

## 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. "Customer" as used in these general terms and conditions shall mean the legal entity which is the contractual partner of this contract only.
- 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.
- 1.3 If the Customer does not accept our quotation within two (2) weeks of receipt thereof, we shall have the right to withdraw the quotation.
- 1.4 Price indications are non-binding and may be subject to change unless expressly agreed otherwise.
- 1.5 Our deliveries are valid for the agreed use, which is defined in the Statement of Work in the product or service description and is limited to business-to-business (B2B) transactions. Unless explicitly agreed upon in writing (e.g. Statement of Work), our deliveries are valid for the target market where ESCRYPT places the ESCRYPT product.
- 1.6 Pending the coming into force of new terms and conditions for supply, these General Terms and Conditions shall also apply to all future deliveries to the Customer.

### 2. Customer's Obligation to Cooperate

- 2.1 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.
- 2.2 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.
- 2.3 The Customer shall name a designated contact person, who shall be authorized to provide and receive information relevant for contractual performance as well as to receive software deliveries and to report complaints or deficiencies to us.
- 2.4 The Customer shall be responsible for the correct integration of our products and shall validate them prior to any productive use.
- 2.5 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).

### 3. Prices and Terms of Payment

- 3.1 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.
- 3.2 In the absence of any special agreement, prices and delivery shall be "FCA (Free Carrier)", Incoterms 2010®, with packaging included.
- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 We shall be entitled to make delivery dependent upon concurrent payment (e.g. through cash on delivery or direct debit) or advance payment.
- 3.7 Moreover, we shall be entitled to offset payments against the oldest outstanding amount receivable.
- 3.8 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.
- 3.9 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.

### 4. Software Licenses

- 4.1 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. The usage by third parties (including affiliates) requires a separate agreement. 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. The use of the license on server infrastructures or in the cloud requires the conclusion of a separate agreement.
- 4.2 Licensing models
  - (1) A **license per instance** (MACHINE-NAMED LICENSE) authorizes the Customer to use the software on exactly one uniquely identified workstation. Each license may only be used once at any point in time on the defined workstation or on one virtual machine on that workstation.
  - (2) A **centrally administered, personal user license** (USER-NAMED LICENSE) authorizes the Customer to use the software by one uniquely identified user. Each license may be used once at any point in time on up to three workstations or virtual machines, which obtain the license from a server allocated/controlled by the Customer.

- (3) A **concurrent user license** (FLOATING LICENSE) authorizes the Customer to use the software once at any point in time on a workstation or virtual machine, which obtain the license from a server allocated/controlled by the Customer.
- (4) In the case of a **corporate license**, software/net lists may be used simultaneously by any desirable number of the Customer's employees. This license model, however, does not allow the transfer to or use of the software (e.g. by means of sublicensing) by third parties.
- (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. The product, the project or the platform will need to be identified by means of an unambiguous designation, the processor/compiler-type used and the production years.
- (6) In the case of **product and/or project and/or platform licenses** the use of software/net lists is granted for a specific product/project or platform at the Customer without a contractually agreed limitation of the amount of reproductions. The product, the project or the platform will need to be identified by means of an unambiguous designation, the processor/compiler-type used, as well as in case of a development license the development years and in case of a production license the production years.
- (7) A combination of license models is possible.
- 4.3 Unless otherwise agreed upon in writing, software will be delivered in binary code.
- 4.4 In conjunction with the license models described in Article 4.2, subs. (1) – (3), the Customer shall activate the software/network list by means of a license key obtained from ESCRYPT. For the purpose of license control in the cases described in Article 4.2 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.
- 4.5 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).
- 4.6 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.
- 4.7 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.
- 4.8 Unless explicitly agreed upon in writing, the Customer shall not have the right to adapt the software.
- 4.9 ESCRYPT software may contain framework components of third party vendors, which allow communication between different processes and programming languages. The Customer may use such technologies only for the purpose of developing product extensions (so-called "Add-Ons") on interfaces designed for such purpose.
- 4.10 The licensing models described in Article 4.2 permit, in principle, the transfer of the software and the associated perpetual license to third parties as long as the Customer informs us of such transaction without delay. The Customer shall ensure that the transfer of the software license to 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, such deletion is to be confirmed by Customer vis-à-vis ESCRYPT in writing. The Customer must reach a written agreement with the third party in which the said party accepts the 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 software maintenance contract, the same shall remain with the Customer and shall not be transferable. Upon request, we will offer a software maintenance contract to the assignee.
- 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.
- 4.11 If the Customer has acquired the 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.
- 4.12 The specification of a new license server Host ID or MAC address for a license e.g. in the event of a replacement of a computer ("Rehost") is possible in the event of MACHINE-NAMED-LICENSE once in 6 months and in the event of a USER-NAMED-LICENSE once in 6 months and in the event of a FLOATING-LICENSE once in 12 months. The customer shall delete the old license and any copies thereof once he received the new license. Such deletion shall be confirmed in writing by Customer vis-à-vis ESCRYPT upon request by ESCRYPT. 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.
- 4.13 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.
- 4.14 In case of licensing of simulation models additional and/or deviating terms may apply.
- 4.15 If within the scope of warranty and/or software maintenance services a new software version is provided to the Customer, such version shall be subject to the above mentioned license conditions. Upon installation of such new version Customer's rights to use previous versions shall cease.
- 4.16 In case that other programs or program parts are provided to the Customer as Add-Ons with the licensed software, ESCRYPT hereby grants the Customer a non-exclusive, non transferable, timely limited right to use such Add-Ons for testing and evaluation purposes. Unless expressly agreed otherwise in writing, the right to use such Add-Ons shall be limited to a period of 14 days from the date of installation („Grace Mode“). The Customer shall not be entitled to use the Add-Ons for series development/production and/or provide them to third parties (including sub-licensing). Articles 4.4 – 4.7 shall apply respectively.
- ## 5. Software Maintenance
- 5.1 Customer shall only be entitled to the software maintenance services described in this article if a software maintenance contract with ESCRYPT (to be entered into separately) is in place. The software maintenance services described in this Article are provided for the latest program version of licensed software only. Any support services for previous program versions shall require a separate agreement between the parties.
- 5.2 Unless otherwise agreed upon in writing software maintenance shall comprise the following services:
- delivery of generally available program updates, new program versions, which may include defect corrections, functional enhancements and/or adaptations to technical frameworks;
  - delivery of patches and fixes to remedy and/or bypass critical errors;
  - provision of information regarding restrictions, error correction and/or error avoidance;

- technical assistance for routine or straightforward issues related to installation and use (“how-to” questions) and/or defects via telephone or e-mail during ESCRYPT’ regular business hours (Monday to Friday, except public holidays).
- 5.3 Software maintenance does not include support for
- the integration of the software and any influences such integration may have on third party products,
  - the design and development of applications, using the software,
  - Customer’s use of the software in other than the agreed/specified operating environment,
  - problems and errors caused by products which have not been delivered by ESCRYPT.
- 5.4 The agreement regarding the provision of software maintenance does not result in any commitment of ESCRYPT regarding availability and/or fail-safe stability of a system.
- 5.5 The agreed software maintenance services will only be provided in favor of the Customer. Customer may not transfer software maintenance to third parties.
- 5.6 Unless otherwise agreed upon, software maintenance will be provided for a period of one (1) year as of the delivery/provision of the software.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 If and to the extent that ESCRYPT acts as a processor in accordance with section 62 BDSG/ article 28 General Data Protection Regulation (GDPR), the agreement for data processing of software maintenance services or hardware repair to individual order, maintenance agreement or warranty which is available under the following link [https://www.escrypt.com/en/terms\\_and\\_conditions](https://www.escrypt.com/en/terms_and_conditions) and which will be made available to Customer by ESCRYPT upon Customer’s request, shall apply.

## 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, Delay

- 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 11.
- 7.4 In the event that the Customer causes shipment or delivery to be delayed (default of acceptance) or if the Customer does not comply with its obligations to cooperate culpably, we shall be entitled to claim any loss or damage resulting thereof. Without proof of any actually accrued loss or damage, we shall be entitled to claim a lump sum fee for additional expenditures in the amount 0.5 % of the price of the products or services concerned for each inchoate month, but not exceeding the aggregate amount of 5 % of the price for the products or services concerned. The parties shall, however, have the right to provide evidence for higher or lower loss or damages. Partial shipments and corresponding invoices shall be permitted, unless these should be unreasonable for the customer.

## 8. Complaints and Notices of Defect

- 8.1 The Customer shall serve written notice of recognizable quality defects immediately, however no later than 15 days after receipt of the products. Adhesive box labels, content labels and any tally sheets or control slips enclosed with the consignment shall be submitted with the notice. As regards to other complaints of quality defects, the Customer shall provide similar notification immediately upon their discovery. The material date shall be the date on which we receive the notice of defect.
- 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 quality defects, shall be excluded if the notice of defect is not received by us within the time period stipulated above.
- 8.4 Claims for transport damages shall be made within the limitations governed by the respective freight contract.
- 8.5 The Customer shall not have the right to refuse acceptance of deliveries due to minor defects.

## 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 hardware or 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 hardware 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 We shall not be liable for the quality of the product based on the design or choice of material, insofar as the design or the material has been stipulated by the Customer.
- 9.12 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.
- 9.13 Claims on account of defects as to quality including claims asserting the Customer's right of recourse shall be excluded insofar as the Customer has failed to have the defect remedied by our repair department.
- 9.14 In all other respects, our obligation to compensate for damages and/or for futile expenditures as contemplated by section 284 of the German Civil Code (BGB) on account of quality defects shall be governed by the terms of Article 11. Claims made by the Customer concerning quality defects other than those covered by this Article 9 and Article 11 shall be excluded.
- 9.15 For any defects of title that do not arise from a violation of the property rights of third parties, the provisions of this Article 9 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 11.
- 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 10 and Article 11 shall be excluded.
- 10.10 Product may comprise components implementing Standards (e.g. mobile service standards, WLAN standards), integrated electronics and/or related software, supplied or provided by sub-suppliers, which may make use of third party intellectual property rights. Unless otherwise agreed, licenses to use such third party intellectual property rights for the Product, and corresponding indemnifications for claims against Customer based on such third party intellectual property rights, are not part of ESCRYPT's deliverables. Customer may be required to obtain licenses from the owners of these third party intellectual property rights directly. "Standards" shall mean technical specifications or functions (i) adopted by a standards organization (inter alia ETSI or IEEE), (ii) defined by research institutes, industrial companies or other market participants to ensure technical conformity or compatibility, or (iii) established by common practice in a particular technical field.
- 10.11 In the event of alleged infringements of third party intellectual property rights by Customer's use of components implementing Standards, integrated electronics and/or related software, contained in the Product, ESCRYPT shall reasonably provide Customer with relevant information on request against such allegations. This includes the provision of any documents which ESCRYPT controls and is entitled to provide to Customer.
- 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 Compensation payable in case of a breach of 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 **Our products may on occasion facilitate the exertion of influence or control on an electronic system. Such actions may lead to injury to life or limb or to property damage. Our products are therefore exclusively intended for operation by qualified specialist personnel.** We shall not assume liability for damages caused by improper operation or by use in a manner other than that intended.
- 11.4 When using our products for safety-relevant intervention in vehicle behavior (as with the stimulation of the vehicle's bus systems, e.g., CAN, or with bypasses intervening in the vehicle's control equipment, e.g., in the electronic control units onboard the vehicle governing powertrain, chassis or body systems), and when our products are deployed in conjunction with electronic control units presenting a danger to life and limb in the event of any malfunction, the user shall be obligated to ensure the installation of devices that provide a secure transition of the system to a safe condition in the event of a hazard (e.g. Emergency-Off mode or Limp-home operation).
- 11.5 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 software or hardware parts or from access to our products via interfaces released by us.
- 11.6 In the event that a defect or fault in the licensed software 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.
- 11.7 The foregoing provisions shall not be construed as reversal of evidence.
- 11.8 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.
- 12.2 Should the products in which retained title require maintenance, such maintenance shall be carried out at Customer's expense.
- 12.3 The Customer shall have the right to process or connect our products within the normal course of its business. We shall acquire joint ownership in the products created by such processing or connection as security for our claims set forth in Article 12.1; the Customer transfers this joint ownership to us already at this point. As a subsidiary contractual duty, the Customer shall keep in safe custody, free of charge, the items in which we hold joint ownership. The proportion of our joint ownership share shall be determined by the relationship between the value of our product and the value of the item (invoiced amount incl. VAT) created through the processing or connection at the time of such processing or connection.
- 12.4 The Customer shall have the right to resell the products within the normal course of business against pre-payment or subject to the retention of title. Already at this point, the Customer shall assign to us in full all of the claims to which it is entitled from such sale of our product together with all ancillary rights, irrespective of whether our product has been further processed or not. The assigned claims shall serve as security for our claims pursuant to Article 12.1. The Customer shall have the right to collect the assigned claims. We may revoke the Customer's rights set forth in this Article 12.4 if the Customer fails to duly perform its payment duties to us, in particular if the Customer is in default of payment, suspends payment, or if insolvency or similar proceedings for the purpose of debt relief have been filed. In addition we shall be entitled to revoke Customer's rights set forth in this Article 12.4, if an impairment of the Customer's financial situation occurs or is threatening to occur or if the Customer should become insolvent.
- 12.5 Upon request, the Customer shall notify us immediately in writing as to whom the Customer has sold the products in which we hold title or joint title, and of the claims to which the Customer is entitled from such sale; the Customer shall also be obligated to issue to us at its expense publicly certified deeds relating to the assignment of the claims.
- 12.6 The Customer shall not be entitled to effect any other disposals of the products to which we have retained title or joint title or of the claims assigned to us. The Customer shall be obligated to notify us immediately of any seizures of or other impairments to the rights of products or claims belonging to us either in whole or in part. The Customer shall bear all the costs which must be incurred to cancel the access of third parties to our property with reserved title or serving as security

and to recover the property items, insofar as it is not possible to collect these from third parties.

- 12.7 If the value of the security existing for us exceeds the amount of our total claims by over 10 %, we shall release security to this extent at our discretion at the Customer's request.

### 13. Withdraw/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 withdraw from or terminate the contract. Any other right given by contract or law shall remain unaffected.
- 13.2 We shall be entitled to withdraw 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.
  - (iii) We shall be entitled to withdraw from or terminate the contract if the fulfillment of the contract was no longer permissible due to legal and/or regulatory changes after the signature of the contract.
- 13.4 We shall be entitled to withdraw from or terminate the contract if the fulfillment of the contract was no longer permissible due to legal and/or regulatory changes after the signature of the contract.
- 13.5 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
- 13.6 The rights mentioned in this Article 13 shall be in addition to any statutory right, which shall not be affected thereof.

### 14. Export Control and Customs

- 14.1 We are entitled to refuse to fulfil our obligations under this contract insofar as the fulfilment is prohibited or impaired by foreign trade law, especially applicable national and international export control and customs regulations, including embargos and other sanctions, which is – in accordance with this law – applicable to this contract (hereinafter "foreign trade law").
- 14.2 In case of delay in the fulfilment of our obligations under this contract caused by licensing requirements, authorization requirements or similar requirements or caused by other foreign trade law procedures (hereinafter "Authorization"), the time of performance for such obligations is extended/moved accordingly. Should an Authorization be denied or not granted within 12 months after filing the application, we are entitled to rescind the contract (Rücktritt) to the extent the fulfilment of the obligation requires this Authorization.
- 14.3 We will notify the Customer of the reasons for such refusal according to clause 14.1 or delay according to clause 14.2 without undue delay. Claims for damages based on prohibitions, impairments or delays in accordance with clauses 14.1 and 14.2 are excluded insofar as these were not intentionally or grossly negligent (grob fahrlässig) caused by us.
- 14.4 The Customer shall provide any information and documents (required in particular for customs-cross-border and intra-community export / transport) necessary to abide by applicable foreign trade law or requested by authorities in that

regard. Such obligation may especially include information on the end Customer/user, the destination and the intended end-use of the contractual items. We are entitled to rescind the contract (Rücktritt) if the Customer does not provide us with such information within a time period stipulated by us.

- 14.5 The Customer shall indemnify and hold us harmless from and against any and all liability, claims, proceedings, actions, fines, losses, costs, expenses and damages arising out of, connected with or resulting from Customer's infringing (by act or omission) upon applicable foreign trade law. Such costs and expenses include but are not limited to investigation expenses, fines imposed by the authorities or fees for legal advice sought because of the infringement.
- 14.6 When passing on the contractual items delivered by us to a third party, the Customer shall comply with applicable foreign trade law (in particular of national and international (re-)export control law).
- 14.7 Unless explicitly agreed otherwise in the delivery or quotation documents, the customs-cross-border supply of software or software know-how (without hardware) shall be performed exclusively by electronic means (e.g. e-mail or download).
- 14.8 The Customer shall neither directly nor indirectly use our deliveries for the development, production or proliferation of nuclear, chemical or biological weapons, other war weapons or missile technology for military purpose. Moreover, the Customer shall not pass on our deliveries to a third party for any such purpose. We are entitled to rescind the contract without any notice if the Customer violates this obligation. Clause 14.5 applies accordingly.

### 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 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.

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.

- 16.3 All legal relation-ships 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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