



**1. INTERPRETATION**

For the purposes of these Terms and Conditions for the sale and supply ("Conditions"):

"Buyer" means the person, firm or company placing an order for purchase of Products and/or Services as identified in any such order or Quotation as the case may be.

"Conditions" means these terms and conditions of sale and supply.  
 "Contract" means the agreement between Supplier and Buyer arising as a result of Supplier's Quotation provided to Buyer, Buyer's submission of an order for Supplier's offered Products/Services and Supplier's acceptance (e.g., by means of an order confirmation) as well as any mutual agreement on Supplier providing Products/Services referring to these Conditions; such Contract shall be deemed to incorporate and be governed by these Conditions.

"Products" means goods agreed to be supplied by Supplier to Buyer under any Contract, including Software (if any).

"Quotation" means a document provided by Supplier describing Products and/or Services offered to Buyer, subject to these Conditions.

"Services" means any services, which Supplier has agreed to provide using reasonable care and skill under any Quotation or Contract, as applicable.

"Supplier" means the VI-grade GmbH having its registered address at: Im Tiefen See 45, 64293 Darmstadt, Germany.

**2. BASIS OF SALE**

THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS, WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER.

2.1 No term or condition of Buyer's order additional to or different from these Conditions shall become part of any Contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any Products delivered by Supplier, receipt by Buyer of any Services performed by Supplier or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision.

2.2 Any customization of Products, where Supplier's commercially available off-the-shelf products are modified in any way at Buyer's request or instruction, shall be provided pursuant to a rate schedule to be agreed upon by the parties and may be subject to additional terms.

**3. QUOTATIONS**

Prices and specifications referenced in Supplier's Quotations are for information only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Delivery dates are governed by Section 6.3.

**4. ORDERS**

By submitting an order to Supplier, Buyer agrees to be subject to these Conditions in their entirety. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted by Supplier, e.g. by means of an order confirmation.

**5. PRICES AND TAXES**

5.1 The prices for Products and Services will be as set out in the Contract or otherwise agreed between the parties in writing (for example in a framework agreement). As and when applicable to the Products sold and/or Services supplied under any Contract, prices do not include taxes, transport charges, insurance and export and/or import charges or duties, including without limitation sales taxes, value added tax, use or excise taxes, which taxes and other charges may, in Supplier's discretion, be added by Supplier to the price or billed separately and which taxes and other charges shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate. Buyer shall pay for taxes, transport charges, insurance, export/import charges and duties unless agreed otherwise in writing.

5.2 If, after the conclusion of a Contract, the Supplier provides services at the request of the Buyer, which are not covered by the Contract (for example, without limitation, to forward additional documents or certificates, to defer a shipment, to suspend Services, etc.), the Supplier may charge the Buyer for all external costs and internal expenses arising therefrom.

5.3 Where the Contract is invoiced in any currency other than Euro, each party has the right to claim adjustment the Contract price according to the most recent applicable rate of currency exchange.

5.4 Payment shall be effected by bank transfer except as provided differently in the Quotation, whereby cash payments cannot be agreed or accepted under any circumstances.

**6. SHIPMENT AND DELIVERY**

6.1 Unless otherwise agreed by both parties in writing, packaging, shipment and delivery shall be carriage and insurance paid to the place of destination as specified within the Contract (CIP in the meaning of the Incoterms 2020) whereby Supplier, in its sole discretion, may arrange for the delivery of Products and may invoice any costs related to export clearance, packaging, transport insurance and carriage thereof to the Buyer.

6.2 If Buyer is in default of receipt, if Buyer fails to timely provide agreed or otherwise necessary contributions for delivery (including without limitation information) or if such are wrong (including without limitation provision of an incorrect address by Buyer), or if delivery is delayed for other reasons for which Buyer is responsible (including without limitation where the site designated for delivery is closed during regular business hours), Supplier shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For such damage, a lump-sum compensation of 0.5% of the net order value per calendar week shall apply, beginning with the delivery date and up to a maximum of 10% of the net order value in the event of final non-delivery for above reasons. Supplier reserves the right to claim additional damages, if any; the lump sum is then to be credited against these damages. Buyer may prove that Supplier has incurred no damage at all or only significantly less damage than the aforementioned lump sum.

6.3 Any dates quoted for delivery of Products or provision of Services are approximate only until expressly confirmed as binding by the Supplier and Supplier shall not be liable for any delay howsoever caused, including without limitation delays described in Section 6.4.

6.4 Supplier shall not be responsible for delays caused by reasons not attributable to the Supplier, including without limitation: (a) force majeure events according to Section 17; (b) delayed or denied export license as described in Section 21, provided Supplier took commercially reasonable efforts to obtain such licenses; (c) conflicting sanctions or embargos; (d) delayed customs clearance; (e) lack of delivery by Supplier's upstream suppliers or vendors, provided Supplier took commercially reasonable efforts to ensure being supplied; (f) failed delivery as described in Section 6.2; (g) any deficiencies in the provision of agreed or necessary access, support or other contributions on part of the Buyer. Supplier shall inform Buyer of such delays. If such delays last longer than ninety (90) days, the affected part of a Contract may be terminated by either party without additional cost, and without liability to the other party.

6.5 Supplier reserves the right to make delivery of Products and provision of Services by instalments and to issue a separate invoice in respect of each instalment. When delivery is to be by instalments or Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason Buyer shall not be entitled to treat the Contract as a whole as repudiated.

6.6 Supplier may deliver Products in advance of any quoted or confirmed delivery date subject to such advance delivery being commercially reasonable for the Buyer and to giving reasonable advance notice to Buyer.

**7. RISK AND PASSING OF TITLE**

7.1 Risk of loss and damage to the Products shall pass to Buyer on delivery in accordance with Incoterm stated in Section 6.1 unless agreed otherwise by the parties in writing. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to Supplier immediately where the package is visibly damaged and within one working day of the date of delivery where internal damages are claimed.

7.2 Title to the Products delivered shall pass to the Buyer only upon receipt of payment in full of all amounts due by the Buyer to the Supplier. In case of breach of contract by the Buyer including, without limitation, default in payment, the Supplier is entitled to re-take possession of the goods.

7.3 Before passing of title, the Buyer shall only have the right to resell the Products delivered within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in Section 20 below. Moreover, the Supplier may withdraw such authority of reselling through written notice if the Buyer is in breach of any obligation owed to the Supplier under a Contract (particularly in



- payment default or compliance matters) or if the Supplier becomes aware of other incidents that give rise to reasonable doubts about the Buyers creditworthiness or ability to honour its payment commitments
- 7.4 The Buyer's right to process the Products delivered shall also be subject to the limitations set out in Section 7.3 above. The Buyer shall not acquire title to the goods resulting from fully or partly processing Supplier's Products; such processing shall be free of charge for the benefit of the Supplier (Supplier being the 'manufacturer' as per section 950 of the German Civil Code [*Bürgerliches Gesetzbuch*]). If the Supplier should, for whatever reason, lose its rights under the retention of title, it is hereby agreed between the parties that the Supplier, upon processing of the Products, shall acquire title of the resulting goods and the Buyer shall remain custodian of such goods free of charge.
- 7.5 If the Products in which the Supplier has retained title shall be inseparably assembled or mixed with goods that are third party property, then the Supplier shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the Products delivered by the Supplier under retention of title and the invoice value of the other goods.
- 7.6 Products which the Supplier delivered under retention of title in accordance with Section 7.2 as well as Products which the Supplier shall acquire sole or co-title in accordance with Section 7.4 and/or Section 7.5 shall be regarded as "*Retained Products*" for the purposes of the following paragraphs under this Section 7.
- 7.7 The Buyer hereby assigns to the Supplier all claims arising from the resale of the Retained Products. Such claims shall also include claims against the bank which, within the scope of such resale, shall have issued or confirmed a letter of credit for the benefit of the Buyer acting as reseller. The Supplier hereby accepts such assignment. If the Retained Products shall be a processed good or a mixed stock, where, in addition to the Products delivered by the Supplier, only such goods exist that are either the Buyer's property or a third-party property as a result of a (simple) retention of title, then the Buyer shall assign to the Supplier all of the claim arising from the resale. In the other case, i.e. in the event of a conflict between pre-assignment claims by other suppliers, the Supplier shall be entitled to receive any resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of the Products concerned and the other processed or mixed goods.
- 7.8 Where Supplier's claims for payments of Products delivered are secured through the assignment and retention by more than 110 %, any surplus of receivables and/or Retained Products shall, upon demand of the Buyer, be released from retention whereby the selection of the Products covered by such release shall be in the Supplier's reasonable discretion.
- 7.9 The Buyer shall be authorised to collect any outstanding debt arising from the resale of Retained Products. Such authorisation to collect shall cease in the cases referred to in Section 20 below. In addition, the Supplier may revoke Buyer's authorisation to collect if the Buyer is in breach of any obligation owed to the Supplier under a Contract (particularly in payment default) or if the Supplier becomes aware of other incidents that give rise to reasonable doubts about the Buyers creditworthiness or ability to honour its payment commitments. If the authorisation to collect ceases or is revoked by the Supplier, the Buyer shall, upon Supplier's request, without undue delay specify to the Supplier the debtors of the claims assigned under Section 7.7 and provide to the Supplier with all information and documentation necessary for collection by the Supplier.
- 7.10 In the event of third-party action against Retained Products or against any outstanding debts resulting from claims assigned under Section 7.7, the Buyer immediately shall notify such third party of Supplier's ownership/right thereto and shall inform the Supplier thereof. The costs of remedies against such third-party action shall be borne by the Buyer.
- 7.11 If the Buyer is in breach of any obligation owed to the Supplier under a Contract (particularly in payment default) the Buyer shall be obliged to immediately return to the Supplier, upon Supplier's first request, all Retained Products and assign to the Supplier any related handover claims against third parties. Retaking possession of Retained Products or related enforcement actions against third parties shall not be regarded as termination or cancellation of the Contract concerned.
- 7.12 In the cases referred to in Section 20 below, the Buyer shall, upon Supplier's request, without undue delay specify to the Supplier the debtors of the claims assigned under Section 7.7 and provide to the Supplier all information and documentation necessary for collection by the Supplier.
- 8. SERVICES**
- 8.1 Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Contract.
- 8.2 Buyer shall, upon Supplier's reasonable request and otherwise as required, provide Supplier with all agreed or necessary information, access to site and materials to enable Supplier to provide Services in accordance with the terms of any relevant Contract. Buyer will be responsible for the completeness and accuracy of all such information and materials provided.
- 9. TERMS OF PAYMENT**
- 9.1 Each shipment of Products may, in Supplier's reasonable discretion, be treated as a separate transaction and Buyer may be invoiced on shipment thereof. For Products being stand-alone software, the Buyer may be invoiced upon conclusion of the Contract. Notwithstanding the foregoing, if the Products are to be accepted by the Buyer (either upon delivery, or following an installation by the Supplier or by a third party acting on Supplier's behalf), Buyer may be invoiced in accordance with the following payment schedule, unless otherwise set out in the Quotation:
- 40% of the price upon Buyer's receipt of Supplier's order confirmation;
  - 40% of the price upon delivery of the Products in accordance with Section 6. hereof;
  - 10% of the price after installation of the Products in accordance with Section 11. hereof;
  - 10% of the price after acceptance of the Products in accordance with Section 12. hereof.
- 9.2 In the event of a delay in the delivery or acceptance that is not attributable to Supplier, payment shall not be affected and Buyer shall pay the full amount or the instalments, if any, based upon the initially agreed upon delivery or acceptance date.
- 9.3 For Services, Supplier shall be entitled to invoice Buyer on the effective date of the respective Contract, unless stated differently in the Quotation. Terms of payment shall be net thirty (30) days from date of invoice for Products and Services unless agreed otherwise.
- 9.4 Without the Supplier's express written and prior consent, the Supplier shall not be obliged to provide any bonds, bank guarantee, letters of credit, collaterals or other securities to the Buyer. In any case, Supplier may invoice any costs incurred with contracting, maintaining or otherwise related to such securities to the Buyer.
- 9.5 All amounts due under a Contract shall be paid in full by Buyer without claiming deduction, withholding, set-off or any other counterclaim, save as may be required by law. Payments shall be effected directly from Buyer. Payment by third parties shall require the express written consent of the Supplier.
- 9.6 If the Supplier becomes aware of incidents that give rise to reasonable doubts about the Buyers creditworthiness or ability to honour its payment commitments, Supplier may, in its sole discretion, request from Buyer full or partial payment in advance, or the provision of a reasonable security for payment. In such case, the obligations on part of the Supplier under a Contract shall be suspended until Buyer fully effected such payment or security.
- 9.7 If Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to Supplier, Supplier shall be entitled to: (a) suspend or cancel further delivery of Products and/or the provision of Services (or any part thereof) under the Contract concerned or any other Contract between the parties, (b) claim damages, and (c) recover interest on the unpaid amount of 9 percentage points over the respective base interest rate.
- 9.8 Buyer agrees and acknowledges that, should Buyer fail to pay any sum due and payable to Supplier, Supplier may take all legally required and equitable efforts to collect such debt including but not limited to employing lawyers and/or third-party collections agents. Any fees or costs of these collection efforts shall be chargeable to Buyer.
- 10. PRODUCTS**
- Supplier may modify specifications of Products (including without limitation parts, components and material used) provided the modifications do not adversely affect performance of the Products.
- 11. INSTALLATION AND MAINTENANCE OF THE PRODUCTS**
- 11.1 If installation of the Products or the provision of maintenance is a requirement of the Contract, the performance of such work shall be subject to the Buyer properly fulfilling the following provisions at the Buyer's expense and responsibility: (a) safe and secure climate controlled on-site storage so that Products and Supplier's tools (as applicable) are protected against theft and any damage or



deterioration; any item lost or damaged during the storage period shall be repaired or replaced at Buyer's sole expense; (b) the timely and sufficient execution and completion of the preparatory works in accordance with all applicable safety, electrical and building codes as well as with Supplier's requirements; (c) the availability of Buyer's site to Supplier without obstacles in due time to enable Supplier to start installation or maintenance at the scheduled date, whereby in case Supplier's personnel involved in such work should be required by Buyer to undergo specific training or certification or Buyer having to pay an access fee of any kind prior to entering Buyer's site, Supplier may invoice any costs related thereto to the Buyer; (d) Buyer taking all necessary and beneficial measures to protect Supplier's personnel and property when entering Buyer's site and guarantee that conditions in this site are in conformance with Supplier's health, environment and safety standards as set forth in Supplier's respective policy which will be provided to the Buyer upon request; (e) the availability of the manpower and equipment necessary to place the Products in their final location or to provide the scheduled maintenance; (f) the acquisition of all permits, licenses, rights of way, etc. of the pertinent authorities required for or in connection with installation or maintenance to be performed; and (g) the availability of all visas or any other permits necessary for Supplier's personnel and for the import and export of tools, equipment, and materials necessary for installation or maintenance to be performed.

- 11.2 If any of the above provisions are not, not properly or not timely complied with, or Supplier has to interrupt or delay its installation or maintenance works for reasons not attributable to Supplier, the period of completion shall be extended accordingly and any and all additional costs resulting therefrom shall be for Buyer's account.
- 11.3 Supplier assumes no liability and offers no warranty for the fitness or adequacy of the premises or the utilities available at the premises, in which the Products are to be installed, used or stored.
- 11.4 Information provided by Supplier's employees will be the basis for calculating the working time. Supplier may demand a written confirmation that the work has been properly performed.
- 11.5 The Buyer should set the date for performing the work so that it is completed before weekends (if possible on Friday, or on Saturday, if necessary) or public holidays. If the work continues over a weekend or one or several public holidays, and no work is possible or necessary on these days, Supplier's personnel will be entitled to travel home for the weekend. The costs thereof will be borne by the Buyer. This will also apply to consecutive public holidays or public holidays adjoining a weekend. Supplier's personnel have been instructed to strictly observe the maximum admissible working hours, breaks and rest periods pursuant to the applicable working time provisions (in Germany in particular according to the German Working Time Act [*Arbeitszeitgesetz*]).
- 11.6 If excess of the maximum admissible working hours is permissible in exceptional cases on certain conditions, and if the Buyer utilizes the services of Supplier's personnel in excess of the generally admissible working hours, then the Buyer shall inform Supplier immediately and confirm to it – in a form that meets the requirements of the respectively applicable regulations – compliance with the conditions for justified excess of the maximum working hours, as well as confirming the amount of overtime. Work on Sundays and public holidays may only be performed in exceptional cases, as set forth in the respectively applicable provisions. In such cases, too, the Buyer will be required to inform Supplier immediately and to issue a respective confirmation.
- 11.7 The Buyer shall take all measures for protection of Supplier's personnel required in accordance with the general and special accident prevention regulations, in particular with the accident prevention regulations of the institution for the precision and electrical engineering industry [*Berufsgenossenschaft der Feinmechanik und Elektrotechnik*] as well as the German Ordinance on Hazardous Substances [*Gefahrstoffverordnung*]

## 12 INSPECTION AND ACCEPTANCE

- 12.1 Where neither installation nor acceptance is a requirement of the Contract, Buyer shall inspect the Products without undue delay after delivery using an inspection method at least equivalent to the then latest version of ISO 9001 and notify the Supplier of any discovered defects within one working day after such inspection is completed.
- 12.2 Where installation is not a requirement of the Contract, but acceptance is, Buyer shall carry out the agreed acceptance tests (or, in the absence of such agreement, the tests Buyer may reasonably consider necessary) and notify the Supplier of any discovered defects without undue delay after such test is completed. If no such notification is received by Supplier within ten (10) working days after delivery, the

Products shall be deemed accepted. If Supplier receives a notification which Supplier, in its reasonable opinion, considers unjustified, Supplier shall inform Buyer thereof and the Products shall be deemed accepted upon sending out this information to Buyer. If Supplier receives a justified notification, Supplier shall as a sole remedy correct the shortcomings as soon as reasonably possible, and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.

- 12.3 Where both installation of the Products and acceptance thereof are requirements of the Contract, Supplier shall notify Buyer when the installed Products are ready for acceptance testing, inviting Buyer within a reasonable time to attend the agreed acceptance test (or, in the absence of such agreement, Supplier's standard tests to demonstrate relevant compliance of the Products and of the installation with the agreed specifications). Buyer's attendance at the acceptance test shall be at Buyer's sole expense. If Buyer fails to attend acceptance testing on the date notified, Supplier will commence with the tests according to Supplier's standard test procedures whereby these tests shall be considered performed in the presence of Buyer. By passing the relevant acceptance test, the Products concerned are accepted. If acceptance testing on the date notified is prevented due to reasons within Buyer's sphere (including non-granting of access) without good cause claimed by the Buyer which the Supplier, in its reasonable opinion, considers justified, acceptance is deemed to have taken place with the notification of readiness for acceptance testing. If the acceptance test is justifiably, reasonably and in good faith not (deemed) passed, Supplier shall as a sole remedy correct the shortcomings as soon as reasonably possible, and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.
- 12.4 Minor defects or deviations not affecting the operational use of the Products installed shall not entitle the Buyer to reject acceptance and shall not obstruct or suspend acceptance testing. The Supplier remains responsible to remedy such defects.
- 12.5 During the warranty period set forth in Section 13, Buyer shall notify Supplier of any hidden or latent defect immediately after its discovery.

## 13. WARRANTY

- 13.1 Unless otherwise stipulated in the provisions of this Section 13, the statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly/installation or defective instructions) to the Products. In all cases, the statutory provisions on the sale of consumer goods (sections 474 et seq. of the German Civil Code [*Bürgerliches Gesetzbuch*]) and the rights of the Buyer under separately issued guarantees, if any, shall remain unaffected.
- 13.2 The basis of Supplier's liability for defects shall be the agreement reached on the quality and the intended use of the Products (including their accessories and instructions). Such agreement consists of the descriptions and specifications of the Products that are detailed in the individual Contract and that have been publicly announced by the Supplier at the time of the conclusion of this Contract (in particular in catalogues or on its Internet websites). Descriptions and specifications in the Contract shall take precedence over public statements. Public statements by or on behalf of the Supplier (in particular in advertising or on labels) shall take precedence over third-party statements. If there is no such agreement on the quality, the existence of a defect shall be determined in accordance with the statutory provisions (section 434 para. 3 of the German Civil Code [*Bürgerliches Gesetzbuch*]).
- 13.3 If Products with digital elements or other digital content are concerned, the Supplier shall only be obliged to provide and, if necessary, update the digital content to the extent that this expressly results from a quality agreement pursuant to Section 13.2. Public statements by other third parties shall not be relevant to the Supplier's warranty in this respect.
- 13.4 Buyer's warranty rights (warranty claims) shall require that the Buyer fulfils its duties as per Section 12. The Supplier is generally not liable for defects of which the Buyer is aware at the time of conclusion of the Contract or is not aware due to gross negligence (section 442 of the German Civil Code [*Bürgerliches Gesetzbuch*]).
- 13.5 In the event of a defect in quality, the Supplier may choose whether to remedy the defect by repair or replacement. In the event of defects of title, the Supplier may choose whether to acquire the right for the Buyer to continue using the Products or modify it in such a way that no third-party rights are infringed. If the remedy chosen by the Supplier is unreasonable for the Buyer in the individual case, the Buyer may refuse it. The Supplier's right to refuse subsequent performance under the statutory conditions shall remain unaffected.



- 13.6 The Supplier shall be entitled to make any subsequent performance dependent on the Buyer's payment of the purchase price due. The Buyer shall, however, be entitled to withhold a reasonable part of the purchase price in relation to the defect
- 13.7 The place of fulfilment for any subsequent performance shall be the originally agreed delivery location of the Product concerned. Any costs and expenses for the provision of warranty to Products being increased due to a Product being transported to a location other than the agreed delivery location shall be borne by the Buyer.
- 13.8 The Buyer shall give the Supplier the time and opportunity necessary to make such repairs or to replace such Product, in particular to hand over the Products allegedly defective to the Supplier for inspection. If replacement is chosen, the Buyer shall, at the Supplier's request, return the defective Products in accordance with the statutory provisions without being entitled to demand return. Subsequent performance shall not include the dismantling, removal or disassembly of the defective Product or the installation, fitting or assembly of a defect-free Product if the Supplier was not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs shall remain unaffected.
- 13.9 The Supplier shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these Conditions if a defect actually exists. Otherwise the Supplier shall be entitled to claim reimbursement from the Buyer of the costs incurred as a result of the unjustified request for remedy of the defect, if the Buyer knew or could have known that there was in fact no defect.
- 13.10 In urgent cases, in particular when operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect on their own and to demand from the Supplier reimbursement of the expenses objectively necessary and actually spent for this purpose. The Supplier shall be notified immediately, if possible in advance, of such self-remedy. The right to self-remedy shall not exist if the Supplier would be entitled to refuse such remedy in accordance with the statutory or Contractual provisions.
- 13.11 If a reasonable period of time to be set by the Buyer for subsequent performance expires without the defect being cured or such deadline is dispensable according to the statutory provisions, the Buyer may withdraw from Contract or reduce the purchase price according to the statutory provisions. There shall be no right of withdrawal in the case of an insignificant defect.
- 13.12 Buyer's claims for reimbursement of expenses pursuant to section 445a para. 1 of the German Civil Code [*Bürgerliches Gesetzbuch*] shall be excluded unless the last contract in the delivery chain is a purchase of consumer goods sections 478 and 474 of the German Civil Code [*Bürgerliches Gesetzbuch*] or a consumer contract for the provision of digital products (section 445c sentence 2, section 327 para. 5 and section 327u of the German Civil Code [*Bürgerliches Gesetzbuch*]). Even in the event of defects in the Products, the Buyer shall only be entitled to claim damages or reimbursement of expenses in accordance with Section 14 below.
- 13.13 Section 6.4 shall apply mutatis mutandis for Supplier's warranty performances and time shall not be of the essence in this regard.
- 13.14 When Services were specifically agreed as an obligation to achieve a specific result capable of acceptance ("Service contract" [*Werkvertrag*] pursuant to section 631 of the German Civil Code [*Bürgerliches Gesetzbuch*]), the warranty provisions for Products shall apply in respect of such results. For all other Services, there shall be no warranty.
- 13.15 The general limitation period for claims arising from defects in quality and defects in title shall be two years from delivery. Deviating from section 438 para. 1 No. 3 of the German Civil Code [*Bürgerliches Gesetzbuch*], unless otherwise agreed in writing by the Supplier and the Buyer, the limitation period shall be one year from delivery for the following Products: simulators; Hardware-in-the-Loop test benches and all related hardware; all system upgrades, repairs, and spare parts. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
- 13.16 If the Products are a building or an object that has been used for a building in accordance with its customary use and has caused defectiveness of such building, the limitation period shall be five years from delivery in accordance with the statutory provisions (section 438 para. 1 no. 2 German Civil Code [*Bürgerliches Gesetzbuch*]). Other special statutory provisions on the limitation period (in particular according to section 438 para. 1 no. 1, according to section 76 para. 3 and according to sections 444, 445b of the German Civil Code [*Bürgerliches Gesetzbuch*]) shall remain unaffected.
- 14. LIABILITY**
- 14.1 The Supplier shall be liable without limitation according to statutory law: (a) for intentional conduct, including fraudulently concealed defects, (b) for gross negligence, (c) for injuries to life, limb or health, (d) for claims based on the German Product Liability Act [*Produkthaftungsgesetz*], and (e) if and to the extent the Supplier has given a guarantee.
- 14.2 Subject to Section 14.1, the Supplier shall only be liable for slight negligence [*leichte Fahrlässigkeit*] if the Supplier is in breach of such material contractual obligations, the fulfilment of which facilitate the due performance of the Contract, the breach of which would endanger the purpose of the Contract, and the compliance with which the Buyer may constantly trust in. In other cases of slight negligence the Supplier shall not be liable.
- 14.3 If the Supplier is liable for slight negligence under Section 14.2 above, such liability shall be limited to the damage that if foreseeable and typically occurring under the Contract in question.
- 14.4 In the cases referred to in Section 14.3 above, the maximum amount of damage shall be determined as follows: The parties assume that the foreseeable and typically occurring damage under a Contract will not exceed 125% of the respective net Contract value. The Supplier's maximum liability in such cases shall therefore be limited to 125% of the relevant net Contract value. The foregoing maximum liability shall not apply if the Buyer indicates a higher value of foreseeable and typically occurring damage (at least in text form) when placing the order, at the latest prior to commencement of performance under the Contract. The liability limit shall then be the value notified by the Buyer. The Supplier shall be entitled to terminate the relevant Contract with immediate effect and without compensation to the Buyer, in case the value notified by the Purchaser exceeds 250% of the net Contract value – or six (6) million Euro, if this sum is lower than 250% of the net Contract value.
- 14.5 The provisions on liability in this Section 14 shall also apply in the event of breaches of duty by or for the benefit of persons whose fault the Supplier is responsible for in accordance with statutory provisions, in particular his legal representatives and vicarious agents.
- 14.6 For Supplier's obligation to pay compensatory damages to or reimburse expenses of the Buyer resulting from infringement of third-party intellectual property rights, Section 16 shall be decisive.
- 15. SOFTWARE**
- Supplier shall at all times have and retain all rights, title and ownership of all computer programs, firmware, programming routines, and documentation relating thereto supplied by Supplier for use with the Products or as Products of their own (stand-alone Products), and of all copies thereof made by Buyer or the end user of the Products (collectively "Software"). Use of any Software shall be governed by the terms of the Supplier's general End User License Agreement (EULA), unless a special license agreement is agreed separately, or upon download, installation and/or run of such Software.
- 16. INTELLECTUAL PROPERTY RIGHTS**
- 16.1 Notwithstanding the delivery of the Products and the passing of title in any Products and subject to Section 15 and 16.3, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, Buyer any intellectual property rights in or to any Products and/or Services.
- 16.2 Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, source code, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions or in the relevant Contract.
- 16.3 The Supplier grants to the Buyer a non-exclusive, non-transferable and non-sublicensable licence to use such of the Works as are necessary, and to the extent necessary, for the end user to obtain and utilize the intended benefit of the Products and/or Services. Source code will not be provided or escrowed unless specifically agreed upon between the parties; Supplier may invoice any costs related to escrow to the Buyer.



- 16.4 If any claim is made against Buyer that the Products or Services infringe the patent, copyright or other intellectual property rights of any third party granted by the competent intellectual property office(s) in the country of delivery or in force by law, Supplier shall be liable to the Buyer for damages and expenses only provided that: (a) Supplier is given full control of any proceedings or negotiations in connection with any such claim; (b) Buyer shall not make any admission of liability and shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (c) except pursuant to a final award, Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Supplier; (d) Buyer shall do nothing, which would or might vitiate any insurance policy or cover, which Buyer may have in relation to such infringement and shall use its best efforts to recover any sums due thereunder; (e) Supplier shall be entitled to the benefit of, and Buyer shall accordingly account to Supplier for, all damages and costs (if any) awarded in favour of Buyer, which are payable by, or agreed with the consent of Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (f) without prejudice to any duty of Buyer, Supplier shall be entitled to require Buyer to take such steps as Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for, which Supplier is liable to the Buyer under this Section 16.4, which steps may include (at Supplier's option) terminating use of the Product or Service, accepting from Supplier non-infringing, modified or replacement Products or Services.
- 16.5 Supplier shall have no obligation or liability under Section 16.4 insofar as the infringement arises from: (a) any additions or modifications made to the Products and/or Services in question without Supplier's prior written consent; (b) any information provided by Buyer to Supplier including without limitation any specifications, drawings, models or other descriptions equivalent thereto; (c) performance by Supplier of any work required to any Products, or performance of any Services, in compliance with Buyer's information referred to in Section 16.5.b or any other of Buyer's instructions; (iv) a combination with or an addition to equipment not manufactured or developed by Supplier; or (v) the use of Products beyond that scope established under Section 13.2 above or otherwise approved in writing by Supplier.
- 16.6 Without prejudice to Section 14.1, this Section 16 states the entire liability of Supplier and the exclusive remedy of Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the performance of any Contract. This Section 16 shall be subject to the limitations of liability as set forth in Section 14.
- 16.7 Any use of Supplier's intellectual property objects by the Buyer or third parties as the input data for the Artificial Intelligence (AI) chatbots, any other AI-generating software or tools, as well as for any programmable content-generating algorithms is not allowed without prior written permission of the Supplier.
- 17. UNAVAILABILITY OF PRODUCTS AND SERVICES (FORCE MAJEURE)**
- 17.1 Notwithstanding anything to the contrary in these Conditions, Supplier shall be excused from, and shall not be liable for, failure of performance to the extent due to causes beyond Supplier's control and without Supplier's fault or negligence, including, but not limited to the following events (regardless of whether they affect the Supplier itself or its upstream supply chain): war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization, civil war, acts of terrorism, acts of sabotage, acts of piracy, acts of god including natural disasters (including unusually severe weather and floods), epidemics and pandemics (including without limitation those caused by the SARS-CoV-2 virus and its current or future variants) as well as related lockdown measures, acts of government in either sovereign or contractual capacity, explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy, general labour disturbance such as boycott, strike and lock-out. In order to be excused from performance Supplier shall use commercially reasonable efforts to promptly submit written notice thereof stating an estimate of the probable period of delay. Supplier shall use all commercially reasonable efforts to overcome the effects of such event and to limit its impact as much as possible. Any date/period for delivery of Products and provision of Services is automatically extended for as long as such event continues. If the delay lasts longer than ninety (90) days, the affected part of a Contract may be terminated by either party without additional cost and without liability to the other party.
- 17.2 If, due to such circumstances or events described in Section 17.1, the Supplier has insufficient stocks to meet all its commitments vis-à-vis its customer, the Supplier may apportion available stocks between such customers at Supplier's sole discretion.
- 18. CONFIDENTIALITY**
- 18.1 The parties shall follow the provisions of any existing Non-Disclosure Agreements and adhere to all applicable trade secret protection laws, statutes and regulations.
- 18.2 The parties shall treat all non-public proprietary business information having a confidential nature received through any audit performed under these Conditions or any Contract, including the EULA, as confidential information being covered under a Non-Disclosure Agreement concluded between them. If there is no Non-Disclosure Agreement in place between the parties, the parties agree to negotiate in good faith an appropriate non-disclosure agreement prior to an audit.
- 18.3 Buyer shall notify Supplier without undue delay after becoming aware of any suspected or actual data breach or other cyber security incident involving Supplier's data by contacting Supplier at [hbkitsecurity@hbkworl.com](mailto:hbkitsecurity@hbkworl.com).
- 19. CANCELLATION, RESCHEDULING AND TERMINATION**
- 19.1 Contracts relating to the supply of Products may be cancelled, varied, amended or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and Buyer shall indemnify Supplier against the cost of all labour and materials used in connection with the Contract so cancelled, varied, amended or rescheduled and against all loss, damage cost, charges and expenses suffered or incurred by Supplier as a result of that cancellation, variation, amendment or rescheduling; including, where the purchase of a certain amount of items within a certain period of time was a condition for a lower price per item being applicable, reimbursing the Supplier for the difference between the discounted price and the list price applicable at the time of delivery. Where the Contract is varied or amended by request of the Buyer accepted by the Supplier, the Supplier may adjust accordingly the total and/or per item price. Contracts for Services shall commence on the commencement date identified in the relevant Contract and, subject to earlier termination in accordance with Section 19, shall continue in force for the initial term as prescribed in such Contract and thereafter for any renewal period (if any) set out in the Contract and thereafter without limit of period unless or until terminated by either party in accordance with this Section 19.
- 19.2 Either party may terminate part of a Contract relating to the provision of Services for convenience by giving sixty (60) days' notice to the other party. Where a longer term of a Contract relating to the provision of Services is a condition for a lower price being applicable, the Supplier reserves the right to charge a penalty fee to the Buyer for the early termination for convenience, calculated based on the price that would have been applicable if the Contract had a term counted from the commencement date to the termination date.
- 19.3 Either party may terminate for cause parts of a Contract relating to the provision of Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services, which is incapable of remedy or fails to be remedied.
- 19.4 Supplier may terminate parts of Contracts relating to delivery of Products and/or provision of Services immediately at any time by written notice to Buyer if (a) the Buyer violates Supplier's Code of Business Ethics available at: [Ethical business - Spectris](#), and/or (b) the Buyer or its controlling shareholders or its ultimate beneficiary owner(s) becomes subject of sanctions or embargos, and/or (c) the Buyer is otherwise subjected to legal proceedings with a potentially adverse effect on Supplier's reputation.
- 19.5 Upon termination or expiry of any Contract for Services, each party shall return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same. This shall not apply if, to the extent that and for as long as such items are (a) required for the exercise or performance of continuing rights or obligations under the relevant Contract, (b) required to prove proper performance under the Contract, and/or (c) subject to statutory, administrative or regulatory retention obligations.
- 20. INSOLVENCY OF BUYER**
- The Supplier may – without prejudice to any other rights or remedies available to the Supplier – treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to Buyer in any of the following circumstances: (a) if insolvency, impending insolvency or illiquidity – or a comparable situation under applicable foreign law – exists in the Buyer; (b) if a insolvency procurator or insolvency administrator – or a comparable person under applicable foreign law – is appointed over the assets of the Buyer; (c) if



a resolution is made for its dissolution or liquidation of the Buyer (other than for the purpose of solvent amalgamation or reconstruction); or (d) if the Buyer ceases, or threatens to cease to carry on business. If any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable if the above conditions are met (notwithstanding any previous agreement or arrangement to the contrary).

## 21. EXPORT CONTROL

- 21.1 Buyer understands that where Supplier's obligations under the Contract to supply any Products or Services are subject to governmental export control laws and regulations, the performance of this Contract and Buyer's use or export of any Products delivered by Supplier shall be conditional upon the grant of all necessary permits or licences. Buyer shall provide all information and documentation, including end user certification, not in Supplier's possession which may be used in the necessary applications for permits or licences concerning deliveries to Buyer. Supplier shall be relieved from its obligations to Buyer to supply any Products or Services to the extent that applications for permits or licenses for the same are refused by a relevant governmental authority or where sanctions are introduced.
- 21.2 Buyer shall not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, tranship (including stop in port), transport, or otherwise dispose of any Supplier's Product, material, Software (including source code) or technology to, via, or for: (a) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to relevant sanctions at any time; (b) any other individual or entity identified on a denied or restricted party list; or (c) any activity or end-use restricted by applicable laws without first obtaining all required government authorisations at Buyer's own expenses.
- 21.3 Supplier shall have the right, at its option, to suspend performance under or terminate any Contract if: (a) applicable sanctions are imposed; (b) the Buyer is designated as or determined to be a denied or restricted party under applicable law; or (c) a circumstance described in Section 21.1 exists.
- 21.4 Buyer shall not sell, export, or re-export (directly or indirectly) to the Russian Federation and/or to the Republic of Belarus, or for use in these countries, any Products supplied by the Supplier that fall under Article 12g of the Council Regulation (EU) No 833/2014 and shall undertake all efforts (including implementation of adequate monitoring mechanism) to ensure that third parties within Buyer's commercial chain comply with this clause. Buyer shall immediately inform Supplier of any issues in applying this clause and make available all relevant information on compliance with it. Violation of these obligations shall constitute a material breach of the Contract, and the Supplier shall be entitled to seek all appropriate remedies, including but not limited to immediate termination of the Contract.

## 22. DATA PROTECTION

- 22.1 The Buyer represents, warrants and undertakes that, to the extent required by applicable law, it has complied and shall continue to comply at all times with the EU General Data Protection Regulation 2016/679, the Regulation (the "GDPR"), the Electronic Communications Data Protection Directive (2002/58/EC) and any other applicable laws in any jurisdiction relating to the processing or protection of personal data and privacy, including where applicable the guidance and codes issued by any relevant supervisory authority from time to time.
- 22.2 The parties expect that under each Contract a processing of personal data is conducted solely on behalf of its own. In case that a party suspects that either its activities or the activities of the other party under a Contract create a data processing relationship in the sense of Art. 28 GDPR, or in case a supervisory authority or a court considers the Parties to be in such relationship, the parties will enter into a separate data processing agreement meeting the requirements of Art. 28 GDPR. In the absence of such separate data processing agreement, the provisions of the Annex to the 'Commission Implementing Decision (EU) 2021/915 on standard contractual clauses between controllers and processors under Article 28 (7) of Regulation (EU) 2016/679' shall govern such relationship.
- 22.3 The Buyer shall reimburse the Supplier for all losses, costs, claims, expenses or damages howsoever arising, which the Supplier may incur, or for which it may become liable as a result of or in connection with any breach or failure by the Buyer or its representatives to comply with this Section 22.

## 23. DISPOSAL

- 23.1 The Supplier or its authorized representative shall take reasonable efforts to create the possibility for the Buyer to dispose of the delivered Products in accordance with the statutory regulations after said Products are no longer in use.
- 23.2 The Buyer shall in no case transfer the delivered Products or parts of the delivered Products, which have been classified exclusively for commercial use under the German Electrical and Electronic Equipment Act [*Elektro- und Elektronikgerätegesetz*] to any private third parties.
- 23.3 The Buyer warrants that it will fully comply with its obligations under the German Electrical and Electronic Equipment Act [*Elektro- und Elektronikgerätegesetz*].

## 24. OWNERSHIP AND UTILIZATION OF MACHINE DATA

- 24.1 All process data that is automatically generated in the context of the manufacturing process of Products or provision of Services (e.g. process parameters, process programs, equipment configuration (including all changes), process results, condition of equipment, log files, failure messages etc.), (hereinafter referred to as "Machine Data") is owned by the Supplier. For the avoidance of doubt, the Machine Data shall not include information and data generated as the standard result of the intended use of the supplied Products or provided Services (output data received as the result of use).
- 24.2 Buyer may use the Machine Data only in the context of maintenance, monitoring, repair or failure analysis in connection with the supplied Products or provided Services, and without the right of its copying or reproduction, unless Supplier provides its prior written consent for this. For these limited purposes, the Machine Data shall be read by the Buyer on its own, without the support of the Supplier.
- 24.3 Utilization of the Machine Data by the Buyer beyond the abovementioned scope, especially use of the Machine Data for development and realization of business models of the Buyer, passing of the Machine Data to a third party or any reverse engineering of Machine Data is not allowed.

## 25. GENERAL

- 25.1 These Conditions and any Contract shall be governed by the laws of Germany without regard to its conflict of law principles and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties agree to settle any claims or disputes arising out of or in connection with these Conditions or any Contract by amicable negotiations. Exclusive place of jurisdiction shall be Darmstadt, Germany.
- 25.2 Failure by Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right.
- 25.3 If any Conditions are found to be invalid, this shall not affect the rest of the Contract, which shall remain in full force and effect.
- 25.4 Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or obligations, in whole or in part without the written consent of Supplier.
- 25.5 Changes and other modifications to any Contract must be in writing and signed by the parties; Clause 5.2 remains unaffected.
- 25.6 All notices given under these Conditions shall be sent to the address of the other party set forth in the Quotation or in Contract. Notice will be deemed to be properly given if sent in writing or in text form. Notices shall be deemed to have been served (a) on the next working day from delivery if sent by email or fax, and (b) on the day of receipt if sent by express courier or by registered mail.

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