



**General Terms of Sale and Delivery  
of Kjellberg Finsterwalde Plasma und Maschinen GmbH (KPM)**

valid from 1<sup>st</sup> July 2023

**I. Scope of Application**

1. These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "these Terms") apply to all our business relations with our business partners and purchasers (hereinafter referred to as "Customer" or "Customers"). These Terms apply only if the Customer is an entrepreneur (§14 German Civil Code), a legal person under public law or a special fund under public law.
2. These Terms apply exclusively. Any conflicting, diverging or supplementary business and purchase terms of the Customer will apply only if and to the extent that we have expressly consented to their applications in writing. This requirement of consent applies in any event, even if, for example, we execute an order without reservation to the Customer while being aware of the general business and purchase terms of the Customer. These Terms will be deemed accepted no later than upon acceptance of our delivery/performance.
3. These Terms also apply as a framework agreement to future business with the same Customer, even if we have not referred to them in each individual case, as long as we have not given notice of a change hereto. These Terms will be provided at any time upon request.
4. Any individual agreements made with the Customer in the particular case (including side agreements, supplements and amendments) shall have priority over these Terms in all cases. As for the content of any such agreements, a written contract or our written confirmation will be authoritative.
5. Any references to the application of statutory provisions are made for clarification purposes only. Even without such clarification, the statutory provisions will therefore apply unless directly amended or expressly excluded in these Terms.

**II. Offer and Conclusion of Contract; Confidentiality**

1. Our offers are subject to change and are non-binding. This applies even if we have provided the Customer with catalogues, technical documentation (e. g. drawings, plans, calculations, computations, references to DIN standards), other product descriptions or documents, including in electronic form. In all this information we reserve rights of ownership and copyrights. This will not apply only in such a case where we expressly refer to them as binding offers for a contract.
2. The required specification and suitability with regard to the set purpose are exclusively subject to the responsibility of the Customer.
3. All documents provided to the Customer shall be used by the Customer exclusively to fulfil its obligations under the contract made with us and must be returned to us without request after performance of the contract. Any wastepaper and interim material must be destroyed by the Customer at its cost. The documents must be kept in strict confidence vis-à-vis third parties, even after performance of the contract. The confidentiality obligation will expire only and to the extent that the knowledge contained in the documents provided has become generally known or we have given our written consent to the Customer to its disclosure.
4. An order for the goods by the Customer will be deemed a binding offer for a contract unless provided otherwise in the order or the other agreements.
5. We have the right to accept such offer for a contract within two calendar weeks after our receipt of the offer. If the offer is accepted after expiry of that period, and if the Customer therefore considers itself no longer bound by its offer, it must immediately notify us thereof in text form (e. g. e-mail); otherwise the contract will be deemed concluded. Acceptance may be declared either in text form (e. g. by order confirmation) or by delivery of the goods to the Customer.

**III. Prices**

1. Prices are subject to change, ex works Finsterwalde, exclusive of packaging and exclusive of the statutory VAT as applicable from time to time.
2. If we have performed the installation, assembly or putting into operation and if not otherwise agreed, the Customer shall be responsible, in addition to the agreed remuneration, for all necessary ancillary costs such as travel costs, costs for transportation of the required tools, personal baggage as well as travel allowance and the cost of any transportation insurance as may be required by it.
3. For orders whose net value without VAT is below EUR 50.00, a flat handling fee of EUR 20.00 will be charged.
4. We reserve the right to change our prices reasonably if, after conclusion of the contract, any cost decreases or increases take place, especially due to any collective bargaining agreements made or to changes in material prices. We will prove this to the Customer upon request.



5. The customer is obligated to confirm upon request the receipt of goods on the delivery note sent by us or transmitted electronically with the necessary details for tax-free deliveries within the European Union. If this is not carried out within 4 weeks, the customer shall pay the current valid statutory VAT to us. The payment will be due immediately after receipt of invoice.

#### **IV. Payment Terms; Default**

1. Unless agreed otherwise, invoices are due and payable without deduction within thirty days from the date of invoice. Exempted are invoices for after-sales services, which are payable immediately without deduction.
2. Upon expiry of the aforesaid payment periods, the Customer will be in default unless being independent for negligence. During the period of default, the purchase price shall bear interest at the default interest rate applicable from time to time. We reserve the right to claim additional default damage. Vis-à-vis merchants, our claim to the commercial default interest (§353 German Commercial Code) remains unaffected.
3. The Customer shall be entitled to setoff or retention only to the extent that its counterclaim has been expressly recognized by us in writing or has been established with non-appealable effect.
4. If it becomes recognisable after conclusion of the contract that our claim to the purchase price is jeopardized by the Customer's lack of financial capacity (e. g. on account of a petition for the institution of insolvency proceedings), we will be entitled under the statutory provisions to refuse performance and, where applicable after setting a time limit, to rescind the contract (§312 German Civil code). For contracts for the manufacture of non-fungible goods (individual productions), we may declare rescission immediately; the statutory provisions regarding the non-necessity of setting time limits remain unaffected.

#### **V. Delivery**

1. In principle, deliveries are ex works Finsterwalde, regardless of the place of performance. The delivery dates and periods will be agreed individually or stated by us in the order acceptance.
2. Any delivery period stated by us will be binding only on the condition that all documents, permits and information to be provided by the customer are received by us in due time and all technical issues are clarified. If such conditions are not satisfied in due time, the periods will be reasonably extended; this shall not apply if we are responsible for the delay.
3. If we are unable to meet binding delivery periods for reasons outside our sphere of responsibility (non-availability of performance; force majeure), we will inform the customer thereof without undue delay and at the same time set a new delivery period which is reasonable given the circumstances in each case. If the performance is not available even within the new delivery period or if the hindrance lasts longer than two months, we will be entitled to rescind the contract in whole or in part except that we have caused the non-compliance of a binding delivery period. In case of a part rescission any counter-performance already made by the customer will be reimbursed by us immediately after deduction of expenses and costs. An event of non-availability of the performance in the sense of this clause shall mean, above all, the failure by our suppliers to supply us in due time, where we have concluded another contract for the supply of the products at stake.
4. Force majeure shall include strike, lockout, military mobilization, war, blockades, terrorist attacks, cybercrime, blackout (particularly of the infrastructure regarding power, water, and gas supply), major disruption in the telecommunications sector, export and import bans, pandemics, epidemics, closure of transport routes, official orders as well as other government intervention, no matter whether affecting us, our clients or our supplier.
5. Partial deliveries are admissible unless the customer cannot be reasonably expected to accept them.
6. If circumstances become known which give rise to serious doubts as to the solvency or creditworthiness of the customer, we may refuse performance and set a reasonable time limit to the Customer within which it must pay contemporaneously against delivery or provide security. In the event of the Customer's refusal or if a time limit lapses without result, we will be entitled to rescind the contract and/or claim damages.
7. If we default on a delivery date promised with binding effect, the customer – provided that it can prove that damage has thereby been caused to it – may demand compensation for each full week of default equal to 0.5%, however, no more than a total of 5%, of the price for such part of the delivery that could not be put into operation due to the default. We reserve the right to prove that the Customer suffered no damage at all or a substantially less damage than the aforesaid lump-sum compensation. Any further rights of the Customer exist only in accordance with No. XI of these Terms.
8. Our statutory rights of rescission and termination, as well as the statutory provisions on performance of a contract in case of an exclusion of the obligation perform (e. g. impossibility or unacceptability of performance and/or subsequent fulfilment), remain unaffected. The rights of rescission and termination of the customer under No. XI. of these Terms also remain unaffected.



## **VI. Retention of Title**

1. The goods and all related documents remain our sole property up to complete discharge and satisfaction of all our claims against the Customer under the business relationship (goods subject to reservation of title).
2. Any sale, use, consumption and/or processing of the goods subject to reservation of title shall be permissible only in the normal course of business. Beyond that the Customer shall not be authorized to dispose of the goods subject to the reservation of title, above all, to make or permit any pledging or transfer by way of security. Warehousing costs are only subject to the customer.
3. The Customer hereby, by way of security, fully assigns to us in advance all claims – including all ancillary rights thereto – which are due to the Customer with respect to the goods subject to reservation of title under their resale or on any other legal grounds. We hereby accept such assignment.
4. The Customer is obligated to treat the goods subject to reservation of title with care. In particular, the Customer shall be obligated to adequately insure such goods at its own cost at replacement value against fire, water damage and theft.
5. The Customer is obligated to inform us about any interference by third parties with our ownership rights. This applies to any execution measures both against the goods to which title is reserved and against the claims assigned in advance. Any costs arising in this connection shall be borne by the Customer.
6. The Customer shall be authorised to collect the claims assigned only in the ordinary course of business and only subject to revocation. We will be entitled to revocation if the Customer fails to meet its payment obligations to us, is in payment default or if a petition for the opening of insolvency proceedings is filed. In the event of revocation, the Customer will be obligated to communicate to us, on request, the amount of its claims and the names of the third-party debtors as well as to notify the third-party debtors of the assignment.
7. If the Customer combines, mixes, mingles or processes the goods to which title is reserved, we are entitled to co-ownership in the resulting new goods in the proportion the invoice value of the goods to which title is reserved bears to the invoice value of the new goods.
8. If the Customer breaches its obligations, above all, fails to pay the purchase price when due, we will be entitled in accordance with the statutory regulations, after unsuccessful lapse of a reasonable time limit set to the Customer for performance, to rescind the contract and demand return of the goods on the basis of the reservation of title and rescission of the contract; the statutory regulations regarding the non-necessity of setting a time limit remain unaffected. The Customer is obligated to surrender the goods.
9. If the value of the security provided to us exceeds the claims by a total of more than 10%, we will be obligated, upon request of the Customer, to release any excess security.

## **VII. Delivery and Passing of Risk**

1. In principle, deliveries are ex works Finsterwalde, regardless of the place of performance. Unless otherwise agreed, we are entitled to determine the mode of dispatch (in particular, carrier, shipping route, packaging).
2. Even in case of carriage paid, the risk of accidental loss or accidental deterioration of the goods shall pass to the purchaser, namely as follows:
  - a) In case of deliveries without installation or assembly: when loading, even onto our own means of transport, is completed;
  - b) In case of delivery with installation, assembly or putting into operation: on the day of takeover into the Customer's own operation or, if so agreed, after flawless test operation.
3. If an acceptance procedure at factory Finsterwalde is agreed, completion of such acceptance shall be decisive for the passing of risk. In addition, in case of an agreed acceptance procedure, the statutory regulations of the law governing contracts for works and services will also apply (§§ 631 et seq German Civil Code).  
Default in taking delivery by the Customer has the same effect as handover or acceptance.
4. If the shipment, delivery, the beginning or carrying-out of the installation, assembly or putting into operation is delayed for reasons for which the Customer is responsible or if the Customer is in default in taking delivery on any other grounds, the risk of accidental loss and accidental deterioration of the goods shall pass to the Customer.
5. If the goods are taken back for reasons for which we are not responsible, the Customer shall bear the risk of accidental loss and accidental deterioration of the goods until arrival of the goods at our shipping warehouse.
6. In addition, our carriage conditions shall apply.
7. The customer is obligated to confirm upon request the receipt of goods on the delivery note sent by us or transmitted electronically with the necessary details for tax-free deliveries within the European Union. In addition, the conditions of item III.5 of these General Terms shall apply.



### **VIII. Customer's Claims for Defects in Quality**

1. Unless provided otherwise hereinafter, the rights of the Customer for defects in quality or title (including wrong or short delivery, improper assembly or faulty assembly instructions) shall be governed by the statutory regulations.
  2. To protect its warranty claims the Customer must immediately examine the goods and notify any defects immediately in text form (§§ 377, 381 German Commercial Code). Hidden defects must also be notified in text form immediately when detected. If the Customer fails to notify any defect or to notify in due time, our liability will be excluded for the defect not notified or not notified in due time.
  3. Our liability for defects shall be based on the agreement about the conditions of the goods.  
Our product descriptions specified as such which were provided to the Customer prior to its order or which have been incorporated into the contract in the same way as these Terms shall be considered to be an agreement about the condition of the goods.
  4. An agreement about the condition of the goods does not mean a guarantee. We assume special guarantees only on the basis of a particular agreement regulating the terms and scope of the guarantee notwithstanding these Terms and the statutory rights of the Customer. Furthermore, any guarantee assumed by us must be specifically designated in writing as a guarantee.
  5. If the condition has not been agreed, the goods will be deemed free from defects in quality if they are suitable for the use agreed in the contract. In addition, in supplementation of the statutory regulation, the goods will also be deemed free from defects in quality if they have the properties which the Customer may expect based on the product description provided by us, it being sufficient if the product description is provided to the Customer after conclusion of the contract (especially together with the goods). We assume no liability, however for public statements made by any other manufacturers or other third parties (e. g. advertising statements).
  6. If a defect was caused exclusively or very predominantly by the customer or a third party, the Customer shall have no claims based on defects. This will be presumed, above all, where the defect is based on the following circumstances:
    - Faultiness or unsuitability of the instruction given by the Customer for execution of an order or of the material to be provided by it, if the defect was not recognisable for us or if the Customer rejects the concerns voiced by us:
    - Incorrect or negligent treatment or unsuitable or improper use of the goods after passing of the risk, faulty assembly or putting into operation; excessive strain, use of unsuitable operation material, use of other than the Kjellberg original wearing parts, non-compliance with the rules and guidelines in the operation instruction, improper maintenance, improper interference with the device/machine, especially by untrained staff or staff not trained adequately.
- Our statutory rights in case of the Customer's responsibility or failure to cooperate (§§645; 642, 643 German Civil Code) remain unaffected. Notwithstanding the statutory provisions (§651 sent. 3 German Civil Code), those rights apply irrespective of whether the goods to be delivered are fungible or unfungible items (individual productions).
7. If the delivered goods are defective, we may first choose whether to make subsequent performance by removal of the defect (subsequent improvement) or by delivery of defect-free goods (replacement delivery). Our right to refuse the chosen kind of subsequent performance on the conditions provided by law remains unaffected.
  8. We are entitled to make the subsequent performance owed by us conditional on the Customer paying the outstanding purchase price. The Customer is entitled, however, to receive back such portion of the purchase price as is reasonable in proportion to the defect.
  9. The Customer must give us the time and opportunity necessary to make the subsequent performance owed, especially to deliver the criticised goods for examination. The costs required for such subsequent performance, in particular, the costs of transportation, infrastructure, labour and material, will be borne by us. In the case of replacement delivery, the Customer must return the defective item to us in accordance with the statutory regulations.
  10. In urgent cases, such as danger to the operational safety or to avert disproportionate damage, the customer may remove the defect itself and demand from us reimbursement of the expenses objectively required therefor. Such independent removal by the customer must be notified to us immediately, if possible, in advance. The Customer will not be entitled to remove the defect itself if we were entitled to refuse subsequent performance in accordance with the statutory regulations.
  11. If subsequent performance has failed or a time limit to be set by the customer for the subsequent performance has lapsed unsuccessfully or is not necessary according to the statutory regulations, the Customer may rescind the purchase contract or reduce the purchase price. The right of rescission shall not exist, however, in the event of an insignificant defect. If the Customer declares rescission or reduction of the purchase price, its claim to delivery of defect-free goods will cease.
  12. Claims of the Customer to damages or reimbursement of futile expenses exist only in accordance with No. XI of these Terms but shall be excluded in all other respects.
  13. Claims for defects in quality will become time-barred according to the time limits stated in No. XII.
  14. Parts which are replaced in the context of the removal of a defect will pass into our ownership (transferred as security).
  15. Warranty for Plasma Torches and Laser Heads



The warranty period corresponds to the currently applicable General Terms of Sale and Delivery of Kjellberg Finsterwalde Plasma und Maschinen GmbH.

Excepted are consumables as these, by their nature, wear out faster. These are plasma torches, laser heads, hose packages as well as articles indicated as consumables in the order documents.

Our warranty obligation applies only if the defect as to quality existed already at the time of passing of the risk. It is therefore mandatory that the torch/laser head will be sent to Kjellberg Finsterwalde fully equipped. The torch/laser head must be in exactly the same condition as on occurrence of the damage event. Otherwise, there can be no examination of the cause and no warranty can be accepted.

Damage to the torch/laser head is considered to have occurred later if for example:

- mechanical damage resulting from improper handling, such as the failure to use recommended tools, fall or collision is recognisable,
- there was external interference by non-authorized/non-trained personnel,
- a cooling liquid other than that prescribed by Kjellberg Finsterwalde was used,
- false or impure gases were used, in deviation from the user instructions in the operating manual
- no original Kjellberg consumables were used.

In any such case, there will be no warranty claim.

In such cases, there may be corroded or clogged cooling water and gas channels, the interior space and/or insulating parts may be damaged, or the functionality of the torch/laser head may be impaired.

Repairs are conducted exclusively at the Kjellberg Finsterwalde plant. If possible, a short description of the defect will appear on the invoice.

16. The limitation of warranty claims (warranty period) is subject to Point XII.2 of these General Terms of Sale and Delivery.

17. In the event of the sale of used machines or used components, they shall be sold excluding the liability for quality unless accompanied expressly by a written confirmation thereof. This exclusion shall not apply for claims for damages under liability for quality resulting from intentional or grossly negligent violation of our duties as well as culpable injury of life, body, or health. Insofar as there are claims for damages under liability for quality against third parties, they shall be assigned to the Customer.

#### **IX. Customer's Claims of Defects in Title**

1. Unless agreed otherwise, we are obligated only to deliver the goods and perform other deliveries and services in the country of the place of manufacturer Kjellberg Finsterwalde (Germany) free from intellectual property rights and copyrights of third parties (the "property rights").

2. If a third party makes justified claims against the Customer on the ground of a property rights infringement on account of deliveries performed by us and used in accordance with the contract, we will be liable to the Customer as follows:

At our choice and cost, we will either obtain a right of use for the concerned deliveries or change them so that they no longer infringe the right of use or replace the concerned deliveries. If we are unable to do that on reasonable conditions, the Customer may demand reduction of the price for the defective goods or rescission of the concerned contract and claim damages or reimbursement of futile expenses. The liability for damages or reimbursement of futile expenses shall be limited, however, in accordance with No. XI. below.

3. The above obligations shall apply only to the extent that the Customer has immediately notified us about the claims made by such third party and all defence actions and settlement negotiations are reserved to us.

4. Claims of the Customer shall be excluded insofar as it is responsible for the property rights infringement.

5. Claims of the Customer will also be excluded if the property rights infringement is caused by special requirements of the Customer, any application not foreseeable for us or by the fact that the delivery is modified or used in combination with any products not delivered by us.

6. In case of any other defects in title, the provisions in No. VIII. shall apply correspondingly.

7. Claims due to property rights infringements or defects in the title will become time-barred within the periods stated in no. XII.

#### **X. Recourse to Supplier**

1. If the newly produced goods supplied by us to the Customer have been sold on, with respect to the Customer's claims for defects, the following provisions, and apart from that the statutory provisions, shall apply in addition to Nos. VIII. and IX.

2. The Customer's rights to subsequent performance according to No. VIII. 7. apply subject to the following conditions: the Customer may demand from us the kind of subsequent performance which it owes to its customer in the particular case, taking into consideration the Customer's statutory and contractual rights of refusal; we have no option right in this respect. The Customer is entitled to assign this claim to subsequent performance to its customer, however, only on account of performance or/and by way of security, i. e. without prejudice to its own continued liability vis-à-vis the



consumer. An assignment instead of performance shall be invalid. Our right to refuse such subsequent performance on the statutory preconditions remains unaffected.

3. If we have agreed with the Customer on equivalent compensation in the sense of § 478 (4) German Civil Code, the claim to reimbursement for expenses the Customer had to bear in relation to its customer (§ 478 (2) German Civil Code) is excluded.

4. In addition, the seller's right of recourse shall be governed by the applicable statutory regulations of the German Civil Code.

#### **XI. Other Liability**

1. Unless provided otherwise in these Terms including the provisions below, in case of a breach of contractual or non-contractual duties, we will be liable in accordance with the pertinent statutory provisions.

2. We will be liable for damages, no matter on what legal basis, only in case of intent or gross negligence. In addition, we will also be liable in case of simple negligence

- for damage resulting from the violation of a person's life, body or health,
- for damage resulting from the violation of a material contractual duty – these are such obligations enabling a performance of a contract-; in that case, our liability shall be limited, however, to reimbursement of the foreseeable damage typically occurring.

The aforesaid limitations on liability will not apply if we have fraudulently concealed a defect or have assumed a guarantee as to the condition of the goods. The same applies to claims of the Customer under the German Product Liability Act.

3. In case of a breach of a duty other than a defect, the Customer can rescind or terminate the contract only if we are not responsible for the breach of duty. A free right of termination of the Customer (in particular, according to §§ 651, 649 of the German Civil Code) is excluded. Any rescission or termination must be declared in written form. Otherwise, the statutory requirements and legal consequences will apply.

#### **XII. Limitation of Time**

1. The mutual claims of the parties will become time-barred in accordance with the statutory provisions, unless otherwise agreed hereinafter.

2. Notwithstanding § 438 (1) No. 3 of the German Civil Code, the general limitation period for claims resulting from defects in quality and title shall be 12 months from putting into operation, however, no more than 15 months after dispatch of the goods from Finsterwalde. Contrary to aforesaid, the general limitation period for claims resulting from defects in quality and title from sale of laser heads shall be 12 months from delivery of goods in Finsterwalde.

For power sources, gas control units (PGE, PGV, PGC, Q-Gas) plasma torch connection units (PBA, Q-Port) and cooling units (KWE) of the HiFocus, SmartFocus and "Q" product lines, the general limitation period for claims resulting from defects in quality and title shall be 24 months from delivery of goods in Finsterwalde.

If acceptance is agreed, the limitation period will start upon such acceptance.

3. Claims based on defects in title will not become time-barred, however, as long as the third party's claim against the Customer has not become time-barred.

4. In the event of fraudulent intent (§ 438 (3) of the German Civil Code), the statutory provisions remain unaffected in all cases.

5. If we owe contractual damages to the Customer according to No. XI. based on or as a result of a defect, the unabridged statutory limitation periods under the law of sales shall apply (§ 438 of the German Civil Code). Those limitation periods also apply to concurrent non-contractual claims for damages unless the application of the regular statutory limitation (§§ 195, 199 of the German Civil Code) leads to a shorter limitation period in the particular case. The limitation periods under the German Product Liability Act remain unaffected.

6. The statutory regulations regarding suspension, suspension of expiration and recommencement of limitation remain unaffected.

#### **XIII. Place of Jurisdiction and Applicable Law**

1. If the Customer is a merchant in the sense of the German Commercial Code, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly under the contractual relationship shall be our place of business in Finsterwalde. We remain entitled, however, to sue the Customer at its place of business.

2. The legal relations in connection with this contract shall be governed by the laws of the Federal Republic of Germany excluding all international and supra-national laws (of contract), in particular, the United Nations Convention on Contracts for the International Sale of Goods ("CISG").

3. The requirements and effects of the reservation of title according to No. VI. are subject, however, to the law governing at the location of the item, insofar as, under such law, the choice of law in favour of German law is impermissible or invalid.



#### **XIV. Severability**

If individual provisions of the contract are invalid, the contract remains valid in all other parts. This shall not apply if adhering to the contract would mean reasonable hardship to either side.

### **Supplementary Terms and Conditions for the Delivery and Use of System Technology where the Delivery thereof includes the Provision of Integrated Software (Embedded Software)**

#### **XV. SUBJECT-MATTER OF THE CONTRACT; SCOPE OF APPLICATION, OPEN-SOURCE SOFTWARE ELEMENTS**

1. As a supplement to the above General Terms of Sale and Delivery, these software terms and conditions shall apply to all software, products, including updates and upgrades, that are distributed by Kjellberg Finsterwalde Plasma und Maschinen GmbH (hereinafter also “we” or “us”) and provided to customers as part of system technology products. In cases of doubt, special software-specific provisions shall take precedence over the General Terms of Sale and Delivery, which shall however remain part of the contract.

2. For the purpose of operating the system, the customer shall receive together with the delivered goods embedded software containing proprietary Kjellberg software as well as open-source software (OSS). OSS is software or software elements that are made available to the public but are subject to special terms of licence in some circumstances.

The software components are listed in the overview of applicable licences (manifest). In this respect, the OSS elements are indicated by the respective licence type and the licence version. The overview of software components is to be found on the system (e. g. *Q Desk* under “Help”) and in the operating instructions.

3. The open-source software modules (OSSM) shall be provided directly by the respective rights holder free of charge and in accordance with the respective rights holder’s licence terms included in the delivery.

The licence terms relating to the respective rights holder that are applicable to the OSS elements can be accessed on the web interface. In respect of the OSS used, the user shall receive from the respective rights holders an ordinary right of use on the terms and conditions provided for under the respective terms of licence valid in this respect. The liability – and warranty related provisions contained therein, inter alia, shall be valid only in relation to the respective OSS rights holders. Beyond this, our liability for defects shall be limited to wrongful intent and gross negligence (cf. XXL. of these terms of contract). The OSS contains software components in respect of which notification duties exist with the context of the rights holders’ applicable licence terms, and any person can receive the source code of these software elements on a data carrier. The written offer/offer in text form in this connection is contained in the operating instructions.

4. The terms of use of the software that are provided for below shall apply to the provision of the software as a whole in the relationship between us, as the supplier, on the one hand and the customer and user on the other hand. In particular, this concerns the provisions regarding liability for quality-related defects as provided for under XXI. and the limitations of liability provided for under XXV. that apply to the software as a whole. In no event shall the provisions of these terms of use of the software be limited by the rights of use for the OSS. In this respect, therefore, the relevant open-source licence terms shall take precedence.

#### **XVI. INCLUSION AS PART OF THE CONTRACT**

These terms of use of the software as well as the aforementioned OSS licence terms shall be incorporated into the supply contract and shall also apply to future business relations with the same customer. They form part of the contract and shall be accepted upon placing an order for the goods. This shall apply even in the case of deviating or conflicting or supplementary general terms and conditions of business of the customer. Full reference is made to the provisions of the above General Terms of Sale and Delivery, Section I.

Other users (customers of the customer) shall accept the terms of use of the software upon putting the system into operation. The customer shall be obliged to contractually pass on use-specific provisions of these terms.

#### **XVII. RIGHTS OF USE**

1. The ordinary non-exclusive right of legally permissible use of the software without limitation as regards time or territory shall be granted to the customer/user only in combination with the related system for the purpose of operating this system (individual licence). It shall not be permissible to reproduce software programmes. Multiple licences shall not be granted.



We shall remain the holder of all rights under the law of property regarding the software and all its elements, including back-up copies made and the software documentation.

2. The customer/user shall not read out the software or parts thereof. The customer/user shall not make programmes accessible to third parties, unless this is necessary for the implementation of the purpose of the contract.

Manufacturer's notices, licence notices, licence terms and copyright notices, as well as any reference or licence terms relating to OSS shall not be removed or altered.

3. The rights of use shall be transferable only within the context of a sale of the system. If the right to use the software is transferred together with the system, the transferring party shall contractually pass on the obligation arising from these terms and conditions. The customer's rights of use shall lapse when the software is passed on to another acquirer.

#### **XVIII. ALTERATIONS, DECOMPIATION**

1. The customer/user shall not be permitted to translate, modify or otherwise alter software programmes or parts thereof.

Reverse translation of the software code (decompilation) shall be permissible subject to the statutory limitations under Section 69e *UrhG* [Copyright Act] and only if we have, despite a prior request, not made available the information necessary for bringing about interoperability. Reverse translations beyond this are ruled out.

2. This provision relating to reverse translation shall not apply to the software components if and insofar as reverse translation is expressly permitted in certain circumstances under individual licence terms of open-source software (OSS). In these cases, the respective individual licence terms shall take precedence over the aforementioned provision.

Where the software components concerned are subject to the licence terms of the LGPL-2.1 licence, it shall be permissible to alter for the user's own needs the software licensed under LGPL-2.1 and to carry out reverse engineering for debugging these alterations. However, it shall not be permissible to pass on to third parties the knowledge acquired in the course of reverse engineering for debugging these alterations. Moreover, it shall be impermissible to pass on altered versions of the LGPL-2.1-licensed software.

3. In any event, all warranty claims relating to the software shall be ruled out insofar as the customer fails to prove that the defect would have existed even without the alterations.

When passing on the terms and conditions stated herein, the customer may allow its customers to alter the software for the customer's own needs and to reverse engineer the software for debugging these alterations.

#### **XIX. UPDATES, UPGRADES, RELEASES – OBLIGATION TO PASS ON**

1. These terms of use of the software shall likewise apply to the delivery of updates, upgrades and releases, unless otherwise stipulated upon the delivery thereof. The customer shall co-operate with the provision, distribution and installation of security-related updates for its customers, if we ask it to do so. Where updates are made available to the user, this shall not automatically constitute recognition of a defect.

2. However, we shall not, as a result of the supply contract concluded, take on at the same time an obligation to render software services. The provisions regarding our warranty obligations for the delivered goods themselves shall remain unchanged.

#### **XX. PASSAGE OF RISK**

The risk relating to the software shall pass at the same time as the risk relating to the system that is to be delivered and for whose operation the software shall be provided.

#### **XXI. WARRANTY – CUSTOMER'S CLAIMS FOR DEFECTS IN QUALITY**

1. The software shall be delivered "as seen". We warrant that the software shall fulfil the essential functions within the context of contractually agreed operation of the system delivered and has been created with the required diligence and expertise. However, it is not possible under the present state of the art to fully rule out bugs in the software. Within the context of the qualities owed, we do not warrant that the software will run without interruption and bug-free or that all software bugs can be eliminated.

A defect in the software shall exist if, as a result of the running of the programme, use of the delivered system for the contractually agreed purpose is impaired to such a significant extent that the hardware no longer has the qualities and functionality owed.

Warranty rights shall exist only if the software remains unaltered, and the system delivered is used as contractually agreed.





In particular, loss incurred as a result of unsuitable or improper use, incorrect handling or operation or unauthorised actions carried out on the delivery item shall be excluded from the warranty.

2. No warranty rights shall exist for software enhancements undertaken on an interface made available by us.

3. The software together with the system delivered shall be thoroughly checked by the customer without delay after delivery, no later than within three weeks (obligations to inspect and give notifications of defects in accordance with Section 377 HGB [German Commercial Code]).

Defects in the software shall be reported in text form without delay, and the reproducible defect shall be described as precisely as possible. Other defects shall be communicated, along with a comprehensible description of the defect, without delay upon their discovery. If no defects are communicated, or communicated in due time, the software shall be deemed approved as regards the defect concerned, and there shall be no right to assert warranty claims in this respect.

4. The warranty period for the software shall equal the warranty period for the system delivered and shall run from the time of the passage of risk.

5. In the event of a defect, we shall first of all be given the opportunity to render supplementary performance within a reasonable period (at least 4 weeks). We shall choose the method of supplementary performance. The customer shall make available the information, documents and data necessary for supplementary performance and enable us to access the system as a whole. Rectification may be brought about by delivery or installation of an update. If supplementary performance fails, the customer shall, in accordance with the law, be entitled to the further warranty claims relating to quality-related defects.

6. Beyond the contractually agreed qualities of the goods and the software, we shall not provide any guarantees, assurances or warranty commitments of any kind verbally, in writing or by implication, unless this is expressly declared individually and in writing on a legally binding basis.

## **XXII. THE CUSTOMER'S/USER'S DUTIES TO CO-OPERATE**

1. In order to use the software, it is essential that the system requirements set out in the product description, the operating instructions and the manual are met. The customer/user itself shall bear sole responsibility for this.

2. The customer/user shall, to a reasonable extent, support us in the rendering of our contractual service.

3. The customer/user shall take all necessary and reasonable measures to prevent the incurrence of loss or damage due to the software and to mitigate such loss or damage.

4. The user shall sufficiently protect its own operational data against loss, alteration and damage. In the event of a failure to back up, we shall not be liable in any way for resulting loss, damage or consequences, in particular for the recovery of data or programmes lost or damaged. Insofar as technically possible, the user shall carry out a backup whenever updates are to be installed, or alterations to the software are to be made. The user is to inform us, in appropriate manner, of possible security vulnerabilities.

5. To a reasonable extent, the software user itself shall, in accordance with the respective current state of the art, ensure the secure operation of the system delivered and its software with regard to integration into its work environment and IT infrastructure. In particular, this concerns operation of the system using a VPN tunnel and connections to the VPN server. The user of the software shall adequately restrict access to the system and the software. The user shall appropriately protect access information against use by unauthorized third parties.

6. Following the passage of risk, the user shall be solely responsible for compliance with the terms of licence concerning the respective OSS. For this the user shall receive the terms of licence concerning the respective OSS elements as specified under XV.

## **XXIII. DATA USAGE, USE OF DATA COLLECTED**

1. For the purposes of carrying out the contract, the user shall grant us the right to also reproduce, store and use data collected from the user.

2. In addition to the rights of use granted to the user for the purpose of carrying out the contract, our rights of use shall, even after delivery has taken place, continue to exist regarding databases set up by us as well as data and software information made available. These shall constitute trade secrets to be treated confidentially, unless we have expressly consented to their disclosure or use.

3. By consenting to the execution of access to the system and/or its software (in particular remote maintenance), the customer/user shall grant us the right to retrieve data stored by means of the software programmes and the system and to store, reproduce and use these data for the envisaged purpose.

4. If the rendering of servicing or maintenance or repair services is agreed upon after the goods have been delivered, the customer of these services shall grant us at the same time the right to access customer data for the purpose of carrying out the contract.

5. We shall likewise be entitled to use these data to optimize the system technology and related software, unless the customer/user has expressly prohibited us from doing so.



#### **XXIV. COMPLIANCE WITH STATUTORY DATA PROTECTION REGULATIONS**

The software provided enables the system's operation data to be recorded. Insofar as personal or personalisable data are collected in this respect, the user shall be solely responsible for compliance with all provisions concerning the protection of personal data in accordance with the respective applicable statutory provisions and regulations, in particular the European General Data Protection Regulations and the *Bundesdatenschutzgesetz* [German Federal Data Protection Act]. The user shall be the "controller" within the meaning of the provisions concerning data protection.

#### **XXV. LIABILITY TO COMPENSATE FOR LOSS OR DAMAGE**

We shall be liable to compensate for loss or damage not relating to the delivery item itself (the system including embedded software or software updates) only on cases of wrongful intent or gross negligence, regardless of the legal basis.

Moreover, we shall, even in cases of ordinary negligence, be liable for mortal injury, physical harm or health damage as well as for loss or damage arising from a breach of a material contractual duty. In the latter case, however, our liability shall be limited to compensation for the foreseeable loss or damage typically occurring.

The above limitations of liability shall not apply where we have fraudulently concealed a defect, or insofar as we are mandatorily liable under the *Produkthaftungsgesetz* [Product Liability Act] for personal injury and property damage.

#### **XXVI. LIMITATION OF CLAIMS**

In respect of limitation of claims, reference is made to the provisions of this General Terms of Sale and Delivery (1<sup>st</sup> part).