

## GENERAL TERMS AND CONDITIONS FOR ONLINE ORDERS

AS AT 10/2021

### 1. General information – Scope

- 1.1 For our deliveries that we provide within the scope of our shopping cart system on our website [www.balluff.com/en-in/](http://www.balluff.com/en-in/) (hereinafter referred to as “shopping cart system”), our General Terms & Conditions below apply exclusively to online orders made in the Indian shopping cart system (hereinafter referred to as “terms and conditions”). These website are operated by us:

Balluff Automation India Pvt. Ltd.  
Office No- 201, Tower 1,  
World Trade Center, Kharadi,  
Pune, Maharashtra 411014  
India  
Tel. +91 020 61320300  
info.in@balluff.in  
www.balluff.in

- We do not accept any conflicting, deviating, or other terms and conditions, or any alterations or amendments to these general terms and conditions, unless we have granted express prior written consent thereto.
- 1.2 Before using our website and services therein, please make sure that you have read and understood these terms and conditions, and any additional terms and conditions referred to herein and published on our website.
- 1.3 By browsing, accessing, using, and/or placing order(s) on our website (as defined above), you are deemed to have accepted these terms and conditions. In the event these terms and conditions are not acceptable to you, you must stop the use of our website forthwith, and any continued use of our website or any features or services therein shall be deemed to indicate your acceptance to the terms and conditions.

### 2. Eligibility

- 2.1 We offer our services and online order features only to institutional/commercial buyers who are eligible to enter into legally binding contract under the Indian Contract Act, 1872. We do not offer our services and online order feature to individual retail buyers/consumers and/or persons who are ineligible or incompetent to enter into legally binding contracts, including minors, insolvents, etc. We shall not be responsible for any loss, harm, or damage, either direct or indirect, to you or any third person, which may arise due to you not being eligible for our services or for being ineligible to enter into legally binding contracts while using our website.
- 2.2 We reserve our right to terminate your membership and/or any transactions entered into by you and/or refuse to provide you access to the content or services on our website or any features therein, if it is discovered that you are under the age of 18, or are otherwise incompetent to enter into legally binding contracts or are not an institutional/commercial buyer.

### 3. Modification

We reserve our right to change, alter, or amend these terms and conditions at our sole discretion without any prior intimation. Any change to these terms shall be uploaded on our website. It shall be your responsibility to check and review these terms from time to time for any changes or amendments hereto.

### 4. Links to other websites/applications

Our website may contain hyperlinks to or details of websites, applications, etc. operated by persons other than us. These hyperlinks or details have been provided merely for your convenience and do not constitute any recommendation or advice. You understand and agree that we shall not be liable in any manner whatsoever for anything done or arising out of your use of these hyperlinks or details to third-party websites, applications, or products.

### 5. Disclosures / Your obligations

- 5.1 You agree, undertake and warrant that you shall furnish true and complete information when using our services. Whenever there is any change in your personal data/information, including name, address, contact numbers, and e-mail address, etc. you are required to notify us immediately of these changes by updating the details in the shopping cart system. If you fail to provide and update this information, or provide false, outdated, or incomplete data, we are entitled to terminate the contract, provided a contract has been concluded. We also reserve our right to refuse your access to our website or its services or content therein if we suspect that the information provided by you is incorrect, incomplete, or outdated. You must ensure that the e-mail address you specified is accessible from the time you provided it and that the receipt of e-mails is not impossible due to forwarding, shutdown, overloading of the e-mail account, or for any other reason.
- 5.2 You are also obligated to ensure that the information you provide belong to you, and that you have the right to share that information. You should not share any third-party information with us, or any confidential information, or any such information which you do not have the right to share or sharing of which is against any law or regulation. You shall be solely responsible for the information you share with us, and we shall not be liable for any loss, damage, or expenses, whether direct or indirect, that may arise to you or any third-party due to your sharing the information with us.

- 5.3 If you are a registered customer/user, your password is required to submit the order. You are required to store your credentials (i.e. username/e-mail address, password, etc.) carefully and use them in such a way as to preclude their loss or disclosure to unauthorized third parties. If the password is lost, you are obligated to inform us and change your password immediately thereof. We will make best efforts to block the password-protected area immediately following receipt of the notification to that effect. However, we shall not be liable for any loss, damage, or expense, either directly or indirectly, that may arise to you or to a third-party by virtue of you losing your password or a third-party getting access to your password. You shall be solely responsible for all acts done on our website through your account, whether performed by you or a third-party. If a third party receives knowledge of the password as a result of your negligent or improper use, you shall be solely liable for the orders made with your password for their full amount until the loss is brought to our notice.
- 5.4 You shall not attempt to gain, or allow anyone else to attempt or gain, unauthorized access to any portion, service, or feature of our website, network, or devices and equipment connected to the website.
- 5.5 You shall not cause or attempt to cause, either yourself or through any other person, any interference with the proper functioning of our website, features, or services.

## **6. Disclaimer**

- 6.1 Although best efforts have been made to provide accurate product descriptions, specifications, and pricing details, to the extent possible, we do not warrant, undertake, or represent that the descriptions, specifications, pricing, estimates, or other information provided on our website are accurate, reliable, complete, up-to-date, and/or error-free.
- 6.2 We reserve our right to change, at any time, the description, specifications, pricing, or any other information on our website or policies without any prior notice or intimation. Such changes shall be effective immediately upon posting on our website unless a different intention is expressly stipulated therein.
- 6.3 We shall not be liable, in any way whatsoever, in relation to the content, features, and services provided on our website or the use thereof. Although adequate safeguards have been made to keep our website safe and protected, we do not warrant that the content, services, features, documents, etc. provided to you through our website are free from any virus, malware, or other harmful components.
- 6.4 Although adequate safeguards have been taken to ensure your confidentiality and that of the information shared by you to us, we do not warrant or guarantee confidentiality of any information shared to us through our website or any feature or service therein.
- 6.5 We disclaim any and all warranties, representations, whether express or implied, and without limitation with respect to:
- a) Any information, specifications, description, drawing, photograph, representation, document, etc. downloaded or obtained or accessed through use of our website.
  - b) Compatibility of our website, its features and services with all devices, software, networks, etc.;
  - c) Uninterrupted access to our website, its features and services;
  - d) Information, description, specifications or any such thing provided on our website;
- 6.6 We shall also not be responsible for any loss, damages, expenses, arising directly or indirectly to you or any third party out of unintended use of our website, its features and services.
- 6.7 We shall not be responsible, either, for any loss, damages, expenses, etc. arising directly or indirectly to you or any third party due to your providing any false, incomplete, outdated or confidential information, or any information which you were not entitled to share with us under any law or regulation or otherwise.
- 6.8 We shall not be responsible for any loss, damages, or expenses arising directly or indirectly, to you or to any third party, due to deficiency in payment, either by you or by the payment gateway, banks, or intermediaries.

## **7. Conclusion of contract**

The presentation of the products on our website does not represent a legally binding offer of contract by us, but only a non-binding invitation to you to order products. You submit a binding offer when you go through the order process entering the relevant details and click on the button "Order with an obligation to pay" in the last step. Upon successful payment, we confirm receipt of your order immediately with an automatically generated e-mail (order confirmation). This confirmation is merely the confirmation of receipt of your offer and is not an acceptance of the offer. The acceptance of the offer is sent subsequently by us, which leads to the conclusion of a contract.

## **8. Delivery**

- 8.1 The approximate, non-binding estimate delivery date may be specified on our website for the individual products. However, the estimate date and time of delivery is subject to change without any further notice. Date and time of delivery is also subject to change depending upon the availability of product, size and weight of the order, delivery location, etc.
- 8.2 Unless otherwise expressly agreed upon, the delivery will take place "Ex works" (Incoterms in their applicable version, currently Incoterms 2020) at the place indicated in our acceptance.
- 8.3 The delivery date may also be extended to an appropriate extent, if:
- a) the non-compliance with the delivery date can be traced back to an act of force majeure, i.e. an unforeseeable event over which we have no influence and/or for which we are not responsible (e.g. official measures and orders, wars, revolutions, embargos, pandemics, epidemics, fire, earthquakes flooding, storms, explosions, strikes, riots, protests, or other catastrophes or stoppages). This also applies if such an event occurs with one of our sub-suppliers or logistics partners.
  - b) necessary permits or documentation from third parties to be procured by you are not provided on time;
  - c) the required information is not provided by you on time or any information provided is incorrect or incomplete.
  - d) you have not fulfilled your contractual obligations, particularly the payment obligations, in full.
- 8.4 To the extent to which this is reasonable, we are entitled to make partial deliveries, which we shall invoice separately.
- 8.5 If the delivery is delayed at your request or owing to circumstances for which you are accountable, then we are entitled to invoice you the entire costs arising from the storage after notification of the readiness for dispatch, at least 0.5% of the invoice amount for every week of the delay or part thereof. In addition to the costs, we also reserve our right to terminate the contract and demand damages or loss arising thereof.

## **9. Force Majeure and Risk**

- 9.1 We shall not be liable for any failure and/or delay in performing any of our obligations and/or for any loss, damage, costs or expenses incurred either by you or any third party if such failure or delay is a result of any event which is outside our control and/or due to any Force Majeure event (cf. Clause 8.3).
- 9.2 When claiming to be affected by Force Majeure, Balluff India shall notify you in writing without delay on the intervention and on the cessation of such circumstance. If we failure to give such notice, you shall be entitled to compensation for any additional costs which incurred to you and which you could have avoided had you received such notice.
- 9.3 If such events of Force Majeure and circumstances continue for a period of three (3) months or more, Balluff India is entitled to terminate the Contract immediately upon notice. However, existence of Force Majeure event shall not entitle you to not to make any payment for any Product supplied by us to you.
- 9.4 Unless expressly agreed otherwise, the risk of the goods shall pass to you when the goods leave our warehouse. If the shipment is delayed through your request or own fault, then the risk shall pass to you from the time the notification of readiness for dispatch was issued to you.
- 9.5 The extra costs and risks of customary shipping shall be borne by the Customer. We do not bear risks of accidental loss or deterioration during the transportation outside EX-WORKS in transit.

## **10. Retention of title/Lien**

- 10.1 We reserve and retain title and lien over all the goods, including our right to disposal and/or our right to stop the goods in transit, until complete payment in respect thereof, including any other amount that may be payable by you to us, has actually been received by us. The fact that possession or risk over the goods has been transferred to you will not prejudice, extinguish, or act as a bar to our right to retain title and lien over such goods. If possession of the goods has been transferred to you, you shall be obligated to ensure that the goods remain in good condition.
- 10.2 If you act in breach of contract, in particular if you fail to pay the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of the retention of title. The demand for return also includes the declaration of withdrawal. If you do not pay the due purchase price, we may only assert these rights if we have previously set you a reasonable deadline for payment without success or if such setting of a deadline is dispensable under the statutory provisions.
- 10.3 The above rights shall be in addition to and without prejudice to any other rights or remedies that may be available to us under law or equity, including the rights available to us under the Sale of Goods Act, 1930.
- 10.4 In the event the products supplied by us are linked, processed, or blended with other equipment, part, machine, product or any other thing, we shall acquire joint title to the new item in proportion to the value of the item supplied by us. However, we shall not, in any way, be liable or responsible for any liabilities, costs, damages, claims, etc. arising out of or in connection with such new item. It shall solely be your liability and responsibility to store the items of which we have title or (joint) title at your own costs and expense.
- 10.5 Resellers are permitted to resale our goods in the course of ordinary business unless such permission has been revoked. We reserve our right to revoke such permission anytime without any prior notice, including if: (a) you stop or fail to make due payments to us, (b) you are in delay of payment, and/or (c) you seek declaration of insolvency, or are declared insolvent, or any insolvency proceedings are initiated against you.
- 10.6 For goods in which we have title or joint title, you hereby assign to us by way of security all claims arising from resale/sale of such goods to the amount of our claim. On demand, you are obliged to provide us with written declarations of assignment.
- 10.7 Pledging or collateral assignments are not permitted over goods in which we have a title or joint title. You must also inform us without delay of commencement of any insolvency proceedings, seizure, confiscation, or other disposals or interventions of such goods by third parties.
- 10.8 In addition to the above, you agree that in the event there are material indications which justify an assumption, as determined by us, that you lack funds, or any such instance which may jeopardize your ability to perform your obligations under the Agreement, we shall be entitled to demand appropriate securities for our services/products, revoke or amend any payment/credit terms granted, demand full advance payment against delivery, or terminate the contract.
- 10.9 We undertake at our discretion to release the collateral that we hold upon your request insofar as the value thereof exceeds the claim to be retained of title by more than 10 %.

## **11. Claims for Defects**

- 11.1 Notwithstanding the above Clause 6, and unless expressly agreed to otherwise, the quality and the suitability of the goods are regulated exclusively and definitively by the conditions stipulated in the datasheet or the operating instructions for the respective product.
- 11.2 Products once purchased can only be returned or replaced if the product supplied by us is defective or damaged and we are unable to repair the same, or if the wrong product has been delivered. However, notice intimating such defect, damage, or delivery of wrong product should be sent to us in writing within 48 hours of delivery of the product (obvious defects) or within one week after discovery of the defect. Claims for returns, replacement, or repairs raised later will be rejected.
- 11.3 If such claim for repair, return or replacement is found to be correct, we shall undertake the repair, return, or replacement (as the case may be) at our expense. Provided that you shall provide full cooperation, including but not limited to providing access to the goods, returning the goods back to us at our costs (if required), etc.
- 11.4 We shall bear, insofar as the complaint proves to be reasonable and justified, the expenses necessary for the purpose of such replacement, return, or repairs, provided that this does not result in a disproportionate burden on us.
- 11.5 Insofar as the expenses required for the purpose of such replacement, return, or repairs are increased by the fact that you have taken the goods to a place other than the place of delivery, any additional costs incurred as a result thereof shall be borne by you.
- 11.6 Notwithstanding anything to the contrary, claims for defects become time-barred 24 months from the date of transfer of risk. If delivery was delayed for reasons beyond our control, claims for defects are subject to a limitation period of 24 months following transfer of risk or 24 months after we first notified you that we were ready to deliver (whichever period expires earlier).

- 11.7 If a certain number of actuations or switching cycles is agreed for a product, this agreement applies until the limitation periods as per Clause 11. 1 & 6 above has lapsed. If the agreed number of actuations or switching cycles for a product is reached before the expiry of the limitation periods as per Clause 11. 1 & 6 above, all claims resulting from such an agreement end therewith. Apart from that, the number of actuations or switching cycles shall only be performed if the product is used in the ambient conditions as described in the respective datasheet or operating instructions.
- 11.8 Claims for defects are barred in the following cases:
- untimely and improper notification of defects;
  - subsequent unauthorized modification of the goods;
  - defects arising from natural wear and tear, unintended or improper use, or improper storage;
- 12. Liability**
- 12.1 Notwithstanding anything to the contrary, you agree that our liability, including the liability of our affiliates, associates, representatives or partners, with respect to our website, the content, services, products, goods, etc. provided therein shall, in no event, exceed the amount of price paid by you for the respective service or product.
- 12.2 In any case, our liability does not include indirect losses (such as lost earnings or losses resulting from production interruptions).
- 12.3 Irrespective of Clause 12.1 and Clause 12.2, when determining an amount, which we have to pay you as damages, our economic circumstances, the nature, scale and duration of the business relationship, any possible contributions to the cause and/or fault on your part and a particularly unfavorable installation position of the product, shall be taken into appropriate consideration in our favor. Any compensatory damages, costs, or expenses to be borne by us must be proportional to the value of the product.
- 13. Prices – Payment terms**
- 13.1 The prices mentioned on our website are net prices exclusive of applicable taxes, packaging costs, and shipping costs. The total price, inclusive of all the applicable charges and taxes will be specified and confirmed to you before your "Order with obligation to pay".
- 13.2 A standard transport surcharge of INR 500 or 2% of the net invoice value (whatever is more) is chargeable by Balluff India.
- 13.3 We offer the following payment options on our website:  
**Downpayment:** You are obliged to transfer the invoice amount in accordance with your individual payment terms and under any circumstance partly before Balluff India commences delivery. Delivery will only be made if we have received the partial payment. We shall provide the account details in the order acceptance.  
**Invoice:** For payment on invoice, you are obliged, unless expressly agreed otherwise, to transfer the invoice amount to our account stated on the invoice in accordance with your individual payment terms.  
**Credit card:** The purchase price is due for payment as soon as you have placed the order. All payments through credit cards are handled by the payment gateway Visacard or Mastercard and are secured by "SSL" transmission protocol. We do not charge any additional fees for payments through credit cards, yet an additional fee may be charged by your banker.
- 13.4 We reserve our right to increase, decrease, or in any way vary the prices of the products on our website without any prior notice. However, no variance in price shall be carried out after confirmation of your order, unless the same is required due to an error, or due to change in order, or due to exchange rate variation, or if the costs to us of performing our obligations under any contract with you shall be varied (after the date of order confirmation) by reason of the creation or amendment 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 13. of these terms the expression 'cost' is deemed to include overheads and interest paid by us. Exchange rate variation payable shall be calculated at the rate of exchange actually paid by us against the exchange rate in the quotation. If prices are expressed in different currencies and you seek or require payment in any different currency, you shall bear any foreign exchange risk arising from such payment.
- 13.5 Payment shall not be deemed to have been made before we have received the payment. Should you make default in respect of any payment due to us then we shall have the right, in addition to all other rights to which we are entitled at law, to: (a) charge interest on the overdue amount at three percent (3%) above the rate charged to us by our 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 you to us shall be credited first against any interest so accrued; (b) suspend all deliveries or works and any contract period shall be extended by the period of the suspension; or (c) terminate the contract.
- 13.6 We do not, and shall not manipulate the price of goods or services offered in a manner so as to gain unreasonable profit or discriminate between customers of the same class or make any arbitrary classification of customers affecting their rights.
- 14. Indemnity**
- You agree to indemnify and hold indemnified, us, our employees, officers, representatives, or any other person from all losses, damages, costs, claims, etc. that may arise as a consequence of your use or actions on our website or from your breach of any of the terms and conditions published on our website.
- 15. Setting-off**
- Setting-off your claims against ours, and right to retention or withholding performance shall only be permitted if we have recognized your claims or your claims have been allowed by a court of law. Provided that Setting-off of claims, retention, or withholding performance shall only be exercised with respect to the same contract. Setting-off, retention, or withholding performance shall not be allowed for different contracts/transactions.

## 16. Obligations in the case of resale

- 16.1 In the case of resale of the delivered item, you are obligated to adhere to the applicable provisions of law, including the laws pertaining to Goods and Service Tax, Income Tax, Intellectual Property, and/or any other law or regulation that may be applicable.
- 16.2 In the event any loss, damage, or expense is incurred by us pursuant to non-compliance of any law or regulation by you, you shall reimburse us for all such losses, damages, and expenses and indemnify us from any third-party claims that may be raised against us in this connection.

## 17. Data privacy

We only collect, process, and store personal data exclusively in accordance with the provisions of the Information Technology Act, 2002 and any additional applicable Rules and Regulations. Personal data collected by us may be disclosed to partners in India and abroad on a legitimate interest basis. Additional information with respect to our collecting, processing, and storing data can be found in our [privacy statement](#).

## 18. Ownership/Intellectual Property Rights

- 18.1 The contents of this website, including the services, logos, drawings, descriptions, data-sheets, specifications, studies, price details, etc. are Intellectual Properties of Balluff India and / or Balluff India has license to use the same. You shall not, without express written consent from us, copy, publish, share, change, or otherwise utilize, except as has been allowed by way of these and other terms and conditions published on our website.
- 18.2 All intellectual property rights, including but not limited to copyright, patent, trademarks, trade names, etc., either belonging to us or to our licensors shall, at all times, remain with the respective owners thereto. Nothing in these or other terms and conditions published on our website shall be construed to grant to anybody any license or rights to use, share, or otherwise deal with the intellectual property belonging to Balluff India or any of its licensors.

## 19. Interpretation

The headings and captions used in these terms and conditions are for reference only and shall not be construed to have any effect on the interpretation of the respective provisions.

## 20. Waiver

Our failure to exercise any right or remedies as may be available to us under these terms and conditions or under any law shall not be constituted as a waiver of such right or remedies.

## 21. Without prejudice

All rights and remedies as may be available to us under these terms and conditions are without prejudice to any of the rights and remedies as may be available to us under law or equity.

## 22. Severability

In the event any of the provisions of these terms and conditions is held to be unlawful, void, or unenforceable, the said provision shall be enforceable to the fullest extent permitted under law (if possible) and any unenforceable portion shall be deemed to be severed from these terms and conditions and will not affect the enforceability, validity, and legality of the rest of the provisions of these terms and conditions.

## 23. Jurisdiction – Applicable law

- 23.1 The courts in Pune, Maharashtra shall have exclusive jurisdiction over any disputes or claims that may arise from or out of these terms and conditions or from or out of any agreement based on these terms and conditions.
- 23.2 The laws of the Republic of India shall exclusively apply to all transactions and contracts.

## 24. Grievance Officer

In the event you have any grievance, you may contact our grievance officer:

Grievance Officer for General Process, Webshop, Website and Data Protection claims:

Sunil Dighe  
Sunil.Dighe@balluff.in  
+91 020 61320-306

Grievance Officer for Quality claims:

Rajendra Alhat  
rajendra.alhat@balluff.in  
+91 86696147-72

## 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:

### 25. Rights of use

- 25.1 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.
- 25.2 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 breach of this obligation, we are entitled to demand an appropriate additional remuneration, without prejudice to any of our rights, remedies, and claims.
- 25.3 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 (ref. Clause 25.11) 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.
- 25.4 The licensing of the software is effected solely in machine-readable format (object code).
- 25.5 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.
- 25.6 You are not permitted to alter, reverse engineer, translate, or share the software or its code, or remove any parts thereof. You are not permitted to remove the alphanumeric and other identifications from the data carriers. They are to be transferred unmodified even to the backup copy.
- 25.7 Transfer of the software to a third party is only permitted if the same is effected together with the Product that you purchased in connection with the software. In 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 those permitted in these terms and conditions and 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.
- 25.8 You are not entitled to grant sublicenses, or to distribute, copy, share, circulate, or allow use of the software or its code in any manner whatsoever, other than as permitted in these terms and conditions.
- 25.9 You shall be solely responsible for compliance with the applicable law if you transfer the software to a third party, and you shall indemnify us against any costs, loss, damages, or expenses that may be incurred by us upon your failure to do so.
- 25.10 In the event we license/sub-license you any 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 also apply and take precedence in addition to these terms and conditions. If and to the extent that we license you open source software, the terms of use governing the open source software shall apply and take precedence in addition to these terms and conditions. The existence and terms of use of licensed third-party software and open source software shall be mentioned in the datasheet or the operating instructions. In case of any breach of these terms of use (including the terms of the third-party software, as may be applicable), our licensor as well as ourselves shall be entitled to assert any and all claims and rights against you in their/our own name.
- 25.11 If you intend to use the software on multiple devices or simultaneously at multiple workstations, you are required to seek right of use. The above shall also 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 aforementioned terms and conditions:
- a) You shall not use or copy, in any manner whatsoever, the software on multiple devices or simultaneously at multiple workstations without prior express written confirmation from us specifying 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 25.7 applies, however, on condition that the multiple licenses may only be transferred by you to third parties if they are transferred together with all the devices for which written confirmation has been received from us.
  - b) You shall observe the instructions on copying provided by us together with the multiple licenses. You shall maintain logs of the locations of all copies and present these to us on request.

### 26. Transfer of risk

When software is licensed using electronic communication media, for example via the Internet, any danger or risk associated with accidental loss, deterioration, manipulation, etc. of the software shall transfer to you simultaneously with the software leaving our sphere of influence (e.g. at the time of download).

### 27. Obligations to cooperate and liability

- 27.1 You shall take all necessary and reasonable measures to prevent or restrict damage to or by the software. In particular, you shall ensure regular backup of programs and data.
- 27.2 If you are in violation of this obligation, we shall not be liable for any consequences arising thereto, including for replacement of lost or damaged data or programs.

## **28. Material defects**

- 28.1 You agree that software generally cannot be created without errors and the software being licensed to you may have errors or bugs.
- 28.2 Claims for any defects related to the software shall become time-barred if not raised within 12 months of the transfer of risk.
- 28.3 Software shall be considered to have a material defect only if it can be proved 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.
- 28.4 Material defect claims shall not be maintainable:
- for any damage or loss arising as a result of incorrect or negligent use of the software;
  - for any damage or loss arising from special external factors that have not been considered in accordance with the contract;
  - for any damage or loss arising out of modifications made to the software by you or third parties;
  - for software expanded by you or a third party beyond an interface envisaged by us for this purpose;
  - in a situation where the software is not compatible with the data processing environment used by you.
- 28.5 In the event it is established that the software is defective, we shall endeavor to 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.

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