

General Terms and Conditions

General Terms and Conditions of HORIBA FuelCon GmbH
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I. General terms of delivery and payment

1. General provisions

The General Terms and Conditions of Delivery and Payment apply to business transactions with companies, legal entities under public law and special funds under public law (hereinafter referred to as the "Customer").

(1)

All deliveries and services of HORIBA FuelCon GmbH (hereinafter: HORIBA) are based on the General Terms and Conditions of Delivery and Payment and any separate contractual agreements. Deviating or conflicting terms and conditions shall not apply unless HORIBA has expressly agreed to their validity. The following terms and conditions shall also apply if HORIBA or its authorized representative performs the service without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from these terms and conditions.

(2)

Contracts or other binding agreements only come into being when HORIBA confirms the order in writing or when the order is executed. If the customer does not accept HORIBA's offer within one month, HORIBA is entitled to withdraw the offer. HORIBA reserves the right to make minor deviations from the offer for technical reasons even after the offer has been accepted.

(3)

HORIBA reserves its unrestricted property and copyright exploitation rights to cost estimates, drawings and other documents and similar information of a physical and non-physical nature (hereinafter: documents) - including in electronic form. The Documents may only be made accessible to third parties with the prior consent of HORIBA. If the contract is not awarded, the documents must be returned immediately upon request. Sentences 1 and 2 of this paragraph apply accordingly to the customer's documents; however, these may be made accessible to third parties to whom HORIBA has permissibly transferred deliveries.

(4)

HORIBA also reserves its unrestricted property and copyright exploitation rights to all specifications, algorithms, source codes, documentation, working principles and methodologies as well as all upgrades - also in electronic form - transmitted within the scope of the delivery or service.

(5)

These terms and conditions shall also apply to all future services until new terms and conditions come into force.

2. Prices, terms of payment

(1)

Unless otherwise agreed in writing, the prices shall apply in accordance with the FCA delivery terms (INCOTERMS® 2020) including handover of the goods to the first carrier as well as packaging and plus the applicable statutory value added tax.

(2)

Unless otherwise agreed in writing, payment must be made within 14 calendar days of the invoice date without any deductions. In the event of late payment, HORIBA may charge interest on arrears at the statutory rate. The assertion of further damages is not excluded.

(3)

Unless otherwise agreed in writing, payments shall be made free of charge to the HORIBA account specified in the invoice.

(4)

If HORIBA only becomes aware of a significant deterioration in the financial circumstances of the customer after conclusion of the contract, which jeopardizes HORIBA's claim to consideration, HORIBA is entitled to demand the processing of orders not yet executed step by step if the consideration to which HORIBA is entitled is not secured.

(5)

The customer may only offset claims by HORIBA against undisputed or legally established claims.

(6)

Unless otherwise agreed in writing, invoices shall be paid in 3 payment stages: 30% upon order; 60% after delivery and 10% after acceptance by the customer.

(7)

In the event of partial deliveries, HORIBA reserves the right to issue partial invoices. The same delivery and payment conditions listed here shall apply to partial invoices as to the total invoice.

(8)

Unless otherwise agreed in writing, all payments shall be made in EURO (€).

3. Delivery, delay in delivery

(1)

The delivery time results from the agreements between the contracting parties. Compliance with the delivery periods presupposes that all commercial and technical questions between HORIBA and the customer have been clarified and that the customer has fulfilled all obligations incumbent on him, in particular in connection with compliance with the agreed terms of payment and the necessary design freezes (functional design freeze, mechanical and electrical design freeze). If these conditions are not fulfilled in time, the deadlines are extended appropriately; this does not apply if HORIBA is responsible for the delay.

(2)

The delivery deadline is deemed to have been met if the delivery item has left HORIBA's works or readiness for dispatch has been notified by the time it expires.

(3)

Unless otherwise agreed in the contract, the goods shall be delivered FCA (Free Carrier) in accordance with INCOTERMS® 2020. This also applies to software that is transmitted on a data carrier or that is delivered pre-installed on the hardware provided for this purpose.

(4)

Partial deliveries are permissible insofar as these are reasonable for the customer.

(5)

If HORIBA's failure to meet the delivery deadlines is due to force majeure, e.g. mobilization, war, riot or similar events, e.g. strike, lockout or pandemic events, the deadlines shall be extended accordingly. The same applies in the event of late or improper delivery to HORIBA.

(6)

If HORIBA is finally unable to perform the entire contract before the transfer of risk, the customer may withdraw from the contract after giving prior written notice. In addition, the customer may withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the customer must pay the contract price for the partial delivery. The same applies if HORIBA is unable to perform. If the impossibility or inability to perform occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, he remains obliged to counter-performance. Further claims arising from delay in delivery are determined exclusively in accordance with clause 9.2 of these terms and conditions.

(7)

If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer shall be charged for the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch or acceptance.

(8)

If a Letter of Credit (hereinafter referred to as L/C) has been agreed as a payment term, the agreed delivery period shall commence on the day on which the L/C is opened by the customer. A delay in the opening of the L/C shall lead to a corresponding delay in the delivery date.

(9)

If dispatch or delivery is delayed by more than one month after notification of readiness for dispatch at the request of the Purchaser, the Purchaser may be charged a storage fee of 0.5% of the price of the items of the Supplies for each additional month or part thereof, but not more than a total of 5%. The contracting parties are at liberty to prove higher or lower storage costs.

(10)

Upon receipt of the delivery, the customer must also observe the instructions and regulations provided separately by HORIBA for the receipt of the goods.

(11)

Please note that delivery times may be extended at short notice due to global supply chain problems. For this reason, HORIBA is currently unable to agree binding delivery times/deadlines. All dates and deadlines are therefore non-binding!

4. Transfer of risk

(1)

The transfer of risk to the customer takes place in accordance with the contractually agreed terms of delivery in accordance with INCOTERMS® 2020. Subsequent agreements deviating from the contractually agreed terms of delivery must be made in writing and confirmed by HORIBA.

(2)

If dispatch or acceptance is delayed or does not take place as a result of circumstances for which HORIBA is not responsible, the risk passes to the customer on the day of notification of readiness for dispatch or acceptance.

(3)

At the customer's request and expense, HORIBA will insure deliveries against the usual transportation risks. If this insurance is not notified to HORIBA by the customer with sufficient advance notice, the customer bears full responsibility for all damage that may arise from the usual transportation risks.

(4)

Final acceptance of the products should take place without delay on the day of acceptance, or alternatively immediately after HORIBA has announced that the products are ready for acceptance. The customer may not refuse acceptance if no significant defect is found.

(5)

If final acceptance of the products do not take place but the customer nevertheless starts to use the products, the transfer of the risk to the customer shall be deemed to have occurred at the time of first use and the Article 7 shall start to apply.

5. Retention of title

(1)

The objects of the deliveries (reserved goods) remain the property of HORIBA until all its claims against the customer arising from the business relationship have been fulfilled. If the value of all security interests to which HORIBA is entitled exceeds the amount of all secured claims by more than 10%, HORIBA will release a corresponding part of the security interests at the customer's request; HORIBA is entitled to choose between different security interests for the release.

(2)

For the duration of the retention of title, the customer is prohibited from selling, pledging or transferring ownership by way of security. The customer must inform HORIBA immediately in the event of seizure, confiscation or other dispositions or interventions by third parties.

(3)

In the event of breaches of duty by the customer, in particular default in payment, HORIBA is entitled to withdraw from the contract in addition to taking back the goods after the unsuccessful expiry of a reasonable deadline set for the customer. The statutory provisions on the dispensability of setting a deadline remain unaffected. The customer is obliged to surrender the goods. The taking back or assertion of the retention of title or the seizure of the reserved goods by HORIBA does not constitute a withdrawal from the contract, unless HORIBA has expressly declared this.

(4)

The application for the opening of insolvency proceedings entitles HORIBA to withdraw from the contract and to demand the immediate return of the delivery item.

6. Software usage

(1)

If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

(2)

The customer may only reproduce, revise or translate the software to the extent permitted by law (§§ 69 a ff. UrhG). The customer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior written consent of HORIBA.

(3)

All other rights to the software and the documentation, including copies, remain with HORIBA or the software supplier. The granting of sublicenses is not permitted.

7. Material defects

HORIBA is liable for material defects as follows:

(1)

All parts or services that have a material defect must, at HORIBA's discretion, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk. This only applies to defects that are discovered in the first 12 months after delivery. The discovery of such defects must be reported to HORIBA immediately in writing. Replaced parts become the property of HORIBA.

(2)

As an option, HORIBA offers support and repair / problem solving at the customer's location or at the installation site. In the case of on-site assignments, the customer bears all labor and travel costs as well as all costs associated with the repair, including allowances and travel expenses and costs for accommodation for HORIBA employees. In addition, the customer shall grant HORIBA access to the products to be repaired on the agreed day. Costs arising from waiting times, delays and obstructions on site shall be borne by the customer.

(3)

After consultation with HORIBA, the customer must give HORIBA the necessary time and opportunity to carry out all repairs and replacement deliveries that HORIBA deems necessary; otherwise HORIBA is released from liability for the resulting consequences. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case HORIBA must be notified immediately, does the customer have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from HORIBA.

(4)

HORIBA must be given the opportunity to repair or replace the goods within a reasonable period of time.

(5)

If HORIBA - taking into account the statutory exceptions - allows the deadline set to elapse fruitlessly, the customer has the right to withdraw from the contract within the framework of the statutory provisions.

(6)

Of the costs arising from the repair or replacement delivery, HORIBA shall bear the costs of the repair or the replacement part - insofar as the complaint proves to be justified. If it is necessary to send the defective goods to HORIBA for repair or replacement, the customer is responsible for any necessary import and export declarations and bears all costs incurred in connection with the return shipment; in addition, the customer must observe the instructions and regulations for the return shipment of the goods provided separately by HORIBA. All components must be properly packed by the customer for the return shipment!

(7)

Claims for defects do not exist in the case of only insignificant deviation from the agreed quality, only insignificant impairment of usability, natural wear and tear or damage caused after the transfer of risk as a result of unsuitable or improper use, incorrect assembly or commissioning by the customer or third parties, excessive use, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground or damage caused by special external factors. The Seller shall not be liable for damage caused by improper or inappropriate use, faulty assembly or commissioning by the Buyer or third parties, faulty or negligent handling, excessive strain, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground or which arise due to special external influences which are not assumed under the contract, or in the event of non-reproducible software errors. Furthermore, operating materials are not covered by the warranty.

(8)

Unauthorized repairs, external work or modifications of any kind, improper use as well as the alteration, removal or manipulation of attached type plates and/or serial numbers on the delivery item will result in the immediate cancellation of warranty or guarantee claims.

(9)

HORIBA is not liable for improper rectification by the customer or third parties and the resulting consequences. The same applies to modifications made to the delivery item without HORIBA's prior consent.

8. Industrial property rights and copyright, defects of title

(1)

Unless otherwise agreed and to the best of HORIBA's current knowledge, HORIBA is obliged to make the delivery free of industrial property rights and copyrights of third parties (hereinafter referred to as "property rights") only in the country of the place of delivery. If a third party raises justified claims against the customer due to the infringement of property rights by deliveries made by HORIBA and used in accordance with the contract, HORIBA is liable to the customer within the period specified in clause 9.3 as follows:

a.

HORIBA will, at its own discretion and expense, either obtain a right of use for the deliveries concerned, modify them in such a way that the property right is not infringed or replace them. If this is not possible for HORIBA under reasonable conditions, the customer is entitled to the statutory rights of withdrawal or reduction.

b.

The aforementioned obligations of HORIBA exist only insofar as the customer immediately notifies HORIBA in writing of the claims asserted by the third party, does not acknowledge an infringement and leaves all defensive measures and settlement negotiations to HORIBA's discretion. If the customer ceases to use the delivery in order to minimize damages or for other important reasons, he is obliged to point out to the third party that the cessation of use does not constitute an acknowledgement of an infringement of property rights.

(2)

Claims of the customer are excluded insofar as he is responsible for the infringement of property rights.

(3)

Claims by the customer are also excluded if the infringement of property rights is caused by special specifications of the customer, by an application not foreseeable by HORIBA or by the fact that the delivery is modified by the customer or used together with products not supplied by HORIBA.

(4)

In the event of infringements of industrial property rights, the claims of the customer regulated in Section 8.1 a) shall apply accordingly, as well as the provisions of Section 7.4.

(5)

In the event of other defects of title, the provisions of clause 7 shall apply accordingly.

(6)

Further claims or claims other than those regulated in this clause 8 of the purchaser against the supplier and his vicarious agents due to a defect of title are excluded.

9. Liability, statute of limitations

(1)

If the delivery item cannot be used by the customer in accordance with the contract due to the fault of HORIBA as a result of omitted or faulty execution of suggestions and advice given before or after conclusion of the contract or due to the breach of other contractual secondary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of clauses 7., 8. and 9. 2 apply accordingly to the exclusion of further claims by the customer.

(2)

HORIBA shall only be liable for damage that has not occurred to the delivery item itself - for whatever legal reasons

- a.
with intent,
- b.
in the event of gross negligence on the part of the owner / executive bodies or senior employees,
- c.
in the event of culpable injury to life, limb or health,
- d.
in the case of defects which he has fraudulently concealed or the absence of which he has guaranteed,
- e.
in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of culpable breach of material contractual obligations, HORIBA shall also be liable for gross negligence on the part of non-executive employees and for slight negligence. In the latter case, liability is limited to reasonably foreseeable damage typical of the contract. Further claims are excluded.

(3)

All claims of the customer - on whatever legal grounds - shall lapse after 12 months. The statutory periods shall apply to claims for damages pursuant to Section 9. 2 a - e.

10. Export control

(1)

If it turns out before delivery that a contractual obligation to deliver and perform is not possible for HORIBA as a result of national and international export control mechanisms, in particular valid embargoes or other imposed sanctions, HORIBA may withdraw from the contract.

(2)

In the event of a withdrawal from the contract in accordance with 10.(1), any claim for damages or other rights of the customer in this connection are excluded.

(3)

Delays due to export controls or approval procedures will extend the agreed delivery time unless HORIBA is responsible for the delay.

(4)

The customer is responsible for all applicable regulations of national or international (re-)export control laws in case of resale or transfer to third parties of products or services provided by HORIBA to the customer.

11. Applicable law, place of jurisdiction

(1) - In the event that the customer is a German company...

The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered office of HORIBA. However, HORIBA is also entitled to bring an action at the customer's place of business.

(2) - In the event that the customer is an international company ...

The legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

I. 11. Severability clause

Should individual provisions of these General Terms and Conditions of Delivery and Payment be or become invalid, the remaining provisions shall remain valid. The invalid provision shall be replaced by a clause that most closely reflects the intentions of the contracting parties.

II. Purchasing and commissioning services

II. 1. General information

In the event of the purchase or commissioning of services from third parties, the legal relationship between the contractor (hereinafter: Supplier) and HORIBA FuelCon GmbH (hereinafter: Customer) shall be governed exclusively by the General Terms and Conditions for the Purchase and Commissioning of Services.

(1)

We do not recognize any terms and conditions of the supplier that conflict with or deviate from our General Terms and Conditions; they are expressly rejected. Unconditional acceptance of order confirmations or deliveries shall not constitute acceptance of such terms and conditions.

(2)

With the first delivery subject to these General Terms and Conditions for the Purchase and Commissioning of Services, the Supplier acknowledges their exclusive validity for all further orders.

II. 2. Offer, order

(1)

The supplier's offers must be written in German and with net prices in euros.

(2)

Costs for packaging, loading, freight, postage, insurance/transport insurance, shipping costs are to be shown separately if the client has to bear these as agreed.

(3)

Unless otherwise agreed in writing, the prices stated in the Supplier's offer shall be binding for three months from the date of the offer.

(4)

Orders by the Client shall be placed exclusively by means of the Client's order form and in writing. In urgent cases, orders may be placed by telephone, but shall only be deemed to have been finally placed subject to a subsequent written order.

(5)

The order shall be deemed to be in order if it refers to the supplier's offer or if a copy of the offer is enclosed with the order.

(6)

All orders are expressly placed to the exclusion of any offsetting by other companies.

(7)

The supplier can only accept the order within a maximum period of two weeks. If the order is not confirmed in writing within the period from the order date, the client is no longer bound by the order.

(8)

The supplier must send a single copy of the order confirmation to the customer by separate post. It may not be enclosed with the goods.

(9)

The client reserves its property rights and copyrights to illustrations, calculations, drawings, computations and other documents (hereinafter referred to as "documents"). They may not be made accessible to third parties without the express written consent of the client. The Documents are to be used exclusively for production based on the order. After completion of the order, the documents must be returned to the client without being requested to do so. They are to be kept secret from third parties; in this respect, the provision in section II.10 paragraph 1 shall also apply.

II. 3. Prices, scope of services, terms of payment

(1)

The price stated in the order is binding. Unless otherwise agreed in writing, the price includes delivery "free domicile" including packaging, loading, freight, postage, insurance/transport insurance, shipping costs and all necessary taxes. The return of packaging requires special agreement.

(2)

Invoices shall only be processed by the Client if, in addition to the company name and order number in accordance with the order, the exact description of the scope of delivery, in particular the article, type and quantity, are stated on the invoice. The supplier must send the invoice separately; it may not be enclosed with the goods.

(3)

The due date of a payment claim requires a verifiable invoice.

(4)

The supplier is obliged to transfer ownership of the delivered parts of the work, the materials, the components or the purchased item to the client or to provide security for this. Only after fulfillment of these obligations shall the payment claim become due.

(5)

The Supplier shall provide its delivery or service in accordance with the latest rules of technology, applicable safety regulations and the agreed technical data and parameters.

(6)

The supplier assures that all delivery items and service contents are his property and are unencumbered and free from all third-party rights. Ownership is transferred upon handover or installation. By accepting the order, the supplier assumes the obligation to indemnify the customer with regard to the goods to be delivered or services to be rendered from legal claims of domestic or foreign third parties, which may also arise from patents, designs, copyrights or other rights. This also includes any resulting legal costs, compensation payments and costs incurred due to conversion and redesign work. In addition, the provisions of sections II.7 and II.8 shall apply.

(7)

Unless otherwise agreed in writing, the Client shall pay after delivery or performance by the Supplier as follows:

- a.
Three days after receipt of invoice with 5% discount or
- b.
14 days after receipt of invoice with 3% discount or
- c.
30 days after receipt of invoice with 2% discount or
- d.
60 days net after receipt of invoice.

Payment shall be made exclusively by bank transfer or by acceptance - free of charge for the supplier.

(8)

The client reserves the right to offset due claims against the supplier.

II. 4. Packaging, shipping, documents, quality

(1)

The commissioned services must be packaged and transported in such a way that damage is excluded. The client reserves the right to make stipulations regarding the packaging, the choice of means of transport, the transport route and the transport insurance.

(2)

The supplier is obliged to procure all necessary accompanying documents, consignment notes, supplier's declarations, test reports and other documents at its own expense and to submit them to the client in good time. The supplier shall indicate at least the company name and order number on all required documents in accordance with the order; if the supplier fails to do so, the customer shall not be responsible for delays in processing.

(3)

The costs and damages arising from non-compliance with statutory or agreed shipping, packaging or marking regulations shall be borne by the supplier, unless he can prove that he is not at fault.

(4)

Only the qualities and characteristics of the delivered goods or services specified by the client shall be accepted. Decisive for the assessment of the quality of a delivery is its condition on arrival at the Client's incoming goods inspection department; the acceptance protocol shall apply to services rendered. A delivery or service of a quality other than that agreed shall entitle the Client to a reduction in price in accordance with the statutory provisions. In addition, Section II. 7 shall apply.

II. 5. Delivery, transfer of risk

(1)

The delivery time specified in the order or the specified time of handover/completion of the service or a delivery or handover deadline agreed outside the order shall be binding. The delivery date shall exclusively be the date of arrival of the delivery or service at the delivery address specified by the client. In the event of non-compliance with the deadlines, default in delivery or performance shall occur without a reminder.

(2)

Unless otherwise agreed in writing, delivery shall be made "free domicile" to the delivery address stated in the order, on working days from 7.30 am to 4.00 pm. If acceptance is required, the ordered service shall be accepted on site at the delivery address stated in the order.

(3)

For deliveries or services rendered before the delivery date defined by the client, the goods shall be stored temporarily under reservation and without any obligation for the client until the delivery date defined in the order occurs.

(4)

If a call-off order has been concluded with the supplier, the supplier undertakes to provide the call-off quantities in accordance with the specified delivery dates.

(5)

The delivery bill must be enclosed with the goods; in addition to the company name and order number as per the order, it must also contain the exact description of the scope of delivery, in particular the article, type and quantity.

(6)

The supplier is obliged to inform the client immediately in writing if circumstances arise or become apparent to him which result in a delay in the agreed delivery time or the agreed time of handover.

(7)

In the event of default, the client shall be entitled to demand a lump-sum compensation for default amounting to 0.5% of the order value per week or part thereof, but not more than 5% of the order value. In addition, the client reserves the right to extend the payment term by 5 days for each day of delay in delivery if agreed deadlines are not met. Further claims remain reserved.

(8)

The acceptance of delayed deliveries or services does not constitute a waiver of claims for compensation.

(9)

Delivery quantities deviating from the order will only be accepted after express written agreement.

(10)

Deliveries already packaged for export shall only be checked by the client for external damage. The supplier shall be responsible for the correct content, quantity, quality, packaging, etc. Section II.7 shall apply in all other respects.

(11)

If the supplier makes one or more partial deliveries for a contractually agreed service, the service shall only be deemed to have been rendered after complete delivery / provision of the service. The additional costs incurred by partial deliveries, e.g. transportation, packaging and insurance, shall be borne by the Supplier. The Client's claims arising from the contractually agreed delivery or service, in particular the warranty claim, shall remain unaffected by partial deliveries.

(12)

The risk shall pass to the client upon delivery of the ordered service to the delivery address specified by the client. Delivery shall only be deemed to have taken place when the delivery has been accepted by the client's personnel. In the case of a contract for work and materials (delivery and installation), all risk for the entire scope of the order shall remain with the supplier until acceptance of the complete system by the end customer / client. The risk is then transferred directly from the supplier to the end customer.

II. 6. Retention of title, tools, software

(1)

The Client does not accept any reservation of title of the Supplier, regardless of its nature.

(2)

If the Supplier receives tools, test equipment, etc. (hereinafter: tools) from the Customer for the purpose of executing the order, it shall be obliged to treat these with the necessary confidentiality and care in accordance with the Customer's instructions and to return them to the Customer at the latest after the order has been fulfilled. The Supplier has no right of retention whatsoever to the Tools. The supplier may only make the tools available to third parties for use in accordance with the contract. The supplier is obliged to insure the tools provided by the customer for the purpose of fulfilling the order at replacement value against fire, water damage and theft at its own expense. At the same time, the Supplier hereby assigns to the Customer all claims for compensation arising from this insurance; the Customer hereby accepts the assignment. In the event of infringements by the Supplier, the Client reserves the right to claim damages.

(3)

If the delivery contains software, the Supplier shall grant the Customer a simple right of use, unlimited in terms of content, territory and time, to reproduce, distribute, publicly reproduce or make available the software, including the documentation supplied, for use in the control of machines and machine parts, tools, the monitoring of processes and parameters (also by third parties) in accordance with Sections 15 et seq. and 69 c of the German Copyright Act (UrhG). The granting of the right of use serves in particular for the use of the software in machines and machine parts manufactured by the client and supplied by the client to third parties. Pursuant to Sections 69 c No. 2, 69 d (1) UrhG (German Copyright Act), the Client or its contractual partners are entitled to process the respective software or have it processed for the purposes specified in sentence 1 and to reproduce, distribute, publicly reproduce or make this processing accessible (also for use by third parties). All other rights to the software and the documentation shall remain with the supplier or the software manufacturer.

II. 7. Liability for defects, product liability, indemnification, liability insurance cover

(1)

The supplier guarantees the careful and proper fulfillment of the order. Acceptance of the delivery by the Client shall be subject to a quantity, quality and compliance check as well as a check of the warranted characteristics. Any defects discovered shall be notified by the Client immediately after discovery; in this respect, the Supplier waives the objection of delayed notification of defects.

(2)

The client shall be entitled to the full statutory claims for defects. The choice of the type of subsequent performance shall be the sole responsibility of the client. The right to compensation, in particular the right to compensation in lieu of performance, is expressly reserved.

(3)

The supplier must remedy the defect without delay. If he fails to fulfill this obligation even after a reminder and the setting of a reasonable grace period, the customer shall be entitled to remedy the defect himself or have it remedied by a third party at the supplier's expense.

(4)

The limitation period for material defects shall be 24 months from the transfer of risk; a limitation period of 10 years shall apply to defects of title. The limitation period for claims due to a specific defect shall be suspended by a written notice of defects from the client until the defect has been remedied. The suspension of the limitation period ends in accordance with the statutory regulation in § 203 BGB. Subsequent performance shall cause the limitation period to recommence. In the event of defects of title, the Supplier shall also indemnify the Client against any existing third-party claims.

(5)

If the goods are ordered by the Client for the purpose of resale or for the manufacture of its own goods, the warranty period shall commence at the time of the commencement of the warranty period of the manufactured end product, but no later than 12 months after delivery of the goods to the Client.

(6)

If the Client incurs costs as a result of the defective delivery, in particular transport, travel, labor and material costs or costs for an incoming goods inspection exceeding the usual scope, the Supplier shall bear these costs. In addition, the Client is entitled to demand compensation for expenses which the Client has to bear in relation to its customers, because the latter has a claim against the Client for reimbursement of the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs.

(7)

Insofar as the Supplier is responsible for product damage at the Client's customer, it shall be obliged to indemnify the Client against third-party claims for damages upon first request insofar as the cause lies within its sphere of control and organization. If the cause of the damage lies within the Supplier's area of responsibility, the Supplier shall bear the burden of proof in this respect. In such cases, the supplier shall also bear all costs and expenses, including the costs of any legal action or recall action.

(8)

The Supplier undertakes to maintain product liability insurance with a lump sum cover of at least € 2.5 million per personal injury/property damage; if the Client is entitled to further claims for damages, these shall remain unaffected.

II. 8. Property rights

(1)

The Supplier shall be liable for claims arising from the infringement of granted or registered industrial property rights when the goods and services are used in accordance with the contract. He shall indemnify the Customer against all claims arising from the use of such rights. With the delivery of an item protected by copyright, the Customer shall receive from the Supplier a simple, unrestricted right of use in all types of use.

(2)

The Supplier's obligation to indemnify relates to all expenses necessarily incurred by the Client from or in connection with the claim by a third party.

(3)

The limitation period is ten years, calculated from the conclusion of the contract.

II. 9. Accident prevention regulations

(1)

The client is subject to the accident prevention regulations of the Employer's Liability Insurance Association for Precision Mechanics and Electrical Engineering (name change from Jan 08). The supplier must inform the client of any additional accident prevention regulations to be observed. The Supplier shall be responsible for instructing its own personnel and any personnel provided by the Client with regard to compliance with all the aforementioned accident prevention regulations.

(2)

The Supplier and the Client shall inform each other of the persons responsible for compliance with the safety regulations in the respective companies.

II. 10. Confidentiality, data protection, withdrawal from the contract, contractual penalty

(1)

The Supplier undertakes to keep strictly confidential all information from the supply relationship with the Client, in particular technical data, documents, plans, samples, drawings, data carriers, reference quantities, prices, products and product developments, current and future research and development projects of the Client's customers as well as company data (hereinafter: Information), unless they are generally known, lawfully acquired from third parties or independently developed by third parties; all Information must also be used exclusively for the purposes of the delivery. The Supplier shall oblige any subcontractors accordingly.

(2)

The client shall store data of its suppliers in a data processing system within the framework of the statutory provisions of the Federal Data Protection Act, insofar as this is necessary for business purposes.

(3)

Within the framework of the statutory provisions, we are entitled to withdraw from the contract in particular if

a.

the supplier is in default with the provision of its service or

b.

the supplier objectively lacks creditworthiness. This is to be assumed in particular if an application for the opening of insolvency proceedings has been filed, these have been opened or rejected for lack of assets or the supplier has taken an oath of disclosure and this jeopardizes our claim to performance.

(4)

The Client reserves the unrestricted right to agree a contractual penalty with the Supplier for the provision of a service or the omission of an action.

II. 11. Applicable law, place of jurisdiction

(1)

The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the Client. However, the Client shall also be entitled to bring an action at the Supplier's registered office.

(2)

The legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

II. 12. Severability clause

Should individual provisions of these General Terms and Conditions for the purchase and provision of services be or become invalid, the remaining provisions shall remain valid. The invalid provision shall be replaced by a clause that most closely reflects the intentions of the contracting parties.