if any) and property on loan must be returned to us immediately and completely, or destroyed.
- 15.2 We shall retain all rights to the information indicated in Article 16.1 (including copyright and the right to apply for industrial property rights such as patents, utility models, semiconductor protection etc.).

16. Miscellaneous Provisions

- 16.1 If one of the provisions of these General Terms and Conditions or of any contracts entered into based on these General Terms and Conditions should be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to replace the invalid provision by an effective regulation most closely approximating the economic success pursued by the ineffective provision.
- 16.2 In case of licensing of specific software products (such as real-time licenses and simultaneous models, as well as for service contracts) special provisions contained in product-specific "General Terms and Conditions" shall apply with priority.
- 16.3 The courts of Stuttgart (for proceedings at the court of first instance, the district court in 70190 Stuttgart), Germany shall have jurisdiction and venue or, at our discretion, the court at

the registered office of the business facility executing the order, if the Customer is,

- a merchant or
- does not have a general place of jurisdiction in Germany or
- if the Customer moves his place of domicile or normal place of residence abroad after execution of the contract or if his place of domicile or normal place of residence is not known at the time a suit is filed.

- 16.4 We shall also have the right to start legal action at a court with jurisdiction at the place of the Customer's registered office or a branch operation. All legal relationships between us and the Customer shall be exclusively bound by the laws of the Federal Republic of Germany, to the exclusion of the provisions of the conflict of laws and the Convention on the International Sale of Goods (CISG) of the United Nations.

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