

## GENERAL TERMS AND CONDITIONS FOR ONLINE ORDERS

AS AT 10/2021

### 1. General information – Scope

- 1.1 For orders placed through our Malaysian shopping cart system on our website [www.balluff.com/en-my/](http://www.balluff.com/en-my/) (hereinafter referred to as “shopping cart system”), our General Terms & Conditions below apply exclusively to online orders (hereinafter referred to as “Terms and Conditions”). No other terms or conditions endorsed on, delivered with, or contained in your purchase conditions, order, confirmation of order, specification or other document shall supersede these Terms and Conditions unless Balluff otherwise agrees in writing. For the avoidance of doubt, this also applies in the event we execute your order with knowledge of the relevant conflicting conditions or conditions not defined in our terms and conditions.
- 1.2 Our terms and conditions apply only to persons dealing in the course of a business.

### 2. Conclusion of contract – Technical steps of concluding a contract

- 2.1 The presentation of the products on our website does not constitute 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 by entering the relevant details and click on the button “Order with an obligation to pay” in the last step, which we will immediately acknowledge it by an automatically generated e-mail (order acknowledgment). This acknowledgement does not, however, mean that your order has been accepted. Acceptance takes place when we email you to confirm the order following the said order acknowledgment. At this point a legally binding contract will be in place between you and us.
- 2.2 The technical steps of concluding a contract are as follows: on [www.balluff.com/en-my/](http://www.balluff.com/en-my/) you go to a display of individual products using the product selector or by entering the search term directly. You can place the individual products in the shopping cart without obligation by clicking on the „Add to shopping cart“ button. You can view the items in the shopping cart at any time without obligation by clicking on the „Shopping cart“ button. Using the trash symbol you can remove the selected products again from the shopping cart. If you want to purchase the products in the shopping cart, click on the „Pay“ button, whereby a new page is opened. You can now complete the purchase either as a registered customer or guest (without registration). For registration you must enter your e-mail address and click on the button „Continue with customer registration“. Using your e-mail address, and if necessary other details entered by you, we check if you are already an existing customer of Balluff – your authorization to use the shopping cart system. You create your own password, which is assigned to your e-mail address (your login), in the course of registration; you do not need to register again for future orders; simply enter your e-mail address and password. In the next intermediate step, you have the option to change the details for the billing address and delivery address. For this purpose, we show you the addresses you entered during the registration process (for new customers) or the addresses that are stored in the ERP system (for existing customers). You also have the opportunity again to review all details and make any necessary corrections using the delete and change function. If you want to complete the purchase as a guest (without registration), click on the button „Without registration“ and enter your company details and address once in the next step. Also here you have the option to correct your details using the delete and change function. In the final step you can select and correct the method of payment and complete the order process by clicking on the button „Order with an obligation to pay“. We save the contract text of the order. You can save and print the contract text and these terms and conditions, which are made available on a linked page. You can view previous orders in the customer area under „My orders“.

### 3. Disclosure requirements – Password

- 3.1 You are obligated to furnish true and complete information when using the shopping cart system. Whenever there is a change in data, particularly name, address, and e-mail address, you are required to notify us immediately of these changes by updating the details in the shopping cart system. If you fail to provide this information or provide false or incomplete data, we are entitled to reject your order and/or terminate the contract, if a contract has been concluded. 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, or overloading of the e-mail account.
- 3.2 A password will be required to submit the order. You are required to store the password securely and use it in such a way as to prevent its loss or disclosure to unauthorized third parties. If the password is compromised, you are obligated to inform us in writing immediately, which can be done by e-mail. We will block the password-protected area immediately following receipt of the notification. If a third party comes into possession of the password as a result of your negligence or improper use, then you shall be liable for the orders made with this password and responsible for their full amount up until the loss is reported.

### 4. Delivery – Delivery time – Extension of delivery times – Partial deliveries

- 4.1 The delivery date specified for the individual products is only an approximate and non-binding. You will be notified of the valid, exact delivery date in the order acceptance email. Unless expressly agreed otherwise, time of delivery is not of the essence. Balluff shall use its reasonable endeavours to meet the delivery dates.
- 4.2 Unless otherwise expressly agreed upon, the delivery will take place “DDP” (Incoterms in their applicable version, currently Incoterms 2020) regarding that place indicated in our offer or in our acceptance or if in our offer or our acceptance no place is indicated “ex works” Malaysia.
- 4.3 The delivery is only made to locations in Malaysia.

- 4.4 The delivery date shall be extended to an appropriate extent, if
- it is due to force majeure, i.e. an unforeseeable event which is beyond our reasonable control and for which we are not responsible for (including but not limited to official measures and orders, wars, revolutions, embargos, pandemics, epidemics, fire, earthquakes flooding, storms, explosions, or other natural catastrophes, stoppages but exclude your inability to pay). This also applies if such an event occurs during a delay in delivery or with one of our sub-suppliers.
  - necessary permits or documentation from third parties to be procured by you are not provided on time;
  - the required information is not provided by you to us.
  - you have not fulfilled your contractual obligations, particularly the payment obligations, in full.
- 4.5 To the extent which is reasonable, we may deliver the goods in instalment, to which we will invoice separately. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.
- 4.6 If the delivery is delayed at your request or owing to circumstances for which you are accountable and upon our notification of the readiness for dispatch, then we are entitled to invoice you the costs arising from the storage, which shall be at least 0.5% of the invoice amount for every week of the delay or part thereof, and up to a maximum of 10% of the invoice amount. Both parties have the right to prove that a higher, lower, or no storage costs are incurred. We also reserve our rights to terminate the contract and claim for damages in this regard.
- 5. Force majeure – Withdrawal – Reservation of timely and correct supply of incoming goods – Transfer of risk**
- 5.1 If we are unable to deliver within an appropriate period due to force majeure (cf. Clause 4.4), both parties have the right to withdraw from the contract, wholly or partly. The same shall also apply in the case of impossibility performance of contract, for which we have no control of. If the contract is terminated in accordance with this section, neither party shall have any further obligation or liability under the contract. If a party intends to withdraw from the contract under this section, they must immediately inform the other party in writing thereof.
- 5.2 We shall have no liability, in particular in relation to our delivery obligations if the goods ordered have not been delivered to us in time.
- 6. Retention of title**
- 6.1 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.
- 6.2 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 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.
- 6.3 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.
- 6.4 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.
- 6.5 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 proceeds arising from resale of the goods 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. 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.
- 6.6 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.
- 7. Claims for defects – Complaints**
- 7.1 Unless expressly agreed otherwise, the quality and the specification of the goods are listed exclusively and definitively in the datasheet or the operating instructions for the respective product. We warrant that the goods conform in all material respects to the specification.
- 7.2 It is agreed that in the event of a claim for supplementary performance (rework or replacement), the cheaper variant shall be chosen, provided that you do not suffer any substantial disadvantage thereby.
- 7.3 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 recognised a claim for subsequent performance against you before or in connection with the subsequent performance.
- 7.4 We shall bear - insofar as the complaint proves to be justified - the necessary expenses for the subsequent performance, provided that this does not result in a disproportionate burden for us.
- 7.5 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.
- 7.6 Complaints about defective, incomplete or incorrect goods must be notified to us in writing immediately, at the latest within one week after delivery (obvious defects discoverable by physical inspection) or after discovery of the defects (latent defects). Otherwise, the assertion of claims for defects shall be void.
- 7.7 You shall perform a reasonable inspection of the products upon delivery of each shipment of products hereunder.

- 7.8 Claims for defects become time-barred 24 months after the transfer of risk, this excludes any claims of death or personal injury resulting from our negligence as well as in cases of fraud, fraudulent misrepresentation and any breach of statutory obligations. 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).
- 7.9 If a certain number of actuations or switching cycles is agreed for a product, this would apply until the warranty period listed in Clause 7.8 above have lapsed. If the agreed number of actuations or switching cycles for a product is reached before the expiry of the warranty period listed in Clause 7.8 above, all claims resulting from such an agreement shall be barred and we will not be liable for any claims of defect thereon. Additionally, the agreement of a certain number of actuations or switching cycles only takes effect if the product is used under the conditions prescribed in the respective datasheet or operating instructions.
- 7.10 Claims for defects are barred in the following cases:
- untimely and improper inspection and notification of defects i.a.w. Clauses 7.6 and 7.7;
  - unauthorized modification of the goods, unless it is proven that the defect did not arise from these changes;
  - defects arising from normal wear and tear, unintended use, or improper storage.
- 7.11 Our liability to you in this regard is stipulated under Clause 9.

## **8. Intellectual Property Rights – Defects of title**

- 8.1 Unless expressly agreed otherwise, Balluff warrants that the products will not infringe or constitute a misappropriation of any intellectual property rights of third party (hereinafter referred to as „intellectual property rights“) only in the country of the place of manufacture and delivery. „Intellectual property rights“ in this respect means patents, designs, brands, including their respective registrations, as well as copyrights. If a third party lodges a claim that the use or possession of the products infringes its intellectual property rights, we shall be liable to you provided it is within the period stated in Clause 7.8:
- 8.2 At our discretion and expense, we shall either obtain a right to continue using the respective product, modify the product so as to avoid the infringement, or exchange the respective product. If we are unable to do this under reasonable conditions, you may withdraw from the contract or reduce the contract price. Our obligation to provide damages is based on Clause 9.
- 8.3 We shall only be liable to you in accordance to Section 8.1 if only (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.
- 8.4 We will not be liable if you are solely responsible for the violation of intellectual property rights.
- 8.5 Your claims are also excluded if the violation of the intellectual property rights is caused by an application that was not foreseeable by us or caused by the fact that the product has been subsequently modified by you without our authorization.
- 8.6 Further claims or claims other than those stipulated in Clause 8. against us or our vicarious agents owing to a defect of title are excluded.

## **9. Liability**

- 9.1 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 1957 or any other liability to the extent the same cannot be excluded or limited by law.
- 9.2 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 /amount of the order in respect of any one claim or series of related claims.
- 9.3 Our liability arising out of or in connection of this contract shall not extend to any indirect losses (such as 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, and any other indirect, special or consequential loss or damage).
- 9.4 The parties agree that the limitations on liability herein are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this agreement.

## **10. Prices – Payment terms**

- 10.1 Unless otherwise expressly agreed, payment terms are cash in advance and in any case prior to delivery.
- 10.2 Our prices are net prices exclusive of the statutory value added 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).
- 10.3 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.
- 10.4 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.

- 10.5 We offer you the following payment options:  
**Downpayment:** You are obliged to transfer the invoice amount in accordance with your individual payment terms and under any circumstance partly before we commence delivery. Delivery will only be made if we have received the partial payment. We shall provide the account details.  
**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. We do not charge any additional fees for payments through credit cards, yet an additional fee may be charged by your banker. We use the "SSL" transmission method for encrypting your personal data.
- 10.6 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 the expression ‚cost‘ is deemed to include overheads and interest paid by us.
- 10.7 Exchange rate variation payable shall be calculated at the rate of exchange actually paid by 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.
- 10.8 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 services and/or revoke any payment terms granted, also for other receivables. If you do not provide the appropriate collateral that is requested by us within a reasonable period, we may withdraw from the contract. Existing claims from services 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 Where you resell any objects of delivery (i.e. Balluff products) you are obliged to observe all applicable and relevant regulations including the:
- Customs Act 1967 (Act 235);
  - Customs (Prohibition of Exports) Order, 1998;
  - 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)
- at the time in force – 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 fees arising out of or resulting from the noncompliance of the laws and regulations listed in this Clause 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 the 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 We shall only collect, process, and store personal data exclusively in accordance with the provisions of the Personal Data Protection Act 2010. Please see our [privacy statement](#) for further information.

#### 15. Place of performance – Place of jurisdiction – Applicable law

- 15.1 The place of performance for all obligations from the contractual relationship is Malaysia.  
15.2 Any dispute or claim arising out of or in connection with this contract or its subject matter is governed by and shall be construed in accordance with the laws of Malaysia.  
15.3 Any Dispute which is not resolved by the parties as aforesaid within thirty (30) days after the Dispute has arisen shall be submitted to arbitration in accordance with, and subject to, the rules of the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as the 'KLRC').  
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 Chairman for the time being of the KLRC shall appoint the arbitrator, and the decision of the Chairman as aforesaid shall be binding on the parties.  
15.5 The arbitration proceedings 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 effort.  
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 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 shall be for an indefinite period.  
16.2 You may only use the software with the hardware specified in the datasheet or the operating instructions, in the absence of such reference only with the Product delivered together with the software. The usage of the software with another 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 demand an appropriate additional remuneration, without limitation to all our other rights and remedies.  
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 If reasonably necessary, you may only make one copy of the software which can be used for backup purposes only (backup copy), provided that you keep accurate and up-to-date records of such copying containing such information as we reasonably request. Apart from that, you may only copy the software if a multiple license has been agreed as an exception.  
16.6 You are not permitted to change, reverse engineer, adapt, disassemble, remove or translate the software, or any part of it, nor arrange or create derivative works based on the software. 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, assign, distribute, license, sell or otherwise deal in or encumber the software.  
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. 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. 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 or Balluff will be 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 risk 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 Failing which, we shall not be liable for the consequences, particularly not for the replacement of lost or damaged data or programs.
- 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 after 12 months of the transfer of risk. This does not apply to any statutory limitation periods such as a liability for death or personal injury arising from negligence.
- 19.3 Software is considered to have a material defect only if you can prove that there are reproducible substantial deviations from the specification in the datasheet or the operating instructions. A material defect does not exist if it does not exist 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 unauthorised modifications made 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.
- 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, at our discretion and provided we have such or it can be procured by us at a reasonable cost.
- 20. Intellectual Property Rights – Defects of title**
- 20.1 If a third party lodges claims on the grounds of an infringement of intellectual 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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