

for commercial transactions between businesses

I General

1. General terms and conditions of the purchasing party (hereinafter called "Customer") shall apply only where expressly accepted in writing by Busch-Jaegeer Elektro GmbH (hereinafter called "Supplier").

2. The Customer shall only have the non-exclusive right to use the standard software in unchanged form with the stipulated performance characteristics on the agreed equipment.

To the extent that software is provided to the Customer for which the Supplier has only derived rights to use (third party software), the conditions of use agreed between the Supplier and its licensor shall apply with priority. To the extent that the Customer is provided with open source Software, the conditions of use underlying the open source Software shall apply with priority. Upon request, the Supplier shall provide the Customer with the source code if the provision of the source code is provided for as mandatory as per the conditions of use. The Supplier shall point out in the contract documents if third party software or open source Software and pertaining conditions of use exist and make the conditions of use available if so requested.

3. The Customer shall be responsible - at its own expense - for the procuring of any import license, foreign exchange or other permits, required by the agreed country of destination, in good time before the goods are dispatched.

4. Supplier shall not be obliged to take back any used industrial batteries. Customer shall provide for the appropriate waste disposal of all used batteries in compliance with all applicable statutory provisions.

5. The term „claim for damages" used in the present terms also includes claims for indemnification for useless expenditure.

II Terms of Payment, Credit Rating

1. All prices shall be ex works, excluding (i) cost of packing, (ii) customs duties and charges on importation and (iii) Value Added Tax payable under the applicable law, of which costs and expenses shall be borne by the Customer, and the prices are understood as denominated in EURO (EUR).

2. Payment shall be made free of all deductions at the Supplier`s place of payment within 30 days from the date of the invoice. Bills of exchange will only be accepted if specifically agreed to by Supplier in writing and if they are in accordance with the purchasing conditions of the Deutsche Bundesbank. Discount charges and bill tax shall be borne by the Customer and are to be paid to the Supplier upon negotiation of the bill. All payments shall be deemed to have been effected on the day on which the Supplier can freely dispose of the amount paid. Should the due dates for payment be exceeded, the legal consequences of delay shall become effective without any notice being necessary. Without prejudice to any other or further rights or claims, interest on

defaulted payment shall be charged at the rate (in per cent) being the sum of 8 plus the amount of the then actual base rate ("Basiszinssatz" under § 247 of the German

Civil Code BGB).

3. In case of default, particularly suspension of payment, request for composition or moratorium, all amounts owed to the Supplier shall fall due immediately. If the Customer's payments are delayed, the Supplier shall be entitled to demand the return of the goods and compensation for non-performance of the contract.

4. The Customer may only offset against counter-claims which are undisputed or adjudicated by non-appealable judgement. The Supplier shall be entitled to set off all claims against Customer held by Supplier or any company in which the company ABB AG (Mannheim/Germany) directly or indirectly holds the majority of shares, against all claims held by Customer against Supplier or any of the companies described above. On Customer's request Supplier shall hand over to Customer a list of such companies.

5. The obligations of Supplier are based on, and subject to, the continuance of the credit rating of Customer. In case that Supplier after entering into the contract receives information about Customer (i) which would result in Supplier not granting a credit to Customer in the amount of Customer's payment obligations or (ii) which would give Supplier good reason to consider that a situation as described in (i) before applies, then Supplier shall be entitled to demand from Customer advance payments or security or cash payments, each in view of the full amount, or to cancel the contract or to demand compensation in lieu of the. Sentence 1 shall in particular apply in case of a substantial decline

in the assets of Customer or in any of the following events in view of the Customer: enforcement against, cease of payment by, application for any insolvency proceeding or similar proceeding against Customer or the preconditions for any such applications fulfilled; cease or transfer of business by, pledging of or transfer of title in goods or outstanding claims etc. by Customer.

III Time for Delivery, Delay

1. Observance of the agreed time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the Customer, as well as fulfilment of the agreed terms of payment and other obligations by the Customer. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where the Supplier is responsible for the delay. The time for delivery shall be deemed to be complied with if shipment of the deliveries begins, or if Customer picks up the deliveries, within the time for delivery.

2. If non-observance of the times set is due to:

a) force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout);

b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;

c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or

d) the fact that Supplier does not receive its own supplies in due time or in due form such times shall be extended accordingly.

3. If the Supplier is responsible for a delay in delivery, the Customer, who can establish credibly that he suffered a loss from such delay, may claim compensation

of 0.5% for every completed week of delay but not more than a total of 5% of the price of that part of the Supplies which could not be put to the intended use because of the delay.

4. Supplier's liability in connection with the delay (whether compensation (i) for the losses/damages as consequence of the delay or (ii) instead of the performance) and exceeding the limits set out in Clause III.3. shall be excluded in any case of delayed performance, including after elapse of a period set by Customer for the performance. This shall not apply where in cases of intent or gross negligence or in cases of injury of life, body or health there is a mandatory liability on the part of the Supplier.

Customer's right to withdraw from the contract subject to the statutory provisions shall only apply in case that the delay of the performance has been caused by Supplier's intention or negligence.

5. Upon Supplier's request the Customer shall declare in view of the delay within a reasonable period whether Customer will withdraw from the contract or will ask for continued performance.

IV Transfer of Risk

1. Even where "carriage paid" delivery has been agreed, the risk shall pass to the Customer when goods have been dispatched or picked up by the Customer. At the Customer's request and expense, the goods shall be insured by the Supplier against the ordinary risks of transport. In case that goods are taken back by the Supplier for reasons beyond the Supplier's control, the risk shall remain with the Customer until the Supplier receives such goods.

2. If and when the dispatch or the delivery is delayed for reasons within the Customer's responsibility, or if the Customer has failed for other reasons to accept delivery, the risk shall be transferred to the Customer.

3. In case that the Supplies will be returned to Supplier, the Customer shall bear the risk until the Supplies are delivered at Supplier.

V Acceptance and Performance

1. Goods delivered shall be accepted by the Customer even if there are minor defects or modifications, including in respect of the marking. Partial deliveries shall be accepted, provided that such is not unreasonable to Customer.

2. Where goods are manufactured specifically for the contract, the quantity delivered may deviate by up to 10% each way from the order quantity.

VI Liability for Defects

Supplier shall be liable for defects in the Supplies as set forth herein below:

1. The Supplier shall free-of-charge, but at its option, make good the defects in, or replace the, Supplies which show defects within the limitation period (irrespective of the time of operation), provided that the defect existed at the time of transfer or risk.

2. Warranty claims shall be subject to a limitation period of 12 months. This shall not apply to the extent that § 438 para (1) no. 2 (buildings and material for buildings); § 479 para (1) (claims for recourse) or § 634a para (1) no. 2 (defects in connection with buildings) of the German Civil Code provide for any longer statutory limitation period, as well as in cases of injury of life, body or health or in case of intentional or gross negligent

violation of obligations by Supplier or in case of fraudulent concealment of a defect. The statutory provisions on suspension or renewal of the period shall be unaffected.

3. Customer shall without undue delay notify in writing any defect.

4. In the case of notification of a Defect, the Customer may withhold payments to an amount that is in a reasonable proportion to the Defect. The Customer, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Customer has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Customer.

5. The Supplier shall be given adequate opportunity to remedy the defect as set out in para 1 hereof within adequate time. In case Customer will not grant such opportunity Supplier shall no longer be under the obligation to remedy the defect.

6. In case the remedy will be unsuccessful the Customer – without prejudice to claims under no. 10 hereunder – shall have the right to cancel the contract or demand a reduction of the contract price. The making good of the defect shall be considered as non-successful, only if and when the second attempt to repair has not made good the defect within a grace period set by Customer in writing.

7. The Supplier shall not be responsible for minor impairment of usefulness, for natural wear and tear or damage arising, after the passing of risk, from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software defects. The warranty shall not cover modifications or repairs carried out improperly by the Customer or by third parties. The Supplier hereunder shall not give nor assume any special guarantee in view of the properties and/or the durability of the Supplies. The Supplier shall not be liable for any defect of the Supplies which Supplier procures in unchanged form from sub-suppliers.

8. Customer's claims for reimbursement of the expenses necessary for the remedy of the defect, in particular cost of transport, travel, work or material, shall be excluded to the extent, that such cost will be increased due to the fact that the Supplies have been shift to another place than Customer's place of business; provided that such exclusion shall not apply to the extent that the change of place of the Suppliers is within its normal use.

9. Claims for recourse by the Customer against the Supplier in accordance with § 478 of the German Civil Code (BGB) shall not apply to the extent that the Customer enters, or has entered, into agreements with its customers providing to customers rights or claims which are exceeding or in addition to the rights/claims as provided to the buyer under the German law. Para 7 hereof shall apply to the extent of the claims for recourse against Supplier (§ 478 para (2) of the BGB).

10. As far as not expressly laid down in this Clause VI., Supplier's liability shall be subject to Clause IX (Further Liability). Any further or other claims or rights in view of defects of Customer against Supplier or any third party employed by Supplier for such Supplies shall be excluded.

VII Industrial Property Rights and Copyright; Defects in Title

1. Unless otherwise agreed, the Supplier shall only be liable for the infringement of intellectual property rights or copyrights (herein together: Intellectual Property Rights) by the Supplies in the country where the Supplies are to be performed by Supplier. In case a third party shall assert legitimate claims against Supplier based on infringement of

Intellectual Property Rights by the Supplies used in accordance with this contract, the Supplier shall be liable towards the Customer within the period set out in Clause VI.2 as follows:

- a) The Supplier shall at his own choice and expense either obtain a right to use the product, change the product so as not to infringe the Intellectual Property Right or replace the product. If this is not possible on acceptable terms to the Supplier, the Customer shall be entitled to cancel the contract or to ask for a reduction of the purchase price, both subject to the statutory provisions;
 - b) Supplier's liability for compensation shall be subject to Clause IX (Further Liability);
 - c) Supplier's aforesaid obligations shall be subject to the condition that the Customer immediately notifies the Supplier in writing of the claims asserted by the third party, that Customer shall not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to the Supplier. If the Customer stops using the product to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the discontinuation of use does not mean any acknowledgement of infringement of a Intellectual Property Right.
2. Claims of the Customer shall be excluded if he is responsible for an infringement of Intellectual Property Rights. Claims of the Customer shall also be excluded if the infringement of a Intellectual Property Right was caused by specific demands by the Customer, by a use of the product not foreseeable by the Supplier or by the product being modified by the Customer or being used together with products not provided by the Supplier.
3. In the others, in case of infringement of Intellectual Property Rights Clause VI, nos. 4 and 8 shall apply.
4. In case of other defects in title the provisions of this Clause VI shall apply accordingly.
5. Further or other claims against the Supplier or third parties employed by Supplier in view of any defect in title shall be excluded.

VIII Impossibility of Performance; Adaptation of Contract

1. To the extent that delivery is impossible, the Customer is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Customer's claim for damages is, however, limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Customer. The Customer's right to rescind the contract shall be unaffected.
2. Where events within the meaning of Clause III,2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Customer thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Customer.

IX Further Liability

1. Customer's liability for compensation or reimbursement (herein together: further liability), irrespective of the legal grounds, f.i. due to non-compliance by Supplier with its obligations, or tort, shall be excluded.
2. This shall not apply in so far as e.g. under the product liability law, in cases of intent or gross negligence, in cases of injury of life, body or health or of violation of major contractual obligations, there is mandatory liability. However, liability for damages arising from the violation of major contractual obligations shall be limited to the foreseeable damage normally covered by a contract, save in a case of intent or gross negligence or in case of injury of life, body or health. This clause shall not imply a change in the burden of proof to the detriment of the Customer.
3. To the extent that Supplier shall be liable towards Customer under this Clause VIII, such claims shall be subject to a limitation period in the same way as the defects liability claims under Clause VI.2. However, in view of claims under the product liability law the statutory provisions for the limitation period shall apply.
4. Without prejudice to Customer's further obligations, in case of measures necessary to prevent any non-contractual liability (f.i. recall actions) the Customer shall provide the Supplier on its request with information where the goods are located, in particular of the addresses of the customers.

X Retention of Title

1. The supply items, irrespective of whether unchanged or processed ("reserved goods"), shall remain the Supplier's property until each and every claim against the Customer to which the Supplier is entitled on account of the business connection has been duly satisfied. If the value of all sureties in favour of the Supplier exceeds the value of all privileged claims by more than 10%, the Supplier shall release a corresponding part of the sureties at the Customer's request.
In case of non-compliance by Customer with its obligations, in particular in case of delay of payments, the Supplier - after unsuccessful elapse of a reasonable grace period set by Supplier, if so required – shall be entitled to cancel the contract and to demand the return of the goods, and Customer shall be obliged to return the goods to Supplier. The demand for return and/or the enforcement of the title retained shall not require the cancellation of the contract by Supplier; such acts by Supplier shall not be deemed as cancellation of the contract, unless the Supplier will so expressly state.
2. For the duration of the retention of title, the Customer shall be prohibited from giving the reserved goods in pledge or as security, and only the Customer who is a reseller, may resell in the ordinary course of business and only on condition that he receives payment from its buyer or makes it a condition that the property is transferred to the buyer only after fulfilment of such buyer's obligation to pay.
3. In case that the Customer resells the reserved goods, he herewith assigns all claims, including all ancillary rights, accruing to him from these sales, to the Supplier. This assignment shall be limited to the extent which corresponds to the purchase price paid for the goods supplied. The claims and rights, or parts thereof, assigned to the Supplier shall be fulfilled with the priority over the non-assigned parts of the claims or rights, if any. The Customer, until revocation, shall be entitled to collect the assigned claims and rights. Supplier shall be entitled to revoke the consent to Customer to collect the claims/rights in cases of non-compliance by Customer with its obligations, in particular

in case of payment delay, cease of payments, start of insolvency proceedings in view of Customer or in case of similar events. On the Supplier`s request, the Customer shall immediately inform his buyers of such assignment and – if Customer will not fulfil this obligation without undue delay – the Supplier may inform Customer`s buyers of the assignment; the Customer shall hand over and give to the Supplier all documents and information required for the assertion of the claims and rights against the buyers. In case of seizures or other acts or interventions by third parties, the Customer shall immediately inform the Supplier thereof in writing. The Customer shall bear any and all costs and expenses incurred in connection with action taken by the Supplier in order to prevent or annul such acts by third parties or with the collection of claims or rights assigned to the Supplier under this para.

4. In case of culpable violation of major contractual obligations by the Customer, especially a delay in payment, the Supplier shall be entitled to take back the reserved goods following a demand for payment. The Customer shall be obliged to return the reserved goods.

XI Applicable Law, Arbitration, Miscellaneous

1. The contractual and non-contractual legal relationship between the parties shall be governed by German substantive law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

2. All disputes arising in connection with the contract, including its formulation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris, by three arbitrators appointed in accordance with the Rules. The chairman of the Arbitration Board shall be of a different nationality from the parties and shall have a legal education enabling him to become a judge in a law court. The arbitrators shall set out the reasons for their decision in writing, indicating the provisions of the contract and, if applicable, the provisions of the law on which the decision is based.

3. Even in case of legal invalidity of any provision, the remaining parts of the contract shall remain binding save where adherence to the contract would cause unreasonable hardship to one of the parties.