

1. **GENERAL.** The sale of all goods, including hardware, firmware and software products (the "Contractual Products") furnished to Buyer hereunder and the provision of services concerning training, consulting, programming, maintenance, and other services shall be governed exclusively by these general terms and conditions along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller. This shall hold true regardless of whether such sale is effected by paper-based transactions or via facsimile or other forms of electronic data interchange ("EDI") or electronic commerce. General terms and conditions of Buyer which Buyer references in his order or otherwise shall not apply.

2. **DESCRIPTION OF (PROPERTIES AND) CONDITION OF GOODS AGREED CHARACTERISTICS.** The Specification of the Contractual Products is exclusively set forth in the relevant product description (the "Agreed Characteristics" - "vereinbarte Beschaffenheit"). Public statements concerning the Contractual Products will only form part of the Agreed Characteristics to the extent confirmed by Seller in writing. Technical data and information within the product description and the specifications shall not qualify as guarantee with regard to the Contractual Products' quality ("Beschaffungsgarantie") or as any other kind of guarantee, unless they have been confirmed as such by Seller in writing.

3. **PAYMENT TERMS.** Payments under this agreement shall become due upon Buyer's receipt of Seller's invoice. Interest charges apply at the rate of 8 % above the base rate p.a. Buyer may only offset payments with uncontested or finally adjudicated claims. All prices are exclusive of sales tax or any other taxes and customs duties which are to be borne by Buyer.

4. **DELIVERY TERMS.** Delivery terms are Ex Works Seller's plant or warehouse (per current Incoterms) or as otherwise agreed to as evidenced by Seller's order acknowledgment. In all cases title transfers to Buyer upon the earlier of Seller's delivery to Buyer or receipt by the carrier for transport to Buyer.

#### 5. **WARRANTY.**

(a) Defects. The Contractual Products shall be considered defective if at the time of transfer or risk and upon contractual use they (i) deviate from the Agreed Characteristics, or (ii) contain a defect of title (together "Defect").

(b) Investigations. Should it be established during an investigation in connection with a claim under this Section 5 that the Contractual Product did not contain a Defect then Seller shall be entitled to charge the costs of its investigation on a time and materials basis in accordance with Seller's then current rates

(c) Remedies. To the extent that a Contractual Product contains a Defect, Buyer shall set Seller a reasonable period to cure the Defect by repair or replacement ("Nacherfüllung") at Seller's discretion. Should Seller be unable to remedy a Defect within a reasonable period, Buyer shall be entitled to make use of its statutory remedies in accordance with the following. Buyer's right to lower the license fees ("Minderung") shall be excluded. Buyer's right to rescission shall relate to the relevant order of Contractual Products which contained the Defect. Prior to making use of its right to rescission Buyer shall grant Seller one final period to remedy the Defect notifying Seller that after the lapse of such period Buyer will not accept any further attempts of re-performance.

(d) Exclusion of Remedies. Buyer may not make use of its above mentioned remedies in case the Defect is caused by unauthorized modifications to the Contractual Products.

(e) Lapse Period. Buyer may make use of its rights in case of a Defect within 12 months after delivery of the Contractual Products.

(f) "Open Box" Products/Used Product. To the extent hard products are sold as "Open Box" (e.g., customer and distributor returns, factory refurbished or reconditioned, etc.) such Contractual Products are used products. "Open Box" products, while serviceable, may not reflect the latest series or revision.

Seller excludes any remedies for "Open Box" products except for re-performance ("Nacherfüllung"). Seller at its discretion may carry out re-performance either by repair or replacement. Buyer may only make use of its remedy to re-performance within 90 days of receipt of the relevant "Open Box" product.

(g) Buyer Specifications/Compatibility. Seller does not warrant and will not be liable for any design, materials, construction criteria or goods furnished or specified by Buyer (including that sourced from other manufacturers or vendors specified by Buyer). Any warranty applicable to such Buyer-specified items will be limited solely to the warranty, if any, extended by the original manufacturer or vendor directly or indirectly to Buyer. Seller does not warrant the compatibility of its Products with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Seller's published specifications or written quotation.

(h) Recyclable Materials. In keeping with environmental policies and practices, Seller reserves the right to utilize in its product manufacturing, repair and remanufacturing processes certain recyclable materials (e.g., fasteners, plastics and the like) or remanufactured parts equivalent to new in performance or parts which may have been subject to incidental use. However, such utilization will not affect any remedies based on Defects or published reliability statistics.

6. **LIMITATION OF LIABILITY.** Subject to the provision of Section 6(c) below Seller's liability for damage claims shall be restricted as follows:

(a) For slightly negligent breaches of material contractual duties Seller shall only be liable for damages typically foreseeable at the time of entering into the agreement except where the parties have agreed on a further limitation individually.

(b) Seller shall not be liable for slightly negligent breaches of non-material contractual duties or of other duties of care.

(c) This limitation of liability shall not limit any mandatory statutory liability, including liability under the German product liability act, liability based on guarantees or liability for personal injuries caused by negligence.

(d) Buyer shall make backup copies of its files in reasonable intervals, but at least once per day. Failure to comply with these obligations is deemed to be contributory negligence.

7. **RESALE OF THIRD-PARTY PRODUCTS.** To the extent that Seller also sells stand-alone third party products (products not integrated with Seller's products) to Buyer Seller excludes all remedies based on Defects. To the extent possible Seller will assign all remedies based on Defects to Buyer that Seller may have against the third party.

8. **LICENSED SOFTWARE AND FIRMWARE.** Use of Products comprised of software or firmware may be subject to Buyer's acceptance of additional terms and conditions set forth in separate Seller or third-party license agreements that will control to the extent necessary to resolve any conflict with the terms and conditions stated or otherwise referenced herein. In the absence of a separate Seller's license agreement, Buyer subject to payment of the relevant purchase price is granted a perpetual, non-exclusive, non-transferable license to use Seller's software or firmware only in object code form and with no rights to sublicense, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware except to the extent allowed by mandatory law.

9. **CHANGES AND SUBSTITUTIONS.** Buyer-requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior approval and adjustments in price, scheduling and other affected terms and conditions. In any event, Seller reserves the right to reject any change that it deems unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with Seller's design or manufacturing capabilities. Seller further reserves the right to

substitute using the latest superseding revision or series or equivalent Product having comparable form, fit and function.

**10. PACKING AND MARKING.** Buyer-specified packing or marking may be subject to additional charges not otherwise included in the price of the Products.

**11. WEIGHTS AND DIMENSIONS.** Published or advertised weights and dimensions are estimates or approximations only.

**12. PRICES.** Prices and other information shown in any Seller publication (including product catalogs and brochures) are subject to change without notice and to confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information.

**13. RETURNS.** All returns of Contractual Products will be pursuant to Seller's instructions. Returns of unused and resalable Contractual Products (not based on Defect remedies) for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return. Products returned under Defect remedies must be properly packed and shipped to Seller-specified locations. Shipping containers must be clearly marked per Seller's instruction. Notwithstanding the foregoing, all sales of "Open Box" Products and any stand-alone third-party products are final and do not qualify for non-Defect remedy return.

**14. ORDER CANCELLATION.** Cancellation by Buyer prior to shipment is permitted only by written notice and upon payment to Seller of reasonable cancellation and restocking charges, including reimbursement for associated costs. Cancellation charges associated with orders for custom Contractual Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Contractual Products.

**15. SERVICES.** Time and materials services will be provided in accordance with Seller's published services rates, including applicable overtime and travel time expenses, in effect at the date such services are provided, unless otherwise confirmed in Seller's written quotation or order acknowledgment. Billable service time includes travel time to and from the job site and all time Seller's representatives are available for work and waiting (whether on or off the job site) to perform the services. Unless expressly stipulated otherwise in Seller's written quotation or order acknowledgment, all services shall be performed as services within the meaning of Section 611 German Civil Code; Seller only undertakes to perform the services as such but does not guarantee any specific outcome. All services will be performed by appropriately skilled personnel employed or retained by Seller. For specific services additional terms and conditions of Seller may apply and such additional terms and conditions will control to the extent necessary to resolve any conflict with the terms and conditions stated or otherwise referenced herein.

**16. GOVERNMENT CLAUSES AND CONTRACTS.** Application of government contract regulations end clauses to the Contractual Products or the agreement evidenced by these terms and conditions are subject to the separate review and consent by an authorized representative at Seller's headquarters. Contractual Products sold hereunder are not intended to be used, nor should they be used, in any nuclear-related application either as a "Basic Component" as defined under United States nuclear regulations or under similar nuclear laws and regulations of any other country or otherwise.

**17. FORCE MAJEURE.** Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

**18. EXPORT CONTROL.** Contractual Products and associated materials supplied hereunder may be subject to various export laws and regulations, including but not limited to EU 1334/2000, EAR and ITAR regulations. It is the responsibility of the exporter to comply with all applicable laws and regulations. To the extent that Buyer has any questions regarding the application and scope of US export control laws and regulations, Buyer shall contact the Department of Commerce, Department of State or other regulating U.S. department in question. Notwithstanding any other provision herein to the contrary, in the event that U.S. or local law requires export authorization for the export or re-export of any Contractual Product or associated technology, no delivery can be made until such export authorization is obtained, regardless of any otherwise promised delivery date. In the event that any required export authorization is denied, Seller will be relieved of any further obligation relative to the sale and delivery of the Contractual Product(s) subject to such denial without liability of any kind relative to Buyer or any other party. Seller will not comply with boycott related requests except to the extent permitted by U.S. law and then only at Seller's discretion.

**19. DISPUTES.** The parties will attempt in good faith promptly to resolve any dispute arising hereunder by negotiations between representatives of the parties who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms hereof.

**20. GOVERNING LAW AND FORUM.** The agreement and all disputes arising hereunder will be governed by German law with the exception of the 1980 UN Convention on Contracts for the International Sale of Goods (CISG). Save as otherwise provided in the following the courts of Düsseldorf shall have exclusive jurisdiction for any claims under and in connection with this agreement. Seller may bring suit against Buyer also at any other court having proper jurisdiction over Buyer.

**21. ASSIGNMENT.** Buyer may not assign any rights or obligations under this agreement to a third party without the prior written consent of Seller. Seller may assign the agreement to a group company to the extent that such assignment does not affect Buyer's legitimate interests.

**22. ENTIRE AGREEMENT AND WRITTEN FORM REQUIREMENT.** These general terms and conditions (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller) represents the entire agreement between Buyer and Seller with respect thereto all supplements and changes to the agreement require written form and signature by the authorized representatives of the parties. Waiving this written form requirement equally requires written form.