

# GENERAL TERMS AND CONDITIONS

As at 12/2021

## **1. General – Oral/ Written Additional Agreements - Offers**

- 1.1 Any of the deliveries and services between Buyer (i.e. "You") and Seller (i.e. "We") shall be subject to the following General Sales Terms and Conditions exclusively. Any other conflicting, differing and/or terms and conditions not contained in these General Sales Terms and Conditions shall not be effective unless expressly agreed upon by Buyer and Seller in writing, which also applies in case both Parties unreservedly perform deliveries of Product and Service with knowledge of conflicting, differing conditions or conditions not contained in these General Sales Terms and Conditions.
- 1.2 Any Seller's sales personnel are not authorized to make oral or written additional agreements except the General Sales Terms and Conditions, unless upon authorization by chopping the company's seal (including the special seal for contract) on such agreements.
- 1.3 The quantity, quality, and description of and any specification of the ordered Product shall be set out in and be subject to the quotation issued by Seller.
- 1.4 The order shall not be binding for Seller until it is confirmed by Seller in writing or tacitly accepted by Seller in the form of actual performance or issuance of an invoice.
- 1.5 Illustrations, drawings, calculations and other product-related, application-related or project-related documents ("Copyright Documents") which contain valuable know-how or valuable information remain Seller's sole property and are subject to its copyright even if handed over to Buyer. None of Copyright Documents shall be reproduced or made available to third parties without Seller's prior written consent.
- 1.6 No contract that has been agreed upon shall be cancelled unless mutually agreed upon. Seller reserves the right to charge for losses, costs, damages, charges, and/or expenses incurred when the contract is terminated.

## **2. Delivery - Date of Delivery - Extension of the Delivery Period - Partial Performance**

- 2.1 Unless otherwise expressly agreed upon, the agreed dates for performance are not fixed deadlines.
- 2.2 The delivery period and the period for Service does not commence until all details are clarified and both Parties have agreed on all the conditions of business. The prerequisites for adherence to delivery periods and periods for Service are: (a) All documents which are to be provided by Buyer have reached Seller on time; (b) All approvals and releases which are to be provided by Buyer have been issued on time; (c) Buyer has fulfilled its contractual obligations, particularly the payment obligations in full.
- 2.3 Unless otherwise expressly agreed upon, the delivery period is considered to have been met if the operational shipment has left Seller's plant within the agreed delivery period. Unless otherwise specified in the contract all Products shall be delivered under "DDP" (Incoterms 2020) terms.
- 2.4 The delivery is only made to locations in People's Republic of China ("PRC").
- 2.5 The delivery period shall be reasonably extended if the failure to comply with the delivery period is due to force majeure, i.e. an unforeseen event which Seller has no influence on and Seller shall not be responsible for (e.g. official actions and orders (irrespective if they are valid or invalid), fires, floods, storms, explosions or other natural disasters, disturbances of operation, labor disputes, strikes, lockouts). This shall also apply under the following circumstances: (a) if force majeure occurs during an undue delay in delivery and if a supplier of Seller is affected by force majeure; (b) Buyer fails to present necessary approvals or documentation from third parties in time; (c) the necessary specifications are not available to Seller in time.
- 2.6 Deliveries and Services may be made in installments unless otherwise stipulated by the Parties. In such a case Seller is also entitled to invoice such installments separately.
- 2.7 In case the delivery is delayed at Buyer's request or due to circumstances for which Buyer is responsible, Seller is, upon demonstration of readiness to ship, entitled to charge Buyer the costs resulting from storage but not less than 0.5 % of the invoice amount of goods for each week commenced, but in maximum 10 % of the invoice amount of goods. Both Parties may have the right to certify whether the actual storage costs are higher, lower or don't even exist. The statutory rights to terminate the contract and to claim damages shall remain unaffected thereby.

## **3. Force Majeure –Termination of Contract Reservation of timely and correct supply of incoming goods**

- 3.1 Should either Party be prevented from fulfilling its obligations according to these General Sales Terms and Conditions due to the case of force majeure such as war, serious fire, flood, typhoon, earthquake and other incidents which both Parties consistently consider such an incident as Force Majeure, the time for fulfillment shall be extended by a period equivalent to such a time caused by the incident.
- 3.2 The Party claiming Force Majeure shall give written notice to the other Party as soon as possible. In such a case the affected Party will be excused from the fulfillment of its obligations to the extent a delay is caused by Force Majeure.
- 3.3 During the duration of Force Majeure, each Party shall bear its own cost resulting from the delay in the fulfillment of its obligations.
- 3.4 If both Parties cannot reach an agreement within 90 days after the occurrence of the event of Force Majeure, either Party has the right to terminate the sales contract. The same shall also apply in the case of subsequent impossibility of contract performance, for which Seller is not responsible. In case of such termination, either Party shall bear its own costs, and waive the right to claim any compensation resulting from the termination. If a Party intends to withdraw from the contract for the reasons above, then they must immediately inform the other Party thereof.
- 3.5 **Seller also shall be exempt from its delivery obligation towards the Buyer if the correct goods ordered for performing the contract have not been delivered to Seller in due time by the supplier of Seller.**

## **4. Retention of Title**

- 4.1 Seller reserves the title to all the Products until Buyer makes all relevant payment in full. This also applies in case the payment for certain performances indicated by Buyer is made. If the retention of title is linked to special prerequisites or forms in the country or region where Buyer is located, Buyer is required to notify Seller accordingly and to ensure fulfillment at Buyer's own expenses. Seller reserves the option to register the purchased goods on retention of title with the PRC Moveable Property Financing Unified Public Notice System. If Buyer refuses to cooperate with Seller in such

- registration, Seller reserves the right to withdraw the goods at any time and consequently if the goods cannot be recovered by Seller, Buyer shall be obligated to compensate all losses Seller may sustain thereof.
- 4.2 Linkage, blending or processing of the Products shall be conducted by Seller as the manufacturer, but without occurring any obligations for Seller. If (joint) title raised due to linkage, blending or processing, it is agreed that Seller shall acquire joint title to the new item in proportion to the value of the Product supplied by Seller compared with the other products at the time of linkage, blending or processing. Buyer shall store the items of which Seller has (joint) title for Seller without any additional charges.
- 4.3 Resellers are permitted for resale of the Products in the course of ordinary business unless being revoked. Seller may revoke the permission of resale if (a) Buyer stops payment, or (b) Buyer is in delay of payment, or (c) upon the conclusion of the contract, if there are indications for deterioration of Buyer's property or other facts indicating that Seller's claim will be endangered due to Buyer's failure/delay of performance of obligations. For goods in which Seller has (joint) title, Buyer hereby assigns Seller all claims arising from resale of the items delivered to third parties or from any other cause in law in the sum of the invoice value of the corresponding items, and Buyer shall provide a guarantee for the aforementioned goods. On demand Buyer is obliged to provide Seller with written declarations of assignment. Buyer is revocable authorized to collect the assigned claims against the third party in the course of ordinary business in its own name. This collection authorization may be revoked by the same reasons as the right of resale.
- 4.4 Buyer is not permitted to pledge or transfer purchased goods unless otherwise stipulated by the Parties. Buyer must inform Seller without delay of any seizer and lien of property, or any other disposals or interferences by third parties.
- 4.5 Seller undertakes at its own discretion to release the pledge upon Buyer's request insofar as the value of the pledge thereof exceeds 10% of the claim to be pledged.
- 5. Passing of Risk - Incoterms - Transport Insurance**
- 5.1 Unless otherwise expressly agreed upon, the delivery shall be conducted under the term DDP (Incoterms 2020) at Buyer's designated delivery address.
- 5.2 Unless otherwise expressly agreed upon, any risks of losses or damages of the Products passes on to Buyer as soon as the Products have arrived at the destination address.
- 5.3 If internationally customary transportation and risk bearing clauses are used in the contract, these clauses shall be interpreted according to the International Rules for Interpretation of Trade Terms (Incoterms 2020).
- 6. Warranty Claims - Complaint Obligations**
- 6.1 Unless otherwise expressly agreed upon, quality and feasibility shall be stipulated exclusively and exhaustively in the technical data sheet or the instruction manual regarding the respective Product.
- 6.2 Seller agrees that in case of a claim for supplementary performance (subsequent improvement or additional delivery) the most cost-effective alternative shall be chosen, provided that this alternative is not detrimental to Buyer.
- 6.3 Insofar as the expenses required for the purpose of subsequent performance are increased by the fact that Buyer has taken the goods to a place other than the place of performance after delivery, any additional costs incurred as a result shall be borne by Buyer.
- 6.4 Complaints due to incomplete or incorrect delivery must be made to Seller in written form immediately but not later than within one week following delivery (apparent defects) or discovery of the defect. Otherwise the assertion of incomplete or incorrect delivery is excluded.
- 6.5 Buyer's statutory requirements regarding inspection and complaint of Products receivable will not be restricted.
- 6.6 Warranty claims are subject to a limitation period of 24 months following transfer of risk. If delivery was delayed for reasons beyond Seller's control, warranty claims are subject to a limitation period of 24 months following transfer of risk or 24 months after Seller first notified Buyer that Seller was ready to deliver (whichever period expires earlier).
- 6.7 If a certain number of operations or switching cycles is agreed for a product such an agreement shall be valid until the limitation periods described in Section 6.6 above are expired. If the agreed number of operations or switching cycles of a product is reached prior to the expiration of the limitation periods described in Section 6.5 above, all claims resulting from such an agreement shall be ceased with immediate effect. The agreement of a certain number of operations or switching cycles is only valid if the product is used under the environmental conditions described in the appropriate technical data sheet or in the appropriate instruction manual.
- 6.8 Warranty claims are excluded in case of: (a) failure of inspection and complaint of Products receivable as described in Section 6.4 and 6.5 above; or (b) subsequent and unauthorized modification to the Product unless there is evidence that such a defect is not resulted from such a modification; or (c) defects resulting from normal wear, improper usage or improper storage.
- 6.9 Compensation for damages by Buyer shall only be made in accordance with Section 8.
- 7. Intellectual Property Rights and Copyrights - Defects of Title**
- 7.1 Unless otherwise expressly agreed upon, Seller is only obliged to fulfill the obligations not to infringe the Intellectual Property Rights (hereinafter referred to as "Intellectual Property Rights") only in the countries or regions where the Products are produced or where delivery of the Products is made. "Intellectual Property Rights" in terms of these General Sales Terms and Conditions shall mean invention, utility models, design patents, trademarks, as well as copyrights. In case of a third party raises any justified claims against Buyer due to infringement of Intellectual Property Rights through performances supplied by Seller and used according to the contract, Seller shall be liable to Buyer within the period defined in Section 6.6 as follows in Section 7.2.
- 7.2 Seller will decide at its own discretion if to, at its own expenses, (a) acquire the rights to use such Intellectual Property Rights for the performances under the contract, (b) alter the Products in such a manner that Intellectual Property Rights are not infringed, or (c) exchange the Products. Compensation for damages shall only be required in accordance with Section 8.
- 7.3 The above-mentioned obligations of Seller under Clause 7.2 exist only when Buyer informs Seller in writing immediately concerning claims asserted by the third party. Performance of such obligations shall not be considered as Seller's acknowledgement of any infringement and Seller shall retain the rights to take all defensive measures and settlement proceedings.
- 7.4 Buyer's claims are excluded if Buyer is solely responsible for the infringement of the Intellectual Property Rights.

- 7.5 Buyer's claims are also excluded if the infringement of Intellectual Property Rights is caused by Buyer's special instructions, any use not to be foreseen by Seller, or any modification made on the Products without Seller's authorization.
- 7.6 Claims against Seller or Seller's vicarious agents due to defects in title other than those stipulated in this Section 7 are excluded.
- 7.7 Any Intellectual Property Rights produced by the outcome during the fulfillment of the contractual obligations shall belong to Seller, unless Buyer may prove that the outcome is significantly attributed by Buyer. Under similar circumstances or other conditions where Intellectual Property Rights will be inevitably produced, Seller shall obtain a royalty-free and non-exclusive right to use such Intellectual Property Rights, without limitation in terms of time, location and content.
- 8. Liability**
- 8.1 Seller shall only be liable for direct damages of Buyer caused by flaws of delivery or performance, or violation of other contractual or non-contractual obligations, in particular caused by tort as far as legally permitted by the applicable law, due to willful intent or gross negligence.
- 8.2 Damages which Seller is liable under Section 8.1 are limited to such damages that must have been foreseeable by Seller upon the conclusion of contract as typical damages (hereinafter referred to as "Damages").
- 8.3 Damages under Section 8.2 are: (a) the maximum damages in each case shall be equal to the amount of the net purchase price of the affected contract; (b) the maximum damages per calendar year shall be equal to the amount of the net turnover of all purchased products bought by Buyer from Seller in the preceding calendar year. In the first contract year the maximum damages shall be the amount of the turnover of the purchased products bought by Buyer from Seller until the occurrence of the event of damage. In any event, Typical Damages under Section 8.2 shall not include any indirect damages (e.g. recovery for loss of profit, damages resulting from interruption of business).
- 8.4 Despite Section 8.3, the amount of damages to be paid by Seller to Buyer shall be determined in favor of Seller, in consideration of Seller's economic situation, nature, scope, and duration of the business relationship, the amount of damages contributed or responsible by Buyer and a particularly disadvantageous situation of installation of the part supplied. Particularly, damages, cost and expenses paid by Seller to Buyer shall be subject to the value of the Products being delivered.
- 8.5 All limitations of liability shall apply to the same extent to vicarious agents.
- 8.6 A change in the burden of proof to Buyer's disadvantage shall not be associated with the provisions in this Section 8.
- 9. Prices - Price Increases**
- 9.1 The Price shall be the quoted price authorized by special seal for contract. All quotations are valid for 30 days only or may be extended to any date acceptable to Buyer, and Seller has the right to alter the quotation after the expiration of the period or date without giving notice to Buyer.
- 9.2 Except as otherwise stated under the General Sales Terms and Conditions of any quotation or in any price list of Seller, or otherwise agreed in writing between Seller and Buyer, all quotations by Seller are made based on DDP terms with the restriction as of 9.4. Once upon request by Buyer and confirmed by Seller, Seller agrees to make the delivery of Products to the destination other than Buyer's plants and any expenses for packaging, transportation and insurance shall be charged extra.
- 9.3 Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the Price to reflect any increase in the costs to Seller which is due to any factor beyond Seller's control, any change in the delivery dates, quantities or specifications for the Products which is requested by Buyer, or any delay caused by any of Buyer's instructions or failure to give Seller adequate information or instruction.
- 9.4 An additional transportation surcharge of CNY 50 will be charged for each order with a net value below CNY 500.
- 10. Payment Terms - Late Interest - Assignment**
- 10.1 Unless otherwise expressly agreed, payment terms are full payment of Price of Product and/or Service by TT and in any case prior to deliverance of any Product and/or Service.
- 10.2 If there are actual facts indicating that Buyer's financial situation deteriorates after conclusion of the contract, or other facts exist after conclusion of the contract which justify the presumption that Seller's claim against Buyer is jeopardized by Buyer's inability to perform, Seller may demand corresponding adequate guarantee for Seller's Products/Services and/or revoke any payment terms granted, even for other obligations. If Buyer fails to provide adequate guarantee requested by Seller within a reasonable time, Seller has the right to terminate the contract without affecting Seller's rights to claims for products/services provided or Buyer's breach.
- 10.3 If payment is made via bank transfer, Buyer shall bear all international and domestic bank charges and any administrative charges imposed by the banks.
- 10.4 Any payments made on the invoices, including deposit and late interest, are non-refundable and Products and/or Services provided or to be provided are non-exchangeable.
- 10.5 Except with the prior written consent of Seller, any contractual relationships and the associated rights are non-assignable.
- 10.6 If the costs to Seller of performing its obligations under any contract with Buyer shall be varied by reason of the creation or amendment after the date of order acceptance of any law or of any order regulation or by-law having the force of law or any applicable standard, the amount of such increase or decrease shall, as applicable be added to or deducted from the contract price. This includes but is not limited to varying costs of customs and excise duties, levies, charges, imposts and the like. For the purpose of Clause 10. of these terms the expression 'cost' is deemed to include overheads and interest paid by us.
- 10.7 Exchange rate variation payable shall be calculated at the rate of exchange actually paid by Seller against the exchange rate in the quotation. If prices are expressed in different currencies and Buyer seeks or requires payment in any different currency, he shall bear any foreign exchange risk arising from such payment.
- 10.8 Payment shall not be deemed to have been made before the Seller has received the payment. Should the Buyer make default in respect of any payment due to the Seller then the Vendor shall have the right, in addition to all other rights to which it is entitled at law, to: (a) charge interest on the overdue amount at three percent (3%) above the rate charged to the Vendor by its major banker for overdraft accommodation and calculated from the due

- date of payment to the actual date of full and final payment. Any payment subsequently made by the Buyer to the Vendor shall be credited first against any interest so accrued; and/or (b) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; and/or (c) terminate the contract.
- 10.9 All cost of collecting money due under a contract, including but not limited to, legal expenses, costs for preservation, investigation and identification, legal interest, attorney's fees shall be paid by Buyer to Seller.
- 11. Offsetting – Securities – Assignment**
- 11.1 Offsetting your claims against ours is only permitted if we have recognized your claims, your claims are undisputed or legally established, or are closely related to our claim (synallagmatic contract). The same shall also apply to rights to withhold performance; you are authorized to exercise a right of retention in as far as your counterclaim results from the same contractual relationship, except for movables over which a retention is not permitted by the PRC Laws.
- 11.2 If there are actual indications of material deterioration of assets after conclusion of the contract or if there are other facts or facts that become known after conclusion of the contract that justify the assumption that our claim for consideration is jeopardized by a lack of funds, we are entitled to demand appropriate securities for our products/services and/or revoke any payment terms granted, also for other receivables. If you do not provide the appropriate collateral that is requested by us within a reasonable period, we may withdraw from the contract. Existing claims from products/services already provided or on account of delay, as well as our rights from Art. 525 and 526 of the PRC Civil Code, remain unaffected thereby.
- 11.3 The assignment of claims from this contractual relationship is only permitted following our prior written consent. No such entitlement to the granting of such consent arises.
- 12. Obligations in the case of resale**
- 12.1 In the case of resale of the delivery item, you are obligated to adhere to the provisions of the German Law on Foreign Trade and Payments (AWG), German foreign trade regulations (AWV), the EU Dual Use Regulation (Regulation (EU) No. 428/2009), the US Export Administration Regulations (EAR) and PRC Export Control Law - in their respective valid versions – and to pass this contractual obligation on to your customers accordingly.
- 12.2 You shall reimburse us for all losses and costs arising from the culpable non-compliance of the duties stipulated in Clause 12 and indemnify us from any third-party claims lodged against us in this connection.
- 13. Return of electrical equipment – Return of packaging**
- You agree to dispose of delivered products after the end of their use at your own expense in accordance with Regulations on the Administration of Recycling and Disposal of Waste Electrical Appliances and Electronic Products of PRC, Art. 625 of the Civil Code of PRC and other applicable laws and regulations. You shall contractually oblige commercial third parties to whom you pass on the delivered products to ensure that these third parties properly dispose of the products at the end of their use and at their own expense in accordance with the Regulations on the Administration of Recycling and Disposal of Waste Electrical Appliances and Electronic Products of PRC, Art. 625 of the Civil Code of PRC and other applicable laws and regulations, and to impose a corresponding further obligation in the event that the products are passed on again. If you violate your obligation to pass on the obligations to your customers, you are obliged to take back the delivered products at your own expense after the end of their use and to dispose of them in accordance with the Regulations on the Administration of Recycling and Disposal of Waste Electrical Appliances and Electronic Products of PRC, Art. 625 of the PRC Civil Code and other applicable laws and regulations. Provided we are legally obligated to do so, we will return the transport packaging at your request. You shall bear the costs for the return of the transport packaging.
- 14. Data privacy**
- 14.1 With entering this agreement, it is deemed that Buyer agrees that Seller may collect, store and use personal information in relation to Buyer or Buyer company's directors and officers, for the purposes of considering any credit application from Buyer or any other purpose related and incidental to the business relationship between Buyer and Seller.
- 14.2 When Seller discloses Buyer's Personal Data to Seller's affiliates, business partners, and other parties, in event that Buyer's Personal Data may be transferred to countries outside PRC, Seller shall comply with the applicable laws. Seller, insofar as is permitted by the laws, may take the below actions for data protection: through binding company rules, standard contractual terms on the protection of personal data, certificates, or recognized codes of conduct. Please contact Seller's Data Protection Officer if you would like more information on this topic.
- 14.3 Seller will not disclose any of Buyer's personal information to any third party except to obtain credit information, make an entry on Buyer's credit report, to enforce these Terms, or to comply with laws, regulations and authorities.
- 14.4 Please see our [privacy statement](#) for further information.
- 15. Place of performance – Place of jurisdiction – Applicable law – Language**
- 15.1 The place of performance for all obligations from the contractual relationship is Shanghai, the PRC.
- 15.2 It is agreed that any dispute, controversy, claim or difference arising out of or relating to the contract between Seller and Buyer shall be settled through friendly consultations. In case an agreement can't be reached through consultation, the dispute, controversy, claim or difference shall be settled before a competent court in Pudong Shanghai. The defeated party shall bear all court fees and reasonable legal fees incurred by the prevailing party.
- 15.3 The PRC law applies exclusively to the exclusion of the conflict of laws.
- 15.4 The English and Chinese versions of the General Terms and Conditions shall be equally authentic. In case of any discrepancy or conflict between the two versions and such discrepancy or conflict shall not be settled by applicable statutory interpretation, the Chinese version shall prevail.

## Supplementary software conditions

For the use of separately purchased software („Software as a Product“), our Terms and Conditions for the licensing of standard software for a fee or our Terms and Conditions for the free licensing of standard software or our Terms and Conditions for the adaption of standard software (customizing) in return for a fee shall apply with priority. Insofar as software is included in the scope of delivery of a Product and this is made available for use, whether for payment or free of charge, the following provisions shall apply in addition, whereby in the event of contradictions between the above and the following provisions with regard to Software, the following provisions shall take precedence:

### 16. Rights of use

- 16.1 We grant you the non-exclusive right to use the software for its intended purpose. The scope of intended use can be found in the respective software datasheet or the operating instructions for the software. The right of use is limited to the agreed period, in the absence of such an agreement the right of use is for an indefinite period.
- 16.2 You may only use the software with the hardware stated in the datasheet or the operating instructions, in the absence of such reference only with the Product delivered together with the software. The use of the software with another device requires our prior written consent; in the case of culpable breach of this obligation, we are entitled to demand an appropriate additional remuneration. Further claims remain unaffected thereby.
- 16.3 If several devices are mentioned in the datasheet or operating instructions, you may only use the software on one of these devices at the same time (single license), unless a multiple license (cf. Clause 16.11) has been agreed. If there are several workstations for one device where the software can be used independently, then the single license only covers one workstation.
- 16.4 The licensing of the software is effected solely in machine-readable format (object code).
- 16.5 You may only make one copy of the software which can be used for backup purposes only (backup copy). Apart from that, you may only copy the software if a multiple license has been agreed as an exception.
- 16.6 Except in the cases of decompilation, you are not entitled to change, reverse engineer, or translate the software, or remove parts thereof. You may not remove alphanumeric and other identifications from the data carriers. They are to be transferred unmodified to every backup copy.
- 16.7 If there is a termination reason under these terms and conditions, the contract or other applicable laws and regulations or if we have in written accepted a request from you concerning this matter, we grant you the revocable right to transfer the right of use to the software to third parties. A transfer to a third party may only be effected together with the Product that you purchased in connection with the software. In the case of a transfer of the right of use to third parties, you shall ensure that no further rights of use to the software are granted to the third party other than you are entitled to according to these terms and conditions and those in the respective datasheet or the operating instructions, and that the third party shall be obliged to comply with at least the same obligations as are imposed herein with regard to the software. In the case of a transfer, you may not retain any copies of the software.
- 16.8 You are not entitled to grant sublicenses.
- 16.9 If you transfer the software to a third party, then you are responsible for compliance with any export requirements and shall indemnify us against any and all such cases of a culpable breach of duty.
- 16.10 Provided that we license you software, for which we only have a derived right of use (third-party software), the terms of use agreed between us and the licensor shall apply in addition to the provisions of these supplementary software conditions and also take precedence. If and to the extent that we license you open source software, the terms of use governing the open source software shall apply in addition to the provisions of these supplementary software conditions and also take precedence. We shall make reference to the existence and terms of use of licensed third-party and open source software in the datasheet or the operating instructions, as well as give you access to the terms of use upon request. In the case of a breach of these terms of use, as well as ourselves, our licensor is also entitled to assert any and all claims and rights in their own name.
- 16.11 You require a right of use to be agreed separately for using the software on several devices or simultaneously at several workstations. The same shall apply to the use of the software in networks, even if the software is not copied. In the aforementioned cases (hereinafter referred to as „multiple license“), the following provisions (a) and (b) apply in addition to the provisions according to 16.1 to 16.11 and also take precedence:
  - a) A prerequisite for a multiple license is express written confirmation from us about the number of permissible copies which you may create of the software, and about the number of devices or workstations on which the software may be used. For multiple licenses Clause 16.7 applies, however, on condition that the multiple licenses may only be transferred by you to third parties if they are transferred together and with all devices on which the software may be used.
  - b) You shall observe the instructions on copying provided by us together with the multiple license. You shall keep logs of the locations of all copies and present these to us on request.

### 17. Transfer of risk

When software is licensed using electronic communication media, for example via the Internet, the danger of accidental loss and accidental deterioration of the software shall pass to you when the software leaves our sphere of influence (e.g. at the time of download).

### 18. Obligations to cooperate and liability

- 18.1 You shall take all necessary and reasonable measures to prevent or restrict damage by the software. In particular, you shall ensure the regular backup of programs and data.
- 18.2 If you are in culpable violation of this obligation, we shall not be liable for the consequences, particularly not for the replacement of lost or damaged data or programs. A change to the burden of proof is not associated with the aforementioned provision.

### 19. Material defects

- 19.1 The parties agree that software generally cannot be created without errors; this also applies to the software covered by these terms and conditions.
- 19.2 Material defect claims related to the software become time-barred within 12 months of the transfer of risk. The aforementioned provisions shall not apply in cases where the Art. 188 of PRC Civil Code prescribes longer limitation

- periods and in cases of a liability for damage from injury to life, body or health as well as in cases of a liability for damage arising from an intentional or grossly negligent breach of duty.
- 19.3 Software is considered to have a material defect only if you can prove that there are reproducible deviations from the specification in the datasheet or the operating instructions. A material defect does not exist if it does not appear in the version of the software last transferred to you and its use is deemed reasonable for the buyer.
- 19.4 Material defect claims do not exist
- for damage arising as a result of incorrect or negligent use of the software
  - for damage arising from special external factors that are not preconditions in accordance with the contract
  - for modifications made by Buyer or third parties and the consequences
  - for software expanded by Buyer or a third party beyond an interface envisaged by Seller for this purpose
  - in a situation where the software is not compatible with the data processing environment used by Buyer.
- 19.5 The claim for supplementary performance is fulfilled as follows in the case of software: We provide you with a new edition (Update) or a new version (Upgrade) of the software, provided we have such or it can be procured by us at a reasonable cost.
- 20. Intellectual property rights and copyrights – Defects of title**
- If a third party lodges claims on the grounds of a violation of intellectual property rights in relation to the software, we shall be liable according to Clause 7 within the period defined in Clause 19.2.

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