

GENERAL TERMS AND CONDITIONS

As at 12/2021

In these General Terms and Conditions, the terms "we", "our", "us" and "Balluff" shall all refer to and mean Balluff Automation Malaysia Sdn Bhd.

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, differing 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, differing conditions or 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 sales personnel are not authorized to amend any parts of these Terms and Conditions or make any additional agreements, oral or otherwise.
- 1.3 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.
- 1.4 All contracts concluded with you are under the condition precedent that the necessary export licenses will be granted upon application. In particular, there must be no conflicts and obstacles due to our position as exporter, and there must be no conflicts with any export regulations or conditions imposed by regulators which must be observed by us or our suppliers.
- 1.5 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 time of delivery or performance is not of the essence. Balluff shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.
- 2.2 The delivery and service period does 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 periods respectively to periods for service 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 Malaysia.
- 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), and 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 Should we be in a situation where we are not able to fulfil delivery of all Goods in an order, you agree that we shall be entitled to perform partial delivery of the Goods and invoice you separately in each case, provided that you are notified in advance of such partial delivery. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 2.7 In case the delivery is delayed at your request or due to circumstances for which you are responsible, we are, upon demonstration of readiness to ship, entitled to charge you the costs resulting from storage which shall be at a minimum of 0.5 % of the invoice amount for each week of delay, but not more than 10 % of the invoice amount. Our statutory rights to withdraw from the contract and to claim damages remain unaffected thereby.
- 2.8 No order that has been agreed upon shall be cancelled or modified (or thereof) unless mutually agreed upon. We reserve the right to charge for losses, cost, damages, charges, and/or expenses incurred when the contract is terminated.

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 parties 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 the any parties' reasonable control, including, but not limited to, acts of God, acts or omission of any government or order, 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 is 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

- party in question. Any party's failure to pay or other circumstances which may make the terms of this contract unattractive to a party shall not be an event of force majeure in any event.
- 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 withdraw in full or in part from the contract. The same applies to subsequent impossibility of performance of contract which we are not responsible for. No damages may be claimed for such a withdrawal. If one party intends to withdraw from the contract due to the aforementioned reasons it must inform the other party without delay.
- 3.4 We shall be released from our delivery obligation if we ourselves are not supplied in time with the correct goods needs to fulfill the contract without any fault on our part.
- 4. Retention of Title**
- 4.1 We reserve the legal and beneficial title to all the purchased goods until we receive payment in full for all debts owed by you under all contracts entered between us at any given time. 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 legal 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 withdraw from the contract and to demand the return of the goods on the basis of the retention of title. If you fail to re-deliver the goods to us, we have the right to enter any premises where the goods are stored and repossess them. The demand for return shall also indicate our declaration of withdrawal.
- 4.3 Until title to the goods has passed to you, you will hold the goods as bailee for us and ensure that the goods are clearly identifiable as belonging to us.
- 4.4 Mixing, combining 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 mixing, combining or processing, it is herein 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 mixing, combining 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.
- 4.5 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 circumstances after the conclusion of contract that lead us to reasonably believe that you will be in breach of the contract. For goods in which we have (joint) title, you hereby assign to us by way of security all rights or proceeds arising from resale of the goods delivered to third parties or from any other cause to the extent permitted in law in the sum of the invoice value of the corresponding goods. On demand you are obliged to provide us with written proof of assignment. You must keep the proceeds of the sale in a separate, identifiable account until we have been paid in full.
- 4.6 As long as any goods are subject to retention of title or you are subject to any other obligation to vest or to arrange for the vesting of a similar security right on the products, you shall not grant a pledge on the products delivered by us or encumber them in any way. You shall promptly notify us in writing of any attachment or any other intervention by a third party, provide all information required, inform the third party of the title of Balluff, and to protect the products subject to retention. To the extent the third party is not able to reimburse us the judicial and extrajudicial costs for enforcing our title, you shall reimburse and indemnify us the loss and costs sustained by us in this connection.
- 4.7 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 "DDP" (Incoterms in their latest applicable version, currently Incoterms 2020) regarding that place indicated in our offer or in our acceptance or if in our offer. In the event that no place is indicated, it shall be "ex works" Malaysia.
- 5.2 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 delivery, at the latest when the products leave our distribution center. This also applies if we are the party handling 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 latest applicable version, currently Incoterms 2020).
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/stated exclusively and exhaustively in the technical data sheet or in the instruction manual referring to the respective product.
- 6.2 It is agreed 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 substantial detriment.
- 6.3 Any subsequent performance on our part shall generally only be carried out as a gesture of goodwill and not 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 necessary expenses 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 due to the fact that you have taken the goods to a place other than the original place of performance after delivery, any additional costs incurred as a result shall be borne by you.

- 6.6 Complaints in relation to incomplete or incorrect delivery must be made to us in written form immediately, at the latest within one week following the delivery (apparent/patent defects discoverable by physical inspection) or discovery of the defect (latent defects). If no such written notice of rejection is received within the stipulated timeline, any assertion of warranty claims shall be void and you shall be deemed to have accepted delivery provided thereto on an "as is where is" basis.
- 6.7 You shall perform a reasonable inspection of the products upon delivery of each shipment of products hereunder.
- 6.8 Warranty claims are subject to a limitation period of 24 months following transfer of risk. If delivery was delayed for reasons beyond our control, warranty claims 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 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 be barred and we will not be liable for any claims of defect thereon. The agreement of a certain number of operations or switching cycles is only valid if the product is used under the conditions specified in the respective technical data sheet or 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 due to your improper usage or improper storage of the goods.
- 6.11 Compensation for damages shall only be made by us in accordance with Section 8.

7. Intellectual Property Rights - Defects of Title

- 7.1 Unless otherwise expressly agreed upon, we are obliged to fulfil the deliveries and services free of Intellectual Property Rights (hereinafter referred to as "Intellectual Property Rights") only in the countries where the goods are produced or where delivery of the goods is made. "Intellectual Property Rights" in this respect means 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 an infringement of Intellectual Property Rights in relation to the 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) modify the infringing part of the goods in such a manner that Intellectual Property Rights are not infringed, or (c) exchange them. Should any of these options is not possible, you are entitled to withdraw from the contract or obtain a reduction in the price. Compensation for damages shall only be made in accordance with Section 8.
- 7.3 We shall only be liable to you in accordance to Section 7.1 only if (a) you immediately inform us of the intellectual property rights claim by setting out full details of the relevant action, demand or claim (b) do not make any admission of liability or agrees any settlement or compromise of the relevant intellectual property right claim and (c) let Balluff at its request and own expense have the conduct of or settle all negotiations and litigation arising from intellectual property right claim.
- 7.4 Your claims are excluded insofar as you are solely responsible for the infringement of the Intellectual Property Rights.
- 7.5 Your claims are also excluded insofar as the infringement of Intellectual 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 our authorization. In addition, you shall indemnify us against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by us in connection with any claim arising from such modification or use.
- 7.6 Claims against us or our vicarious agents due to defects 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, Intellectual Property Rights are developed, such rights shall belong solely to us. If such rights were jointly created, it is agreed 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 Except as expressly stated in these Terms and Conditions, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law. We do not limit or exclude our liability for: death or personal injury caused by our negligence or wilful default; or fraud or fraudulent misrepresentation; or breach of any obligation implied by the Sales of Goods Act (Cap 393) or the Supply of Goods Act (Cap 394) or any other liability to the extent the same cannot be excluded or limited by law. Additionally, our liability arising out of or in connection of this contract shall not extend to any indirect losses (including but not limited to loss earnings or losses resulting from production interruptions loss of/damage to data or information systems, loss of contract or business opportunities, loss of anticipated savings, loss of goodwill, loss of use and any other indirect, special or consequential loss or damage).
- 8.2 Our total aggregate liability under or in connection with this contract, whether arising in tort (including negligence), contract or in any other manner shall not exceed [the total purchase price paid / net contractual amount] in respect of any one claim or series of related claims .
- 8.3 All limitations of liability shall apply to the same extent to our vicarious agents.
- 8.4 Further, no failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

9. Prices - Price Increases

- 9.1 Our prices quoted are net prices. Packing, shipping and insurance shall be billed separately unless otherwise expressly agreed.

- 9.2 Our prices are net prices exclusive of the statutory sales and services tax, packaging costs, and shipping costs (flat shipping rate). A standard transport surcharge of MYR 35 (or equivalent in SGD, or EUR 10) is chargeable by Balluff for every order with a net merchandise value of below MYR 350 (or equivalent in SGD, or EUR 100). A standard transport surcharge of MYR 15 (or equivalent in SGD, or EUR 5) is chargeable by Balluff for every order with a net merchandise value of MYR 350 or above (or equivalent in SGD, or EUR 100).
- 9.3 All quotations are valid for 30 days only or may be extended to any date acceptable to you/at our discretion, 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 between the parties, payment terms are cash in advance and in any case shall be made to us prior to the delivery of any Service(s).
- 10.2 Prices quoted by us may be in Malaysian Ringgit, Singapore Dollar, or Euros. 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 Prices quoted are subject to 7% Sales and Services Tax unless it is for export shipment where the necessary export documentation are ready and presented to us (e.g. export permit, subsidiary export certificate and note of shipment document) on the date of shipment or within a week from the date of shipment.
- 10.6 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 withdraw from 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 thereby.
- 10.7 Except with the prior written consent of Balluff, any contractual relationships and the associated rights are non-assignable.
- 10.8 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 include but is not limited to varying costs of customs and excise duties, levies, charges, imposts and the like. For the purpose of Clause 10, the term "cost" is deemed to include overheads and interest to be paid by us.
- 10.9 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.
- 10.10 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.
- 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 where both of us have cross-claims that are inseparably connected with each other (i.e. bilateral 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 withdraw from 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 with our prior written consent.
- 12. Obligations in the case of resale**
- 12.1 Where you resell any objects of delivery (i.e. Balluff products) you are obliged to observe all applicable and relevant regulations including but not limited to the:
- Customs Act 1967 (Act 235);
 - Customs (Prohibition of Exports) Order 2017;
 - Strategic Trade Act 2010 (Act 708);
 - Sale of Goods Act 1957 (Act 382);
 - Other applicable Malaysia laws and regulations;
 - German Außenwirtschaftsgesetz (AWG)
 - German Außenwirtschaftsverordnung (AWV)
 - EU-Dual-Use-Directive (Directive (EU) Nr. 428/2009); and
 - US Export Administration Regulations (EAR)
- in their current valid version - and to obligate your customers accordingly.
- 12.2 You agree to defend, indemnify and hold us harmless from and against all claims, damages and costs whether direct, indirect or consequential, including legal's fees arising out of or resulting from the noncompliance of the laws and regulations listed in this Section 12 and you agree to indemnify us and keep us harmless from any claims raised against us in connection therewith.

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 costs and expense in accordance with Environmental Quality Act 1974 (Act 127), in particular the Environmental Quality (Scheduled Wastes) Regulations 2005 (hereinafter referred to as “Regulations”) and/other applicable statutory provisions in Malaysia. You shall ensure that any products falling within the categories of waste listed in First schedule of the Regulations generated by you are properly stored, treated on-site, recovered on-site for material or product from such scheduled waste or delivered to and received at premises prescribed by the Environmental Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities) Order 1989 [P.U. (A) 140/1989] for treatment, disposal or recovery of material or product from such wastes

You further agree to release us from our take-back obligations and from any related third-party claims, if any. You shall also contractually oblige commercial third parties to whom you pass on the delivered products to ensure that these third parties are properly licensed by the Department of Environment (hereinafter referred to as “DOE”) and properly handle and/or dispose of the products at the end of their use and at their own expense in accordance with the statutory provisions and/or other corresponding regulations 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 legal regulations resulting from the WEEE Directive 2012/19/EU and the respective national implementations of this Directive or corresponding regulations in non-EU member states.

13.2 If we are obligated in accordance with any statutory laws, we will return on your demand the transport packaging. You have to bear the cost for the return transport of the transport packaging.

14. Data privacy

14.1 By entering into 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, for the purposes of considering any credit application from you or any other purpose related and incidental to the business relationship between you and Balluff Automation Malaysia Sdn Bhd.

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 Malaysia, which may 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, 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 Place of fulfilment for all duties resulting from the contractual relationship is Malaysia.

15.2 These Terms and Conditions shall be governed by the laws of Malaysia.

15.3 Any dispute, controversy or claim arising out of or relating to this agreement, including the performance, breach, termination or invalidity thereof, as well as any non-contractual claims, which is not resolved by the parties as aforesaid within thirty (30) days after the dispute has arisen, shall be finally determined by arbitration administered by the Asian International Arbitration Centre (hereinafter referred to as the ‘AIAC’), in accordance with the AIAC Arbitration Rules in force at the time of the commencement of the arbitration.

15.4 The Parties shall appoint an arbitrator who is acceptable to both parties to arbitrate the dispute. In the event the parties are unable to agree on an arbitrator within seven (7) days of the dispute being referred to arbitration, the Director for the time being of the AIAC shall appoint the arbitrator, and the decision of the Director as aforesaid shall be binding on the parties.

15.5 The seat of arbitration shall be held in Malaysia and shall be conducted in the English language.

15.6 The decision of the arbitrator and any award granted by the arbitrator shall be final and binding on the parties, save for manifest error.

15.7 The reference of any dispute to arbitration in accordance with this clause herein shall not excuse the parties from continuing with the performance of any other obligations under this Agreement which are not affected by the dispute.

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 – Permitted Software Rights

- 16.1 We grant you the non-exclusive right of intended use of the Software. The intended use is described in the technical data sheet or in the instruction manual referring to the respective Software. The right of use is limited to the agreed period of time; in the absence of such an agreement the right of use shall be unlimited in time.
- 16.2 You may use the Software solely with the hardware specified in the technical data sheet or in the instruction manual, in the absence of such reference, the use shall be limited to the respective Product delivered together with the Software. The usage of the Software on any other device requires our prior written consent; You are not allowed to use the software contrary to any restriction or in a way that is not expressly permitted by the data sheet or the operating instructions, otherwise we are entitled to claim an appropriate additional remuneration, without limitation to all our other rights and remedies.
- 16.3 Where the technical data sheet or the instruction manual refers to more devices you may use the Software simultaneously only on one of those devices (Single License), to the extent that we have not agreed exceptionally on a Multiple License (cf. Section 16.11). Where more than one workplace exists for a specific device where the Software can be used independently, the Single License shall apply to only one workplace.
- 16.4 The Software will exclusively be provided in machine readable format (object code).
- 16.5 You are entitled to make only one copy of the Software solely for back-up purposes (back-up copy), provided that you keep accurate and up-to-date records of such copying containing such information as we reasonably request. Any other duplication is allowed only subject to a Multiple License agreed exceptionally.
- 16.6 You are not entitled to modify, adapt, disassemble, remove, translate or isolate parts of the Software. You may not remove alphanumeric or other identifiers from the data medium and you must transfer such identifiers unchanged to any back-up copy.
- 16.7 We grant you the right - which shall be revocable for good cause - to transfer the right to use the Software to a third party. The right to use the Software may only be transferred together with the Product you have purchased in combination with the Software from us. If the right to use is transferred to a third party you must ensure that the right to use granted to the third party does not exceed the scope of rights to use the Software granted to you under these Terms and Conditions and the related technical data sheet or the related instruction manual, and you must ensure that the third party shall be obliged to comply with at least the same obligations as are imposed in these Terms and Conditions. When transferring the Software, you may not retain any copies of the Software.
- 16.8 You are not entitled to grant sublicenses.
- 16.9 Where you provide the Software to a third party, you must ensure that any existing export requirements are observed; in case of a culpable infringement you must hold us harmless from any duties and claims in relation thereof.
- 16.10 To the extent that Software is provided to you for which we have only derived rights to use (third party software), the provisions of this Section 16 are amended and superseded by the conditions of use agreed between us and our licensor. To the extent that we have provided you with open source software, the provisions of this Section 16 are amended and superseded by the conditions of use underlying the open source software. We will point out in the technical data sheet or in the instruction manual if third party software or open source software and pertaining conditions of use exist and make the conditions of use available if so requested by you. Any breach of these conditions of use on the part of you shall entitle not only us, but also our licensor, to assert claims and rights arising therefrom in its own name.
- 16.11 The use of the Software on more than one device or simultaneously at more than one workplace by you requires a separate agreement on the rights of use. The same shall apply if the Software is used in networks even if the Software is not copied for this purpose. With regard to the situations named above (hereinafter referred to as "Multiple License") the following provisions (a) and (b) shall apply in addition to and with priority over the provisions of Section 16.1 to 16.10:
- a) A Multiple License requires that we expressly confirm in writing the number of admissible copies that you may make of the Software and the number of devices respectively workplaces where the Software may be used. Section 16.7 shall be applicable to Multiple Licenses provided that they may be transferred by you to third parties only if transferred in their totality and together with all devices on which the use of the Software is allowed.
 - b) (b) You must observe the duplication rules provided by us together with the Multiple License. You must keep records on the whereabouts of all copies made and submit us them upon request.

17. Passing of Risk

If the Software is provided via electronic communication media (e. g. via internet) the risk of accidental destruction or accidental deterioration shall pass when the Software leaves our sphere of influence (e.g. when making a download).

18. Additional Obligations to Cooperate and Liability

- 18.1 You have to take all required and reasonable measures to prevent or limit damage to the Software. In particular, you have to make regular back-up copies of the programs and data.
- ~~18.2~~ To the extent you breach this obligation, we will not be liable for any consequential damages and/or loss arising thereof; in particular to the replacement of lost or damaged data or programs.

19. Warranty Claims

- 19.1 The parties agree and acknowledge that software generally cannot be created without errors; this also applies to the Software covered by these terms and conditions.

- 19.2 Warranty claims regarding Software are subject to a limitation period of 12 months following the transfer of risk. This limitation shall not apply in cases of injury to body or health, death, and in cases of willful, intentional or gross negligence or misconduct by us.
- 19.3 Software is considered to be defective only if you can prove that there are reproducible deviations from the specifications stipulated exclusively and exhaustively in the technical data sheet or in the instruction manual. A defect shall not be deemed to exist if it does not manifest itself in the latest version of the Software supplied to you, and the use thereof by you can reasonably be required.
- 19.4 Warranty claims do not exist in any of the following cases:
- damages resulting from faulty or negligent handling of the Software,
 - damages resulting from particular external influences not assumed under the contract,
 - modifications and tampering made by you or third parties, and any consequences resulting thereof,
 - software extensions made by you or a third party through the use of an interface provided by us,
 - incompatibility of the Software with the data processing environment of you.
- 19.5 A claim of supplementary performance will be settled regarding Software by us as follows: We will provide you with a replacement by way of an update or an upgrade of the Software if available to us or obtainable with reasonable efforts by us.

20. Intellectual property rights and copyrights – Defects of title

- 20.1 We shall compensate you for any third party claims that the use or possession of the Software delivered under this agreement infringes the Intellectual Property Rights ("IPR Claim"), in accordance with Section 8 and within the limitation period set out in Section 19.2. However, we shall have no such liability if you:
- do not notify us in writing setting out full details of any IPR Claim of which you have notice as soon as is reasonably possible;
 - make any admission of liability or agree any settlement or compromise of the relevant IPR Claim without the prior written consent of us (which shall not be unreasonably withheld or delayed);
 - does not let us at our request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim; or
 - do not, at our request and own expense, give us all reasonable assistance in the circumstances described above.

21. Severability

Any part, term, provision, representation or warranty of this contract which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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