

## GENERAL TERMS AND CONDITIONS

As at 02/2025

In this Terms and Conditions, the terms “we”, “our”, “us” and “Balluff” shall all refer to and mean Balluff Co., Ltd.

### 1. General - Oral Additional Agreements - Offers

- 1.1 Any of our deliveries of products and services (hereinafter referred to as “Service(s)”) are subject to the following General Terms and Conditions (hereinafter referred to as “Terms and Conditions”) exclusively. We do not accept conflicting or differing terms and conditions, and/or terms and conditions not contained in these Terms and Conditions unless expressly agreed upon their application in writing. This also applies in cases where we unreservedly perform deliveries of products and services with knowledge of conflicting or differing terms and conditions or terms and conditions not contained in our Terms and Conditions or if you unilaterally refer in your request, your order or in any other context to the application of other terms and conditions.
- 1.2 Our terms and conditions apply to the acts of merchants and commercial transactions under the Commercial Code of Japan, but not to contracts between consumers and us.
- 1.3 Our sales personnel are not authorized to amend any portions of these Terms and Conditions or make any additional agreements, oral or otherwise.
- 1.4 Unless otherwise expressly agreed upon, our offers for price and performance are not binding. The order does not become binding for us until we confirm it in writing or tacitly accept it by performance or issuance of an invoice.
- 1.5 All contracts concluded with you are under the condition precedent that the necessary export licenses will be granted, that there are no obstacles due to our position as exporter and that there are no conflicting export regulations which must be observed by our suppliers.
- 1.6 Unless otherwise expressly agreed upon, illustrations, drawings, calculations and other product, application or project-related documents which contain valuable know-how or valuable information remain our sole property and are subject to our copyright even if handed over to you; they may not be reproduced or made available to third parties without our prior written consent.

### 2. Delivery - Date of Delivery - Extension of the Delivery Period - Part Performance

- 2.1 Unless otherwise expressly agreed upon, the agreed dates for deliveries and services are not fixed deadlines.
- 2.2 The delivery and service periods respectively do not commence until all details are clarified and both parties have agreed on all the terms and conditions of the contract. The prerequisites for adherence to delivery and service periods are:
  - All documents which are to be provided by you have reached us on time;
  - All approvals and releases which are to be provided by you have been issued on time; and
  - Your contractual obligations, particularly your payment obligations, have been met in full and on time.
- 2.3 Unless otherwise expressly agreed upon, the delivery period is considered to have been met if the goods have left our plant within the agreed delivery period.
- 2.4 The delivery is only made to locations in Japan.
- 2.5 The delivery and service period shall be reasonably extended if:
  - the failure to comply with the delivery and service period is due to force majeure (as defined hereunder); this shall also apply if force majeure occurs during an undue delay in delivery;
  - the delay in performance of this contract is attributable in whole or in part to any cause beyond our supplier's control, including unpredictable failure and/or delay in delivery by our supplier due to force majeure;
  - necessary approvals or documentation from third parties which are to be provided by you are not presented in time;
  - the necessary specifications are not made known by you in time.
- 2.6 Insofar as this is reasonable for you, we are entitled to partial deliveries and services, which we can invoice separately in each case.
- 2.7 In case the delivery is delayed at your request or due to circumstances for which you are responsible, we, upon demonstration of readiness to ship, are entitled to arrange for storage of the Goods at your risk and expense and to charge you the costs resulting from storage but not less than 0.5 % of the invoice amount for each week commenced and in maximum 10 % of the invoice amount. If not otherwise agreed with regard to the costs for storage, both parties may prove that greater, lower or no storage costs have resulted. The statutory rights to withdraw from the contract and to claim damages remain unaffected thereby.

### 3. Force Majeure - Cancellation - Failure of Supplier

- 3.1 If by any reason of any event of force majeure, any of the parties to this contract is delayed in or prevented from or hampered in performing any of its obligations under this contract, then such delay or non-performance shall not be deemed to be a breach of this contract. In such an event, neither party shall be liable for any failures or delay in performing their obligations arising from such force majeure event.
- 3.2 For avoidance of doubt, a force majeure event shall include, but not be limited to any cause beyond any parties' reasonable control, including, but not limited to, acts of God, acts or omission of any government, orders, rules, acts or omission of transportation/ logistics companies, material shortages, and/or delays in transportation, and/or delays of its suppliers, manufacturers and/or subcontractors for like cause, and/or where the Goods are seized by the local customs authorities causing a delay to load, regulations or orders of any governmental authority or any officer, department, agency thereof, fire, storm, flood, earthquake, accident, acts of war, epidemic, pandemic, rebellion, insurrection, riot, invasion, strikes, industrial disputes or lockouts, or anything regarded as being beyond the reasonable control of the Seller in question.
- 3.3 If it is impossible for us to fulfil the delivery and services within an appropriate period of time due to force majeure, both parties are entitled to cancel the contract in full or in part. The same applies to subsequent impossibility of performance of contract which we are not responsible for. No damages may be claimed for such a cancellation. If one party intends to cancel the contract due to the aforementioned reasons it must inform the other party without delay.
- 3.4 We are released from our delivery obligation if we ourselves are not supplied in time with the correct goods required to fulfill the contract without any fault on our part.

## 4. Retention of Title

- 4.1 We reserve title to all the purchased goods until complete payment of your present and future claims to us which result from the current business connection. This also applies in case the payment for certain goods indicated by you has been made. If the retention of title is linked to special prerequisites or formal requirements in your country you are obliged to notify us accordingly and to ensure fulfilment at your expense.
- 4.2 If you act in breach of contract, in particular if you fail to pay the purchase price due within the stipulated timeline, we shall be entitled to cancel 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 cancellation. 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.
- 4.3 Linkage, blending or processing of the goods shall take place on behalf of us as the manufacturer, but without any obligation for us. If (joint) title is terminated due to linkage, blending or processing, it is already now agreed that we shall acquire joint title to the new item in proportion to the value of the item supplied by us compared with the other goods at the time of linkage, blending or processing. You have to store the items of which we have (joint) title for us at no charge to ourselves. You shall further bear costs relating to insurance and handling of the Goods
- 4.4 Resellers are permitted resale of the goods in the course of ordinary business unless revoked. We may revoke this right of resale if (a) you stop payment, (b) you are in delay of payment, or (c) if there are indications for deterioration of property or other facts after conclusion of contract given that corroborate the belief that our claim is endangered due to a lack of performance. For goods in which we have (joint) title, you hereby assign to us by way of security all claims arising from resale of the goods delivered to third parties or from any other cause in law in the sum of the invoice value of the corresponding goods. On demand you are obliged to provide us with written declarations of assignment. You are revocably authorized to collect the assigned claims against the third party in the course of ordinary business in your name. This collection authorization may be revoked by the same reasons as the right of resale.
- 4.5 Pledges and transfers by way of security are not permitted. You must inform us without delay in the event of an application for the opening of bankruptcy proceedings, civil rehabilitation proceedings, corporate reorganization proceedings, special liquidation proceedings or any other proceedings on the consolidation of debts, as well as of any seizure, confiscation, or other disposals or interventions by third parties.
- 4.6 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 secured by more than 10 %.

## 5. Passing of Risk - Incoterms

- 5.1 Unless otherwise expressly agreed upon, the delivery will take place "CPT" (Incoterms in their applicable version, currently Incoterms 2020) regarding the place indicated in our offer or in our acceptance.
- 5.2 Notwithstanding the preceding paragraph, unless otherwise expressly agreed upon, the risk of accidental destruction and/or accidental deterioration and/or loss of the products shall pass on to you as soon as the products have been handed over to the person executing the transport, at the latest when the products leave our distribution center. This also applies if we have to execute the transport for the delivery. If shipment is delayed for reasons you are responsible for, the risk of accidental destruction and/or accidental deterioration and/or loss of the products shall pass on to you upon the information that the products are ready for delivery.
- 5.3 If internationally customary shipping and risk bearing clauses are used in the contract, these are to be interpreted according to the international Rules for Interpretation of Trade Terms (Incoterms in their applicable version, currently Incoterms 2020).
- 5.4 We will provide transport insurance only upon agreement and at your expense.

## 6. Warranty Claims - Complaint Obligations

- 6.1 Unless otherwise expressly agreed upon, quality and usability are regulated exclusively and exhaustively in the technical data sheet or in the instruction manual referring to the respective product.
- 6.2 You shall agree 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 to your detriment.
- 6.3 Any subsequent performance on our part shall generally only be carried out as a gesture of goodwill and without recognition of an obligation to perform, unless we have agreed otherwise with you or, we have expressly recognized a claim for subsequent performance against you before or in connection with the subsequent performance.
- 6.4 We shall bear - insofar as the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, provided that this does not result in a disproportionate burden for us.
- 6.5 Insofar as the expenses required for the purpose of subsequent performance are increased by the fact that you have 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 you.
- 6.6 Complaints due to incomplete or incorrect delivery must be made to us in written form immediately but not later than within one week following delivery for apparent defects and within three months following delivery for hidden defects. If no such written notice of rejection is received within the stipulated timeline, the assertion of warranty claims is excluded and you shall be deemed to have accepted delivery provided thereto on an "as is where is" basis.
- 6.7 We do not agree with any restriction of your statutory requirements regarding inspection and complaint of goods receivable, unless required by Japanese law and/or regulations.
- 6.8 Warranty claims are subject to a limitation period of 12 months following delivery. If delivery was delayed for reasons beyond our control, warranty claims are subject to a limitation period of 12 months following transfer of risk or 12 months after we first notified you that we were ready to deliver the Service(s) (whichever period expires earlier).
- 6.9 If a certain number of operations or switching cycles are agreed for a product, this agreement is only valid until the limitation periods described in Section 6.8 above. 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 6.8 above, all performance and warranty claims resulting from such an agreement shall cease 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 and within the limitation period prescribed.

- 6.10 Warranty claims are excluded among other things in cases of:
- failure of inspection and complaint of goods receivable as described in Section 6.6 and 6.7 above;
  - subsequent tampering and/or unauthorized modification to the goods unless there is evidence that the defect was not a result of such a modification.
  - defects which occur due to normal wear and tear and/or your improper usage or improper storage of the goods.
- 6.11 Compensation for damages may only be demanded from us in accordance with Section 8.

## 7. Industrial Property Rights and Copyrights - Defects of Title

- 7.1 Unless otherwise expressly agreed upon, we are obliged to fulfil the deliveries and services free of Industrial Property Rights (hereinafter referred to as "Industrial Property Rights") of a third party only in the countries where the goods are produced or where delivery of the goods is made. "Industrial Property Rights" in terms of these Terms and Conditions are patents, utility models, design patents, trademarks, including their applications, as well as copyrights. Insofar as a third party raises any justified claims against you due to infringement of Industrial Property Rights through deliveries and services supplied by us and used in conformity with the contract, we shall be liable to you within the period defined in Section 6.8 as follows:
- 7.2 We will at our discretion and at our expense (a) either acquire the rights of use for the deliveries and services in question, (b) alter them in such a manner that Industrial Property Rights are not infringed, or (c) exchange them. Should this not be possible for us at suitable conditions, you are entitled to cancel the contract or obtain a reduction in the price as provided for by law. Compensation for damages may only be demanded from us in accordance with Section 8.
- 7.3 The above-mentioned obligations exist only if and insofar as you inform us in writing immediately concerning the third party claims asserted, do not recognize/ acknowledge any infringement and all defensive measures and settlement proceedings remain reserved to us.
- 7.4 Your claims are excluded insofar as you are solely responsible for the infringement of the Industrial Property Rights.
- 7.5 Your claims are also excluded insofar as the infringement of Industrial Property Rights is due to your special instructions or due to any use not to be foreseen by us or has been caused by the goods being altered by you without authorization.
- 7.6 Claims against us or our vicarious agents due to deficiencies in title over and above or other than those governed in this Section 7 are excluded.
- 7.7 In the case that in connection with the fulfilment of the contractual obligations a result will be generated that can be protected as Industrial Property Right, all Industrial Property Rights regarding this result will belong solely to us unless you were significantly involved in the creation of the result. In such a case or in all other cases in which a result capable of being protected by Industrial Property Rights was jointly created, you shall agree that we are entitled to at least a royalty-free, non-exclusive, right to use the result, unrestricted in terms of time, location and content.

## 8. Liability

- 8.1 We shall be liable for compensation for damages (hereinafter referred to as "damages") for defects with the delivery or due to the infringement of other contractual or non-contractual obligations, including but not limited to illicit acts, only in the case of intent or gross negligence. The above liability limitation does not apply to injury to life, limb or health; assumption of a guarantee or procurement risk; material breach of contract; or liability under the Japanese Product Liability Act.
- 8.2 Damages for material breach of contract are limited to compensation for ordinary direct losses that we had to have foreseen as a possible consequence upon entering into the agreement due to circumstances known to us, except in cases of intent or gross negligence or injury to life, limb or health, assumption of a guarantee or procurement risk or liability under the Japanese Product Liability Act.
- 8.3 Foreseeable ordinary direct losses within the meaning of Clause 8.2 are:
- a) per loss event: losses totaling no more than the net purchase price of the contract in question.
  - b) per calendar year: losses totaling no more than the net sales amount at which you acquired products from us in the previous calendar year. In the first contract year, losses totaling no more than the net sales amount at which you acquired products from us prior to the loss event.
- 8.4 In any case, foreseeable ordinary direct losses under Clause 8.2 do not include indirect losses (such as lost earnings or losses resulting from production interruptions).
- 8.5 Irrespective of Clause 8.3 and Clause 8.4, 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 comparative negligence on your side under the Civil Code of Japan 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.
- 8.6 All liability limitations shall also apply to breaches of duty by persons whose fault we are responsible for according to statutory provisions.
- 8.7 A change to the burden of proof to your disadvantage is not associated with the aforementioned provisions.
- 8.8 Material breach of contract within the meaning of Clauses 8.1 and 8.2 is a breach of an obligation that must be fulfilled in order for the terms of the agreement to be met and the fulfillment of which you may regularly rely on.
- 8.9 You further agree that the failure or omission of either party at any time to exercise any of the rights or remedies available under this contract or any failure or omission by us of claiming any breach of any provision thereof by you shall not be construed as a waiver of any continuing or succeeding rights or remedies or waiver of any continuing or succeeding breach of such provision.

## 9. Prices - Price Increases

- 9.1 Our prices are net prices. Packing, shipping and insurance shall be billed separately unless otherwise expressly agreed.
- 9.2 A standard transport surcharge of JPY 1,000 is chargeable by Balluff for every order with a net value below JPY 10,000.
- 9.3 All quotations are valid for 30 days only or may be extended to any date acceptable to you, and we have the right to alter the quotation after the expiration of the period or date without giving notice to you.

## 10. Payment Terms - Late Interest - Assignment

- 10.1 Unless otherwise expressly agreed in writing, payment terms are cash in advance and in any case prior to delivery of any Service(s).
- 10.2 When making payment to us, you agree to make full payment in the respective currency and amount quoted.
- 10.3 Any payments made on the invoices, including deposit and late interest, are non-refundable and any products or services provided or to be provided are non-exchangeable.
- 10.4 If payment is made via bank transfer, you shall bear all international and domestic bank charges and any administrative charges imposed by the banks.
- 10.5 If we reasonably believe that your financial situation deteriorates after conclusion of the contract or if we become aware of other facts after conclusion of the contract which justify the presumption that our claim against you is jeopardized by the inability to perform by you, we may demand corresponding adequate securities for our Service(s) and/or revoke any payment terms granted. If you do not present the adequate securities requested by us within a reasonable time, we may cancel the contract without incurring any liability to you. Our existing rights to claim for Service(s) provided and work done in anticipation of providing the Service(s) shall remain unaffected.
- 10.6 Except with the prior written consent by us, any contractual relationships and the associated rights are non-assignable. There exists no claim for granting of such approval.
- 10.7 If the costs to us of performing our obligations under any contract with you 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 and Conditions the expression "cost" is deemed to include overheads and interest paid by us.
- 10.8 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.
- 10.9 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 fourteen point six percent (14.6%) 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) cancel the contract.
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 of retention and 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.
- 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 Service(s) 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 cancel the contract. Existing claims from Service(s) already provided or on account of delay 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 Foreign Exchange and Foreign Trade Act of Japan, the EU Dual Use Regulation (Regulation (EU) No. 428/2009), and the US Export Administration Regulations (EAR) – 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**
- 13.1 You are obliged to dispose of delivered products after the end of their use at your own expense. You release us from our take-back obligations as a manufacturer and from any related third-party claims. 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 statutory provisions, 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.
- 13.2 Notwithstanding the provisions of the preceding paragraph, where we are obligated to do so in accordance with statutory provisions, especially the Japanese Act on the Promotion of Effective Utilization of Resources, we will take back the transport packaging at your request. You shall bear the costs for taking back the transport packaging.
14. **Data privacy**
- 14.1 With entering this agreement, it is deemed that you agree that we may collect, store and use personal information in relation to you or your company's directors and officers (hereinafter referred to as "Personal Data"), for the purposes of considering any credit application from you or any other purpose related and incidental to the business relationship between you and us.
- 14.2 When we disclose your Personal Data to our affiliates, business partners, and other parties, this will mean that your Personal Data may be transferred to countries outside Japan which have no comparable level of data protection so that an appropriate protection level is not guaranteed.

If this is the case, we ensure that data protection is sufficiently guaranteed. This is possible through binding company rules, standard contractual terms on the protection of personal data, certificates, or recognized codes of conduct. Please contact our Data Protection Officer if you would like more information on this topic.

Please note that particularly in the case of transmission to the USA there is a risk that your data may be processed by US authorities for control and monitoring purposes and you may not be entitled to any legal remedies.

- 14.3 We will not disclose any of your personal information to any third party except to obtain credit information, make an entry on your credit report, to enforce these Terms and Conditions, or to comply with laws, regulations and authorities.
- 14.4 Please see our privacy statement for further information.

## 15. **Place of Fulfilment - Place of Jurisdiction – Applicable Law**

- 15.1 The place of performance for all obligations from the contractual relationship is Tokyo, Japan.
- 15.2 For legal disputes which fall within the remit of the summary courts, the Tokyo Summary Court is agreed as the competent court of first instance, and for legal disputes which fall within the remit of district courts, the Tokyo District Court is agreed as the competent court of first instance. At our discretion we are also entitled to take legal action at your registered office.
- 15.3 The law of Japan applies exclusively to the exclusion of the conflict of laws.
- 15.4 The English and Japanese versions of these Terms and Conditions shall be equally authentic. In case of any discrepancy or conflict between the two versions and such discrepancy or conflict cannot be settled by applicable statutory interpretation, the Japanese 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 good cause, 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 6 months of the transfer of risk. The aforementioned provision shall not apply 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 you or third parties and the consequences
  - 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.
- 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. **Industrial property rights and copyrights – Defects of title**
- 20.1 If a third party lodges claims on the grounds of a violation of industrial property rights in relation to the software, we shall be liable according to Clause 8 within the period defined in Clause 19.2.

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