

## General Terms of Sale

### 1. GENERAL PROVISIONS

- 1.1. These General Terms of Sale (“GTS”) shall govern any offer made by Eberle controls GmbH (the “Seller” or “Party”), and any sales agreements entered into by the Seller with any buyer (the “Buyer” or “Party”) pertaining to the supply of Products, Software, and/or Services (the “Contract”).
- 1.2. These GTS shall apply exclusively. Any diverging, contrary or complementary general terms and conditions of Buyer shall only become a part of the Contract if and to the extent Seller has expressly consented to their validity. This consent requirement shall also apply where Seller makes a delivery without reservation to the Buyer even though Seller is aware of the Buyer’s general terms and conditions. These GTS shall apply in their respectively valid version also to future contracts regarding the sale and/or delivery of Products, Software and/or Services to the same Buyer, without The Seller having to refer to these GTS again in each individual case.
- 1.3. The Buyer hereby warrants and represents to the Seller that it is a business customer acting in the course of business and is not a consumer, for sales made by Seller, within the meaning of Sec. 13 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).

### 2. DEFINITIONS

- 2.1. “Anti-Corruption Law” means all applicable laws which prohibit the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or advisor of such person, including but not limited to the French “Sapin II” Law, the United States’ Foreign Corrupt Practices Act, and the United Kingdom Bribery Act or any other laws which prohibit money laundering, tax evasion or the facilitation thereof.
- 2.2. “Confidential Information” means any and all information in any form that each Party provides to each other in the course of the Contract and that either (i) has been marked as confidential; (ii) is of such nature that a reasonable person would treat as confidential under like circumstances. Confidential Information does not include work products resulting from the Services performed hereunder and information which (a) is already known to the other Party at the time of disclosure; (b) is independently developed without the benefit of the other’s Confidential Information; (c) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (d) has entered the public domain through no fault of the recipient.
- 2.3. “Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, brands including trademarks and service marks, business names and domain names, design rights, goodwill and rights resulting from unfair competition, rights in designs (Geschmacksmuster), database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 2.4. “Products” means any hardware, Software, supplies, accessories and other commodities provided by the Seller under the Contract.
- 2.5. “Services” means the testing, assessment, engineering services, installation, commissioning, start-up, configuration, repair and maintenance activities, and any development of application programs, customization according to the Buyer’s request, implementation, training and any other services agreed upon between the Parties in orders hereunder, to be performed by the Seller in connection with the sale of the Products pursuant to the Contract, or any other activities that may be agreed by the Seller to be performed.
- 2.6. “Software” means digital products and content, computer software, applications and firmware in all forms, but excludes source code. For the purposes of these GTS this shall be defined as the expression of computer software applications and firmware in human readable language which is necessary for their understanding, maintenance, modification, correction or enhancement.

- 2.7. "Third Party Products" means products and software of a third party vendor. If Third Party Products are supplied by the Seller under the Contract, notwithstanding anything to the contrary, such supply is made on a "pass-through" basis only and is subject to the terms and conditions of the third party vendor. Third Party Products are quoted subject to price changes imposed by third party vendors between the date of order encompassing such Third Party Products and the date of Seller's invoice related to that Third Party Product.

### **3. PURPOSE AND SCOPE OF THE PROPOSAL, CONCLUSION OF CONTRACT**

- 3.1. Unless the Seller issues a specific proposal to the Buyer, the applicable prices are those set out in the Seller's price lists in force on the date when the order is placed.
- 3.2. When the Seller has issued a proposal, the prices and terms and conditions of this proposal relate exclusively to the Products, Services and Software which are specified therein and they remain valid for one (1) month from the date of the proposal, unless there are express stipulations in the proposal to the contrary.

### **4. MODIFICATIONS**

- 4.1. Either Party may request changes that affect the scope, duration, delivery schedule or price of an order, including changes in the Products, Software or Services to be delivered or licensed. If either Party requests any such change, the Parties shall negotiate in good faith a reasonable and equitable adjustment to the order, including if necessary, any price and schedule adjustment and changes to the payment schedule and milestones, where relevant. If the Seller incurs any delay in achieving any milestones as a result of such negotiations, the Seller shall be entitled to submit an interim invoice for the percentage completed of such milestone. Payment of such invoice shall be in accordance with Article 7. Neither Party shall be bound by any change requested by the other until an amendment to the order in the form of a Change Order has been accepted in writing (including by fax and email) by both Parties. Pricing of changes shall be based on the then current Seller's prices.
- 4.2. The Seller reserves the right to make any changes to the Products at any time, including their specifications, in its catalogues and brochures.

### **5. DELIVERY**

- 5.1. Unless otherwise specified in Seller's proposal or other specific agreements, deliveries are deemed as having been made once the Products are made available in the Seller's facility/warehouse (FCA ICC Incoterms 2020).
- 5.2. If the Buyer does not accept the Products at the agreed delivery date or does not collect the Products although the Seller offered them to the Buyer, the Buyer shall be in default in acceptance. The Seller may rescind the Contract pursuant to the statutory provisions without prejudice to any claims of the Seller for the compensation of additional costs. Until it takes possession of the Products, the Buyer shall bear the usual storage costs and any other costs caused by the default.
- 5.3. If the Contract requires, or the Parties agreed upon, an acceptance procedure and the Buyer fails to declare vis-à-vis the Seller acceptance of the Products, Software or Service within an appropriate period from receipt of the Products, Software or Service which may not exceed thirty (30) calendar days, the Products, Software or Service shall be deemed accepted without prejudice to any warranty claims of the Buyer.
- 5.4. Unless other acceptance criteria are agreed upon in an order, Seller's standard testing procedures, including factory acceptance test and site acceptance test, where applicable, shall apply to Products, Software and Services provided. If it is not possible that a representative of the Buyer attends such testing procedures although the Buyer was informed accordingly in advance, the Products, Software or Service shall be deemed accepted if the test was passed or only revealed inconsiderable defects, provided that the Seller has set the Buyer an appropriate period for acceptance and the Buyer did not refuse acceptance within this period stating at least one defect. To the extent that any Products, Software or Services have been, or can be deemed approved by Buyer pursuant to the terms of the Contract or the applicable order at any stage of

Seller's performance, Seller shall be entitled to rely on such approval for purposes of all subsequent stages of its performance hereunder, provided that the Seller is not responsible therefor itself.

## 6. DELAYS IN DELIVERY

- 6.1. The delivery periods commence on the latest of the following: (i) the Seller's unconditional acceptance of the order; (ii) the Seller's receipt of information which the Buyer is responsible for providing where the commencement of the order fulfilment is conditional upon the provision of that information; or (iii) receipt of the agreed down payment.
- 6.2. Unless any specific periods were set forth in the Contract, if the requirements set forth under Article 6.2 are fulfilled within six (6) months from the conclusion of the Contract, the Seller is entitled to rescind the Contract; the Seller and the Buyer hereby waive any claim for damages in relation thereto, provided that the respectively other Party is not responsible therefor.
- 6.3. If the Buyer delays, prevents or impedes performance by the Seller, the Seller shall be entitled to an extension of time for performance and to recover any additional costs incurred due to such delay, prevention or impediment including additional storage costs, de-mobilization/re-mobilization costs, travel and transportation costs, pursuant to the statutory provisions.
- 6.4. The Buyer acknowledges that the Products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Seller's (or its subcontractors) capacity to produce, deliver, install or service the Products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by Seller (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Seller's (or its subcontractors') employees. The Buyer therefore acknowledges that these circumstances constitute reasons for a delay without fault with respect to which it is not possible to assert damages, provided that the Seller is not responsible therefor. This shall also apply to any penalties for delay, if agreed upon.

## 7. PRICES – PAYMENT – TAXES

- 7.1. The prices are net prices exclusive of taxes, whether payable in the Federal Republic of Germany or in the country of delivery of the Products. Unless specified in the order confirmation/contract, payment has to be done within 30 days after invoicing in EUR. On order with a value below 100 EUR, the Seller reserves the right to invoice a low-quantity fee of 30 EUR.
- 7.2. The Buyer shall be responsible for the payment (by addition to the prices or adjustment to the list price for the Products, as applicable) of all trade tariffs (or changes to such trade tariffs) imposed after the date on which this Contract was entered into on any Products supplied under this Contract, which are a duty, tax or levy imposed on imports or exports into or out of the EU or the European Economic Area and Switzerland, or any country with which the EU has a free trade agreement. If the gross prices for the raw materials or components used by the Seller to manufacture the Products change, the Seller can adjust the Product prices accordingly.
- 7.3. If Buyer is required by law to make any tax withholding from amounts paid or payable to Seller under the Contract, (i) the amount paid or payable shall be increased to the extent necessary to ensure that Seller receives a net amount equal to the amount that it would have received had no taxes been withheld; (ii) Buyer shall forward proof of such legally required withholding to Seller.
- 7.4. The Seller shall be entitled to revise the prices applicable to the Contract as follows:
  - (a) by one (1) weeks' written notice to the Buyer in the event of:
    - (i) any fluctuation in the currency exchange rates applicable at the date of the Contract;
    - (ii) any increases in the cost of raw materials, transport, energy or labour;
    - (iii) any changes in legislation;
    - (iv) any changes connected to or arising out of the United Kingdom (or part of it) ceasing to be a member state of the EU whether such change occurs before, during or after the date on which the United Kingdom ceases to be a member state of the European Union or, where a transition period has been agreed, the date on which the transition period expires; or

- (v) other events beyond its reasonable control that affect the Seller's ability to perform or the cost of performance under the Contract; or
  - (b) by two (2) months' written notice to the Buyer in all other cases; in any case, however, there must be an objective reason for the change.
- 7.5. The new prices provided in Article 7.4 shall take effect upon expiration of afore-mentioned notice period, or, if a later date is specified in such notice, on the date so specified. All orders accepted by the Seller prior to such revisions taking effect shall be processed by the Seller at the prices in effect at the time the order is accepted.
- 7.6. Unless otherwise provided in the Contract, Seller shall be entitled to issue an invoice no later than the date of delivery or acceptance of the Products and/or Services (whichever is later) and Buyer shall pay such invoices within thirty (30) days of the invoice date and payment shall be made in the Federal Republic of Germany free of any charge for the Seller. The Seller can issue invoices by regular post, mail or electronically in a PDF or XML format. An EDI payment process can be established by Seller. In no event shall such non-standardized demand relieve the Buyer from its payment obligations as defined in these GTS.
- 7.7. Should the Buyer be in default with payments, the following shall apply:
  - (a) The Buyer shall pay default interest in the amount of 9 percentage points above the base rate per annum calculated on the basis of the outstanding amounts; and
  - (b) the Buyer shall be liable to pay a fixed fee of EUR forty (40) for each outstanding claim to be offset against any claims for damages. However, if the debt collection costs actually incurred by the Seller exceed the amount referred to in this Article 7.7 b), the Seller reserves the right to claim additional compensation from the Buyer.
- 7.8. Failure to pay an instalment on the due date shall automatically cause all amounts owed by the defaulting Buyer to become payable, provided that the Seller has already performed the respective services. Pursuant to the statutory provisions, the Seller furthermore reserves the right to suspend the performance of its own obligations until the Buyer has paid all outstanding amounts in full.
- 7.9. Should the delay in payment exceed thirty (30) days and the Buyer fail to remedy the delay within the deadline set by the Seller writing by registered post, without prejudice to any other remedies available to it by law or under the Contract, Seller may rescind the Contract for reasons attributable to the Buyer and at Buyer's cost.
- 7.10. The foregoing provisions shall apply without prejudice to all damages which may be claimed by the Seller.

## **8. RETENTION OF TITLE AND PASSING OF RISK**

- 8.1. Unless otherwise agreed upon in an order, Seller will retain title to the Products until the Buyer has paid the price for the Products in full. The title to the Software shall remain at all times with Seller.
- 8.2. If the Products are transformed or incorporated into other goods, the Seller shall have a lien on the transformed Products or the goods in which they have been incorporated until full payment of the price.
- 8.3. As from the delivery of the Products, the Buyer assumes all the risks relating to the possession, storage and/or use of the Products as per the applicable Incoterm.

## **9. MARKING AND PACKAGING**

- 9.1. The Seller warrants that it complies with the provisions of Regulation EC No. 765/2008, Decision No. 768/2008/EC and the harmonised EN 50581 standard for all sales of its Products, including the manufacturer's obligation to provide a declaration of conformity. Proof of conformity will be made available to the Buyer at its request, in the form of technical documents.
- 9.2. The Seller warrants that it will comply with the essential requirements and provisions set forth by the laws of the Federal Republic of Germany and the German standards applicable to the Products as well as the EU directives and regulations.

- 9.3. The prices set out in the proposal include ordinary packaging in accordance with the Seller's standard practice. If the Buyer wishes to use a different type of packaging from the packaging normally used by the Seller, an extra packaging fee will be charged.

## 10. CARRIAGE – CUSTOMS – EXPORT CONTROL

- 10.1. Unless otherwise expressly accepted by the Seller, the Products are sold based on FCA (ICC Incoterms 2020) (see Article 5). Accordingly, the Buyer is responsible for the carriage and insurance of the Products, if any.
- 10.2. The Deliverables provided by Seller under the Contract may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. The Buyer acknowledges and agrees that the supply, assignment and/or use of the Products, Software, Services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under the Contract shall fully comply with the related applicable US, EU and other national and international export control laws and/or regulations; however, should the Buyer not have its seat in Germany, this only applies with respect to countries which are subject to sanctions under the US export control laws and/or regulations if these sanctioned countries are also subject to sanctions imposed by the UN, the EU and the Federal Republic of Germany.
- 10.3. Unless applicable export license/s has been obtained from the relevant authority and the Seller has approved, the Products shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Buyer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not be limited to chemical, biological or nuclear weapons.
- 10.4. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Seller from fulfilling any order, or would in Seller's judgment otherwise expose the Seller to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, the Seller is entitled to cancel such order and/or rescind this Contract.
- 10.5. The Seller disclaims all liability for any late deliveries and other consequences caused by the implementation of and amendments to those regulations, provided that the Seller is not responsible therefor.
- 10.6. "Software" is a "commercial item" as those terms are defined under 48 CFR 2.101 (October 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 (September 1995) and is provided to U.S. Government only as a commercial item. Consistent with 48 CFR 12.212 and 48 CFR 227-7202-1 through 227.7202-4 (June 1995), all U.S. Government end-users acquire the Software with only those rights set forth herein.
- 10.7. Each Party shall execute any and all documents, and provide them to the respectively other Party, which are required to fulfil or prove fulfilment of the requirements.
- 10.8. The Parties may correspond and convey documentation via the Internet unless Buyer expressly requests otherwise. Neither Party has control over the performance, reliability, availability or security of the Internet. Seller shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any communication over the Internet due to any reason beyond Seller's reasonable control, provided that the Seller is not responsible therefor.

## 11. ENVIRONMENTAL REGULATIONS

- 11.1. Removal & disposal of Product waste. The party possessing the waste is responsible for removing and disposing it or for having it removed and disposed. For the professional electrical and electronic equipment (hereinafter "EEE") concerned by European Directive 2012/19/EU entered

into force on the 13th of August 2012, and European Directive 2006/66/EC dated September 6, 2006 and resulting implementation regulation, the organizational and financial responsibility for the removal and processing of waste originating from this EEE is transferred to the direct Buyer which accepts such. The direct Buyer undertakes to assume responsibility, on the one hand, for the collection and removal of waste originating from the EEE subject to the sale and, on the other hand, for their processing and recycling. The Buyer's failure to comply with these obligations may lead to the application, among other sanctions, of the criminal sanctions provided for by each member state of the European Union.

- 11.2.** Provisions applicable to chemical substances pursuant to REACH Regulation No. 1907/2006. For Products delivered after the publication of the candidate list of substances for authorization as defined in REACH Regulation No. 1907/2006 and its various updates, and in accordance with Article 33(1) of that Regulation, the Seller hereby informs the Buyer of the presence of those candidate substances in an amount of more than 0.1% (zero point one per cent) weight by weight compared to the total weight, via the following website: [www.eberle.de](http://www.eberle.de), to allow the said Products to be used safely.
- 11.3.** The Seller represents that the substances, used alone or contained in preparations or Products integrated by it for the relevant production, were used in accordance with the registration, authorization and restriction provisions of that Regulation. The Seller shall inform the Buyer, via the same website, of any changes to the composition of the relevant Products/items of which it becomes aware.

## **12. BUYER'S OBLIGATIONS**

- 12.1.** Buyer is solely responsible for the implementation and maintenance of a comprehensive security program ("Security Program") that contains reasonable and appropriate security measures and safeguards to protect its computer network, systems, machines, and data (collectively, "Systems"), including those Systems on which it runs the Products or which it uses with the Services, against Cyber Threats. "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Buyer's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Buyer's Systems, including any data, including through malware, hacking, or similar attacks.
- 12.2.** Without limiting the foregoing, Buyer shall at a minimum:
  - (a)** have qualified and experienced personnel with appropriate expertise in cybersecurity maintain Buyer's Security Program, and have such personnel regularly monitor cyber intelligence feeds and security advisories applicable to Buyer's Systems or Buyer's industry;
  - (b)** promptly update or patch its Systems or implement other appropriate measures based on any reported Cyber Threats and in compliance with any security notifications or bulletins, whether publicly disclosed by Seller or otherwise provided to Buyer;
  - (c)** regularly monitor its Systems for possible Cyber Threats;
  - (d)** regularly conduct vulnerability scanning, penetration testing, intrusion scanning, and other cybersecurity testing on its Systems.
- 12.3.** Seller may release Updates and Patches for its Products, Software, and Services from time to time. Buyer shall promptly install any Updates and Patches for such Products, Software, or Services as soon as they are available in accordance with Seller's installation instructions and using the latest version of the Products or Software, where applicable. An "Update" means any software that contains a correction of errors in a Product, Software, or Service and/or minor enhancements or improvements for a Product, Software, or Service, but does not contain significant new features. A "Patch" is an Update that fixes a vulnerability in a Product, Software, or Service. Buyer understands that failing to promptly and properly install Updates or Patches for the Products, Software, or Services may result in the Products, Software, or Services or Buyer's Systems becoming vulnerable to certain Cyber Threats or result in impaired functionality, and Seller shall not be liable any losses or damages that may result unless the Seller is responsible therefor.
- 12.4.** If Buyer identifies or otherwise becomes aware of any vulnerabilities or other Cyber Threats relating to the Products, Software, or Services for which Seller has not released a Patch, Buyer shall promptly notify Seller of such vulnerability or other Cyber Threat(s) and further provide Seller

with any reasonably requested information relating to such vulnerability (collectively, "Feedback"). Seller shall have a non-exclusive, perpetual and irrevocable right to use, display, reproduce, modify, and distribute the Feedback (including any confidential information or intellectual property contained therein) in whole or part, including to analyse and fix the vulnerability, to create Patches or Updates for its customers, and to otherwise modify its Products, Software, or Services, in any manner without restrictions, and without any obligation of attribution or compensation to Buyer; provided, however, Seller shall not publicly disclose Buyer's name in connection with such use or the Feedback (unless Buyer consents otherwise). By submitting Feedback, Buyer represents and warrants to Seller that Buyer has all necessary rights in and to such Feedback and all information it contains, including to grant the rights to Seller described herein, and that such Feedback does not infringe any proprietary or other rights of third parties or contain any unlawful information.

- 12.5. Unless otherwise specifically agreed in the order, Seller's personnel shall not perform Services on equipment in operation on Buyer's work site.
- 12.6. If Seller is to perform Services on Buyer's work site, Buyer shall be responsible for obtaining all applicable permits, visas or other governmental approval required. Buyer shall be responsible for ensuring the safety of work conditions at its site and the safety of Seller's personnel.
- 12.7. Seller ensures that its employees, subcontractors and agents adhere to and comply with Buyer's health, safety, security and environmental ("HSSE") policies while at the work site, the extent these policies have been made available to Seller.
- 12.8. Other obligations of Buyer shall be set forth in the applicable order. Buyer agrees to cooperate with Seller in the performance of the project described in the order hereunder, including, without limitation, providing Seller with reasonable facilities, timely access to data, information and personnel of Buyer and a safe working environment. Buyer acknowledges and agrees that Seller's performance is dependent upon the timely and effective satisfaction of Buyer's responsibilities hereunder and timely decisions and approvals of Buyer where required.
- 12.9. Buyer acknowledges and agrees that Seller may, in performing its obligations pursuant to these GTS, be dependent upon or use data, material, and other information furnished by Buyer without any independent investigation or verification thereof, and that Seller shall be entitled to rely upon the accuracy and completeness of such information in performing its obligations.

### 13. ANTI-BRIBERY AND CORRUPTION

- 13.1. The Buyer acknowledges that Seller is committed to eliminating all risk of bribery and corruption, influence peddling, money laundering and tax evasion or the facilitation thereof in its business activities and Buyer shall adhere to Seller's Trust Charter /. The Buyer must immediately notify Seller of any suspected, or known, breaches of Anti-Corruption Law.
- 13.2. None of the Buyer's employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of the Contract or has an interest in the Buyer:
  - (a) is a civil servant, public or governmental official;
  - (b) is an official or employee of Seller or one of its affiliates; or
  - (c) has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence peddling, money laundering, or any other criminal offence involving dishonesty as an element. The Buyer will immediately notify the Seller if any such individuals are the subject of any investigation into any such offenses.
- 13.3. The Buyer undertakes and covenants to Seller that it shall not, alone or in conjunction with any other person, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, undue advantage, or anything of value to any employee, official or authorized representatives of Seller.

### 14. INTELLECTUAL PROPERTY AND SOFTWARE LICENSE

- 14.1. Seller may utilize proprietary works of authorship, pre-existing or otherwise, including without limitation software, computer programs, methodologies, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as Intellectual Property Rights and any derivatives thereof, which have been originated, developed or purchased by Seller or to a parent or affiliated company of Seller (all of the foregoing,

- collectively, "Seller's Information"). Seller shall retain at all times ownership of the Seller's information.
- 14.2.** Seller or the applicable third party owner shall retain at all times the ownership of its Software, firmware and third party software, regardless of the media upon which the original or copy may be recorded or fixed. Without prejudice to the license(s) expressly granted hereunder and under an order, no right, title or interest in or to the Software, firmware, Seller's Information, any copies thereof and any Intellectual Property Rights residing in the Products, Software or result of Services is transferred to Buyer. Buyer acknowledges that the prices for Services and Software charged by Seller under the Contract are predicated in part on Seller's retention of ownership over such Software and any results of the Services.
  - 14.3.** In consideration of the receipt of full payment of the Software license fee applicable as part of the price under an order, and subject to Buyer's compliance with its obligations under the Contract and/or the order, Seller shall provide to Buyer a personal, non-transferable, non-exclusive limited license to use the Software described in the relevant order and the Seller's Information incorporated into the Products, Software and Services, if any, for purposes of the Buyer's ordinary business as defined in the order and in the particular location(s) and/or on the particular systems for which Buyer licensed such Software.
  - 14.4.** Seller's Software licensed to Buyer may contain components that are owned by third parties. The third party owner shall retain exclusive right to its firmware and software. Use of such third party components may be subject to restrictions contained in the third party's end user license agreement in addition to the conditions set forth herein. Seller shall make available to Buyer upon request the third party's end user license agreement applicable. Copyright and other proprietary rights notices of Seller and third parties are contained in the Software and Buyer shall not modify, delete or obfuscate such notices.
  - 14.5.** The Buyer may not, without Seller's prior written express consent (i) copy, modify, sublicense, loan or transfer in any manner the Software licensed herein ; (ii) create derivative works based on the Software licensed herein; (iii) subject the Software licensed herein to translating, decompiling, disassembling, reverse assembling, reverse engineering, emulating or performing any other operation on the Software, except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Buyer, unless a reasonable fee is paid or the Seller has provided the information necessary to achieve such integration within a reasonable period and the Buyer has requested the Seller to carry out such action or to provide such information (and will bear the Seller's reasonable costs in providing that information) before undertaking any such reduction. Buyer shall hold the Software licensed herein in strict confidence and will not allow third parties, other than its employees with a need to use the Software and who have agreed to comply with the terms of this Contract, to access or use the Software without Seller's prior written consent.
  - 14.6.** Notwithstanding the foregoing restrictions but subject to all restrictions applicable to Third Party Products as set forth in Articles 14.2 and 14.4, Buyer shall be entitled to make one (1) copy of the Software for backup or archival purposes and may make a limited reasonable number of copies of the instruction manuals and documentation related to the Software for purposes of their use by Buyer in connection with the authorized use of the Software. All titles, trademarks and copyrights and restricted rights notices shall be reproduced in such copies. Moreover, the Buyer's reverse engineering right will in general not be restricted if it relates to a business secret within the meaning of the German Business Secret Law (Geschäftsgeheimnisgesetz, GeschGehG) which is already publicly available or has been disclosed to the Buyer without the latter being subject to any disclosure restrictions with respect to the business secret.
  - 14.7.** Buyer shall maintain complete and accurate records documenting the location and use of the licensed Software in Buyer's possession. No later than thirty (30) days, upon receipt of Seller's written request, Buyer shall provide Seller with a signed certification of compliance with the Software licensing conditions. Seller has the right to conduct an audit of Buyer's use of the Software; however, the Buyer is not obliged to disclose any business secrets in this respect. Any such audit shall be conducted during regular business hours at Buyer's facilities. If an audit reveals any underpayment of license fees, Buyer shall be invoiced for additional license fees consistent with Seller's then current price list for the Software, without any discount being applicable in that instance. The Buyer shall then immediately pay the outstanding amount

together, as the case may be, with default interest from the date on which such amount was due and payable. The assessment of additional license fee is without prejudice to Seller's other remedies in the event of breach by Buyer of other licensing conditions.

- 14.8.** Unless otherwise set forth in an applicable Seller's license agreement, Buyer may not transfer its license to use the Software and related documentation and written materials to a third party without the Seller's prior written consent, which shall not be unreasonably withheld. In case of Seller approval of such transfer, Buyer shall be responsible to ensure that the recipient agrees to the terms of this Article 14.
- 14.9.** The conditions governing the use of the Software and databases and the length of the corresponding user rights are set out in the relevant licences.
- 14.10.** The Seller may cease to deliver any Products, Software or Services which it reasonably considers could infringe third party's rights, without being in breach of the Contract.
- 14.11.** In case the results of Services, Software or Products, or any part thereof, is adjudged to infringe and/or its use is enjoined, the Seller shall, at its own expense and option either (i) procure the Buyer a royalty-free license to continue using such Software, results of Services or Products, or (ii) replace same with substantially equal but non-infringing equipment or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve Seller of its warranties and guarantees set forth in the Contract. Should the Seller not be able to perform one of the aforementioned options, the Buyer may rescind, in full or in part, the sales agreement following two unsuccessful attempts of subsequent performance or the contract to produce a work following one unsuccessful attempt of subsequent performance and return the object which is the subject-matter of the asserted breach to the Seller or reduce the purchase price.

## **15. WARRANTY**

- 15.1.** The Seller warrants that:
  - (a)** Products manufactured by the Seller under its own brands and supplied by the Seller will be free from defects in design, materials and workmanship arising under normal use and in accordance with any instructions issued by the Seller;
  - (b)** Services performed by Seller's personnel will be performed by qualified personnel with the reasonable care, skill and diligence, to be expected of similarly qualified personnel experienced in providing services similar to the Services and in accordance with the applicable generally accepted standards recognized by the industry; and
  - (c)** Software provided with the Products will perform its essential functions during the Warranty Term, as defined herein, or as otherwise applicable to the Products.
- 15.2.** In the event of any (warranty covered) defects or deficiencies in Products in subsection (a) above, or Services in subsection (b) above, or Software in subsection (c) above, the Seller shall re-perform the Services, or repair or replace the defective Products or part of the Products, or provide an update to the Software to correct the non-conformance, replace the Software with the latest available version containing a correction, at the Seller's sole discretion, or replace the media and the licensed Software residing on the media. Apart from that, the Seller shall have no other obligation to provide updates or revisions. The foregoing warranty coverage is contingent on the Buyer providing prompt notification to the Seller once such defect or deficiency is reasonably apparent to the Buyer.
- 15.3.** This warranty shall not apply to: (a) Services not provided by the Seller, (b) Products, Software or Services in case of malfunctions due to any repair or alteration by anyone other than the Seller (c) Products, Software or Services that were subjected to negligence, accident or damage by circumstances beyond the Seller's control or improper or any non-Seller operation, maintenance or storage, or to other than normal use or service, or (d) transfer of the Software from the device on which it was originally installed to another medium.
- 15.4.** The Seller shall bear no responsibility for the performance, repair or warranty of any Third Party Products to the extent this is not covered by the Contract; the Buyer shall look solely to third party vendor for all remedies and support with regard to such Third Party Products.
- 15.5.** Unless otherwise agreed, the Seller does not warrant that the Products, Software or Services will fulfil the Buyer's requirements. The Seller does neither represent nor warrant or guarantee that the Products, Software or Services are safe or free from flaws, damage, liens, viruses, disruptions,

hacking attacks or other intrusion attempts or cyber risks which might occur after the delivery of the Products, Software or Services. By using the Products, Software or Services, the Buyer acknowledges the provisions of this Article 15.1 and agrees that the Buyer accesses the Products, Software and Services at its exclusive discretion and risk and that the Buyer will be solely responsible for any damage to the Buyer's systems or assets as well as any losses that result from such access or use, provided that the Seller is not responsible therefor.

- 15.6.** The Seller does not warrant, in any way, that the Products will meet any targets and/or performance determined by the Buyer itself unless those targets and/or performance were agreed by the Parties. All terms such as "guarantees", "warranty" or "assured properties" which are mentioned in the contract documents shall be understood to mean quality features within the meaning of the statutory warranty provisions and not to mean additional manufacturer or performance guarantees, even if the term "guarantee" or phrases with the same meaning are used.
- 15.7.** The general warranty period for claims resulting from material and legal defects shall be one year from the delivery date pursuant to Article 5. If the order is placed via an electronic catalogue and longer warranty periods are indicated therein, such period shall instead be deemed agreed. However, if the date of delivery, as referred to above, cannot be determined for certain, the Warranty Term will start on the date of the manufacturing of the Product, as marked on the relevant Product, and last for twenty-four (24) months. The warranty period shall in any case not end prior to the expiry of 12 months after the actual delivery date.
- 15.8.** The repairing of, changes to, or replacement of the Product or part of it during the Warranty Term shall not cause the Warranty Term to be extended, with the exception of a defect corrected less than three (3) months before the expiry of the Warranty Term. In such case, the warranty covering the repaired, changed or replaced Product will be extended for up to three (3) months, as of the date of the delivery of the repaired, changed or replaced Product to the Buyer.
- 15.9.** The Buyer's claims for defects shall be subject to the Buyer's compliance with its statutory duties to inspect and to report defects, upon handover and with respect to hidden defects, as soon as the defective operation of the Product manifests itself. If an obvious defect becomes apparent upon handover, or at a later stage in case of hidden defects, the Seller must be notified accordingly in writing and provide all supporting documents of such defective operation, without undue delay. The notification shall be deemed without undue delay if made within two weeks. Should the Buyer fail to duly examine the delivery and/or to duly report defects, the Seller's liability for the defect which was not reported shall be excluded. Under this warranty, the Seller remedies the notified defects, at its expense, as soon as reasonably possible and using the means which it deems fit. Replaced parts once again become the Seller's property and shall be returned to the Seller at its first request.
  - (a)** At the Seller's request, the Buyer shall return the allegedly defective Product to the Seller, at the Buyer's own expense, within thirty (30) calendar days. After due examination, and if the default is covered by the warranty, the Seller shall bear the cost of delivering the replacement or repaired Products. If the Seller sends a replacement Product before completing the above procedure, it will be invoiced to the Buyer if it is subsequently established that: (i) the allegedly defective Product is not defective, after due examination, or (ii) in all cases, if the allegedly defective Product is not returned to the Seller within the above-mentioned period of thirty (30) calendar days.
  - (b)** The Seller can decide at its equitable discretion whether it is possible to perform repairs at the location where the Product is installed;
  - (c)** With the exception of contracts to produce a work or software leasing agreements, and unless the Seller is in default with the removal of a defect or if it is required to immediately remove the defect in order to maintain or restore the software, the Buyer shall not carry out the repair work by itself or have such work carried out by a third party unless it has the Seller's express agreement.
- 15.10.** All warranties provided herein are personal to, and intended solely for the benefit of, Buyer and do not extend to any third party, except in the case of transfer of the software in accordance with Article 14.8 or Article 22.

## 16. LIABILITY

- 16.1. Nothing in the Contract and the GTS shall limit or exclude the Seller's liability:
- (a) regarding injuries to life, body or health;
  - (b) for fraud or fraudulent misrepresentation and/or fraudulent concealment of a defect;
  - (c) for any breach of export regulations;
  - (d) for intent and gross negligence;
  - (e) in case of guarantees; or
  - (f) for claims under the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).
- 16.2. With regard to slight negligence, the Seller's liability shall be limited to the foreseeable damage that might typically occur under the Contract if an obligation is violated the fulfilment of which is essential for the proper performance of the Contract and on the fulfilment of which Buyer may regularly rely (cardinal duty).
- 16.3. Insofar as the Seller's liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of its employees, workers, staff members, representatives and vicarious agents.

## 17. SUSPENSION AND TERMINATION OF THE CONTRACT

- 17.1. Either Party may suspend the performance of its obligations if the other Party has not effectively performed its own obligations that are due, including but not limited to, Buyer's non-compliance with its obligations to secure the site where the Seller shall perform services or works, or non-payment by the Buyer of Seller's invoice.
- 17.2. If the Contract is suspended for a reason that is not attributable to the Seller, the Buyer shall reimburse the lost remuneration and the expenses which are not included in the remuneration incurred by the Seller as a result of such suspension in an appropriate amount. The expenses to be reimbursed may include, but are not limited to, handling, storage, insurance and labour costs, financial costs and the bank fees charged to extend the validity of the bank guarantees borne by the Seller and its subcontractors and, all costs generated by the extended delivery time. If the performance of the Contract is suspended for more than ninety (90) days for any reason whatsoever, the Seller will be entitled to rescind the Contract or, if the Contract is a continuing obligation, terminate the Contract for cause (außerordentlich).
- 17.3. If the Buyer fails to make any payment by its due date or fails to deliver input data or validate deliverables issued by the Seller, in accordance with the Contract, the Seller may rescind the Contract after a written notice to perform upon expiry of an appropriate notice period set therein or, if the Contract is a continuing obligation and if the omission constitutes a good cause (wichtiger Grund), terminate the Contract for cause (außerordentlich) if the Buyer fails to comply with the request. If the Buyer fails to take possession of the Products on the delivery date agreed upon, the Buyer shall bear all handling and storage costs until it takes possession of the Products. Each Party is entitled to unilaterally rescind the Contract if the respectively other Party fails to fulfil its obligations and the violation is not remedied within an appropriate period set by the respectively other Party or, if the Contract is a continuing obligation and if the omission constitutes a good cause (wichtiger Grund), to terminate the Contract for cause (außerordentlich). The provisions relating to confidentiality, intellectual property and liability will survive any termination or rescission, regardless of the reason for the termination or rescission.
- 17.4. The Seller may terminate or rescind this Contract with immediate effect by giving written notice to the Buyer if the Buyer:
- (a) has a receiver, administrator or provisional liquidator appointed;
  - (b) is subject to a notice of intention to appoint an administrator;
  - (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring);
  - (d) has a winding up order made by a court in respect of it;
  - (e) enters any composition or arrangement with creditors (other than relating to a solvent restructuring);
  - (f) ceases to carry on business; or
  - (g) has any steps or actions taken in connection with any of these procedures, and the Buyer will notify the Seller immediately upon the occurrence of any such event or circumstance.
- 17.5. Following rescission or termination of this Contract:

- (a) any conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
  - (b) all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of rescission or termination.
- 17.6.** Within ten (10) days after the date on which the declaration of rescission or termination of the Contract is received, each Party will:
- (a) return to the other Party all confidential information (including all copies and extracts) and all other property (whether tangible or intangible) of the other Party in its possession or control; and
  - (b) cease to use the confidential information of the other Party; provided that each Party may retain any confidential information of the other Party which it has to keep in order to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. Article 14 will continue to apply to retained confidential information.

## **18. DATA PROTECTION**

The Seller reserves the right to save and process the Buyer's data for its own purposes in compliance with current data protection legislation. The Buyer, its officers, employees, agents and representatives will keep all information and data relating to the Seller and the Contract safe and secure.

## **19. CONFIDENTIALITY**

- 19.1.** Each Party retains ownership of its Confidential Information.
- 19.2.** Each Party agrees to (i) protect other's Confidential Information in the same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; (ii) use the other's Confidential Information only in relation to the orders.
- 19.3.** Upon termination of the Contract or a relevant order or upon written request submitted by the disclosing Party, whichever comes first, the receiving Party shall return or destroy, at the disclosing Party's choice, all of the disclosing Party's Confidential Information.
- 19.4.** Neither Party shall, except with respect to their employees, contractors or agents with a need to know for purposes of the Contract, disclose to any person any Confidential Information of the other Party without the other Party's prior written consent, except where Confidential Information may be disclosed by law.
- 19.5.** Unless otherwise agreed in an order, these confidentiality obligations shall terminate five (5) years after the expiration of the relevant order or termination of the Contract, whichever comes first.

## **20. FORCE MAJEURE**

- 20.1.** Except for the Buyer's payment obligations, neither Party shall be liable for delays caused by conditions beyond their reasonable control or events occurring in or affecting the Seller's premises or business or those of its subcontractor and/or its suppliers, which may disrupt the organisation or business activity of the company and which the respective Party is not responsible for, ("Force Majeure"), provided notice thereof is given to the other Party as soon as practicable. Force Majeure shall include without limitation, act of God, lock-outs, strikes, illness, epidemic, pandemic, war, insurrection, riot, civil commotion, act or threat of terrorism, embargos, lightning, earthquake, fire, flood, storm or extreme weather condition, theft, malicious damage, strike, lockout, industrial dispute (whether affecting the workforce of a Party and/or any other person) breakdown or failure of plant or machinery or machinery accident, rejection of parts during the manufacturing process, interruption or delay in the transportation or procurement of raw materials, power or components, or any other event outside the control of the Seller, its subcontractors and/or its suppliers or any other consequences arising as a result of or in connection with the United Kingdom's withdrawal from the EU.
- 20.2.** All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations hereunder to an extension of the date of delivery of the Products

and Software or completion of the Services by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

## 21. COVID-19

- 21.1.** All or part of the Products and/or the Services to be delivered and/or performed, according to the present Contract (“Supplies”) are produced, delivered, performed in, and/or sourced from areas that are or may become affected by the COVID-19 pandemic (including variants) and/or a shortage or interruption or delay in the transportation or procurement of raw materials, power and/or components (“Circumstances”).
- 21.2.** Such Circumstances, even if known at the time of issuing or signing the present Contract, may trigger stoppage, hindrance or delays in the Supplier’s ability to produce, deliver, perform and/or source the Supplies.
- 21.3.** Consequently, notwithstanding any other provision of the Contract or order:
- (a)** The delivery schedule, performance schedule and/or lead times shall be deemed to be indicative and are provided for information purposes only. The Supplier shall inform the Buyer of any changes.
  - (b)** Such Circumstances shall be considered as a cause for excusable delay. The Supplier shall not be liable for any claims, costs or losses resulting from such delays including, without limitation, for delay penalties, liquidated or other damages. In addition, such delays shall not constitute grounds for termination for default.
  - (c)** If such Circumstances render the performance of the Contract or order burdensome and/or more onerous for the Supplier (including increased costs to perform), both Parties shall meet to adjust the Contract or order conditions, including pricing and scheduling conditions. In the event that the Parties are unable to agree such adjustments within 30 days of a request for a meeting from the Supplier, the Supplier shall be entitled to terminate the affected Contract or order, without liability. In such case, the Supplier shall be paid for all Supplies then already delivered or performed.

## 22. MODIFICATIONS

No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 23. ASSIGNMENT

The Buyer will not be entitled to assign, transfer, charge, hold in trust for any person or deal in any other manner with any of their rights under the Contract. This does not apply to claims for payment.

## 24. WAIVER

A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial, exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

## 25. SEVERANCE

If any of these GTS (including any exclusion from, or limitation of, liability set out in Article 16) is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from these GTS and this will not affect the remainder of these GTS which will continue in full force and effect.

## 26. PRESS RELEASES

Neither party shall issue any press release concerning Seller's work without the other consent. Notwithstanding the foregoing, seller may identify Buyer as a client of Seller, use Buyer's name and logo and release and announcement regarding the signing of the Contract. Seller may generally describe the nature of the Services in Seller's promotional materials, presentations, case studies, qualification statements and proposals to current and prospective clients.

## 27. NO COMPANY AND NO (COMMERCIAL) AGENCY RELATIONSHIP

- 27.1. Nothing in these GTS and no action taken by the Parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the Parties or give either Party authority to act as the (commercial) agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.
- 27.2. The Seller will perform the Services as an independent contractor and not as an employee of the Buyer and no staff member of the Seller is entitled to receive any remuneration, payments or other benefits from the Buyer which are typically part of an employment relationship. The Seller shall be responsible for all taxes and other expenses arising from the employment or independent contractor relationship between Seller and its personnel and the provision of services hereunder by such personnel to Buyer.
- 27.3. At all time and notwithstanding anything to the contrary herein or in an order, Seller retains full control over the methods, details, persons employed or otherwise used to perform the Services and any other means of performance of its obligations under an order and very the composition of the team assigned to the performance of the Services or make different arrangements to achieve completion of its obligations.

## 28. THIRD PARTY RIGHTS

The Parties do not intend that any term or provision of this Contract will establish any third-party rights.

## 29. RIGHTS AND REMEDIES

The Seller's rights and remedies set out in these GTS are in addition to and not exclusive of any rights and remedies provided by law.

## 30. APPLICABLE LAW - DISPUTES

The Contract which is subject to these GTS shall be governed by the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods of 1980 ("CISG"). Any dispute relating to any offer issued, or any sales agreement entered into, by the Seller, which cannot be settled out-of-court, shall be subject to the exclusive jurisdiction of the courts at the Seller's registered seat even in the event of summary proceedings, the introduction of third parties or multiple defendants.