

# General Conditions for Supplies of GPS Technologies GmbH for Customers with a Seat or Registered Office outside of Germany

Version: 01.09.2021

## 1 General Conditions, Documents, Scope of the Supplies and Export Control Rules

1.1 Any and all supplies and services, including but not limited to the supply of software (hereinafter called "Supplies") of GPS Technologies GmbH (hereinafter called "Supplier") shall be exclusively subject to the congruent declarations of both parties and the provisions of these General Conditions for Supplies (hereinafter called "Contract"). General terms and conditions of the Purchaser shall only apply as far as expressly accepted in writing by the Supplier. The conclusion of a Contract requires a written order confirmation of the Supplier.

1.2 The scope of Supplies is determined by mutually agreed written declarations of Supplier and Purchaser. Alterations and supplements of the Contract, in particular regarding the specification and the agreed scope of Supply, shall only become effective upon written confirmation of the Supplier. If the Supplies also include the supply of software, the Supplier reserves the right to implement a mechanism into the software which analyses the Supplies during operation (hereinafter referred to as "Analysis Software"). The Analysis Software can communicate with computers which are connected by the Supplier via a communication interface of the software allowing to view and transfer to the Supplier the Supplies' configuration data which provide information about errors occurring during the Supplies' operation, also in interaction with other software programs. The activation and the scope of use of the Analysis Software, as well as the supply of services relating thereto by the Supplier like error analysis and product optimization, are not included in the scope of the Supplies and must be ordered separately by the Purchaser from the Supplier against payment of a separately agreed remuneration.

1.3 For cost estimates, drawings and other documents (hereinafter called "Documents"), the Supplier reserves all rights, title and interests in all intellectual property rights including but not limited to copyrights in the Documents. Such Documents may not be made available to third parties without the prior consent of the Supplier and they shall, upon request, be immediately returned to the Supplier if he is not awarded with the Contract. Sentences 1 and 2 shall apply vice versa to Purchaser's Documents; however, these may be made available by the Supplier to his sub-contractors and sub-suppliers.

1.4 The Purchaser may use the Documents provided by the Supplier only for the intended purpose. The Purchaser shall not be entitled to use the Documents for other purposes, especially not for the reproduction of the Supplies in whole or in part.

1.5 The Supplier is entitled to perform partial deliveries of the Supplies and to invoice such partial deliveries separately; any freight costs for all partial deliveries shall not exceed any agreed freight costs.

1.6 The Supplier's obligation to fulfil the Contract shall be subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

1.7 If the Purchaser transfers goods (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Supplier or works and services (including all kinds of technical support) performed by the Supplier to a third party worldwide, the Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event the Purchaser shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

1.8 If required to conduct export control checks, Purchaser, upon request by the Supplier, shall promptly provide the Supplier with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by the Supplier, as well as any export control restrictions existing.

1.9 The Purchaser shall indemnify and hold harmless the Supplier from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the Purchaser, and the Purchaser shall compensate the Supplier for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Purchaser. This provision does not imply a change in burden of proof.

## 2 Supply of Software and Granting of Rights to use the Software

2.1 As far as the Supplies contain the supply of software, the Supplier grants to the Purchaser rights to use the software specified in the order confirmation or, if the Purchaser does not receive an order confirmation, the software specified in the Certificate of License or, if the Purchaser instead obtains a Software Product Sheet, the software specified in the Software Product Sheet (hereinafter referred to as "SW"). The Certificate of License and the Software Product Sheet shall be collectively referred to as "CoL" hereinafter. The Purchaser shall be provided with the CoL when the SW is supplied or in conjunction with the delivery bill, whereas the CoL may be delivered electronically by delivery of a pdfdocument or by enabling the Purchaser to download such a pdf-document. The way in which the SW is supplied is also derived directly from the order confirmation or from the SW purchase order number contained in the order confirmation, in conjunction with the associated order data of the Supplier's catalog valid at the time of the order confirmation (hereinafter collectively referred to as "Order Data"), or from the CoL. If the Purchaser does not receive a data medium, the Purchaser shall be authorized to copy the SW already available to the Purchaser to the extent necessary to exercise the rights to use the SW granted to the Purchaser. The aforesaid shall apply, mutatis mutandis, to electronic supply of the software (downloading). Where reference is made to the Order Data or the CoL in these General Conditions for Supplies, the reference to the CoL is of significance if the Purchaser has not received an order confirmation.

2.2 The documentation relating to the SW (hereinafter referred to as "Documentation") shall be purchased separately, unless either the Order Data or CoL contains a provision stating that it belongs to the scope of delivery. If the Purchaser is authorized to copy the SW in accordance with Clause 2.1, this shall also apply to the Documentation provided that it is included in the scope of delivery.

2.3 In the event that the Supplier submits a License Key to the Purchaser, which unlocks the SW (hereinafter referred to as "License Key"), this License Key must also be installed.

2.4 In the event that the Supplier submits a Dongle to the Purchaser, which unlocks the SW, this Dongle must also be installed.

2.5 The rights granted to the Purchaser with respect to the SW are determined by the license type and the software type as specified in the Order Data or CoL, whereas the scope of rights is described in the "Scope of Service and Delivery - Product line specific part -Software Solution and Products". If the SW is supplied electronically or if copying rights are granted for it, the rights and duties specified in these General Conditions for Supplies shall apply to the Page 2 of 6 legitimately generated copies only.

2.6 If the Purchaser is legitimately in possession of a previous SW version/release (hereinafter referred to as "Previous Version"), the Purchaser shall be authorized to exercise the rights to use the SW granted to the Purchaser either with respect to the SW or – if this is intended from a technical point of view – to the Previous Version, at its own discretion (downgrading). If it is apparent from the Order Data or CoL, e.g. by the addition "Upgrade" in connection with the SW product name, that the SW is an upgrade for another software item (hereinafter referred to as "Source License"), the Purchaser shall also have the rights to use the SW granted to it with respect to the Source License as soon as this has been upgraded with the Upgrade. The rights originally granted to the Purchaser to use the Source License end with the upgrading. However, the Purchaser is entitled to undo the upgrading (downgrading) – to the extent this is intended from a technical point of view – and to exercise the rights to use the SW granted to it with respect to the Source Version. In case the Purchaser obtains only the data media but no license as per the Order Data or the CoL, any use of the SW by the Purchaser is subject to the acquisition of a license according to Section 2.5. Up to the acquisition of the license the Purchaser is not entitled to supply the SW to third parties.

2.7 In case as the SW contains Open Source Software (hereinafter referred to as "OSS") the OSS is listed in the Readme\_OSS-file of the SW. The Purchaser is entitled to use the OSS in accordance with the respective license conditions of the OSS. The license conditions are provided on the same data carrier as the SW. The license conditions of the respective OSS shall prevail over these General Conditions for Supplies with respect to the OSS. If the license conditions of the OSS require the distribution of the source code of such OSS the Supplier shall provide such source code on Purchaser's request against a corresponding reimbursement of the Supplier's expenses.

2.8 The SW may be licensed software, i.e. software which has not been developed by the Supplier itself but which has been licensed to the Supplier by a third party (hereinafter referred to as the "Licensor"), e.g. Microsoft Licensing Inc. In the event that the Purchaser receives the terms and conditions stipulated by the relevant Licensor together with the SW, such terms and conditions shall apply with respect to the Licensor's liability vis-à-vis the Purchaser. The Supplier's own liability vis-à-vis the Purchaser shall be governed by these General Conditions for Supplies.

### **3 Further Rights and Duties of the Purchaser with regard to SW**

3.1 Unless a stipulation to the contrary relating to a specific number of copies is contained on the data medium or in the readme file of the SW, the Purchaser may generate an appropriate number of copies of every item of SW which it is authorized to use in accordance with these General Conditions for Supplies, where such copies shall be used exclusively for data backup purposes. Furthermore, the Purchaser may only copy the SW if and insofar as it has been granted copying rights by the Supplier in writing.

3.2 The Purchaser shall not be entitled to modify, decompile or reverse engineer the SW or extract any individual parts of the SW unless this is permitted by mandatory copyright law. Furthermore, the Purchaser shall not be entitled to remove any alphanumeric identifiers, trademarks or copyright notices from the SW or the data medium and, insofar as it is entitled to make copies of the SW, shall copy them without alteration. The aforementioned regulation shall apply accordingly to the Documentation supplied in accordance with Section 2.

3.3 If the SW is an Upgrade, the Purchaser shall keep the CoL of the Source License and submit it to the Supplier at any time, if requested, together with the CoL for the SW. In the event that the Purchaser transfers its right to use the Upgrade SW in accordance with Section 14.2 it shall also submit the CoL of the Source License to the third party.

3.4 If the Purchaser receives a data medium which, in addition to the SW, contains further software products which are released for use, then it shall have the right to use these released software products exclusively for validation purposes, for a limited period of time and free of charge. The period of use shall be limited to 14 days, commencing with the first start-up of the relevant software program unless a different period is specified e.g. in the readme file of the relevant software product. These software products supplied exclusively for validation purposes shall be governed, mutatis mutandis, by the stipulations contained in these General Conditions for Supplies. The Purchaser shall not be authorized to pass on these software products separately, i.e. without the SW, to a third party.

### **4 Prices and Terms of Payment, Set-off, Retention, Rescission**

4.1 Prices shall be FCA (Incoterms 2010), but excluding any and all taxes, duties or imposts and packing. The Purchaser agrees to pay or reimburse Supplier for any taxes, duties or imposts which Supplier or his subcontractors or subsuppliers might be required to pay.

4.2 If the Supplier has undertaken the commissioning, assembly, erection or installation, the Purchaser shall bear all required incidental costs in addition to the agreed Contract price unless otherwise agreed. Unless agreed otherwise, the prices applicable for commissioning, assembly, erection and installation are stipulated in the Supplier's price sheet currently valid.

4.3 Payments shall be made free to the bank account or payment office notified by the Supplier.

4.4 The Purchaser may set off or assert a retention right only with respect to those of his claims that are undisputed or have been finally determined in a legally binding manner.

4.5 Unless agreed otherwise between the parties, invoices shall be due for payment immediately and shall be settled not later than on the 30th day counting from the date of the invoice, without any cash discount or other deduction allowed. If the Purchaser is culpably in default in payment, he shall pay interest according to the respective rates for bank overdrafts, however, at least according to the statutory provisions.

4.6 If the Purchaser ceases his payments, if an application to open insolvency proceedings against the Purchaser's assets has been filed or if another material deterioration in the Purchaser's creditworthiness occurs which endangers the Purchaser's claims, the Supplier is entitled, without prejudice to any other rights, to rescind the Contract.

### **5 Retention of Title**

5.1 Title to supplied goods shall remain with Supplier until each and every claim against the Purchaser to which the Supplier is entitled under the business relationship with the Purchaser has been duly satisfied.

5.2 In case that the reserved goods are combined with other goods, the Supplier shall obtain co-ownership of the new item according to the relation of the invoice value of the reserved goods to the invoice value of the other goods. In case that the ownership of the Supplier expires due to the combination, the Purchaser shall transfer to the Supplier already at this point in time his ownership rights at the new asset or the new item to the extent of the invoice value of the reserved goods and shall store the new asset or the new item at no charge to the Supplier. Co-ownership rights of the Supplier arising hereunder shall be treated as reserved goods.

5.3 For the duration of the retention of title, the resale of the reserved goods shall be permissible only to resellers in the ordinary course of business and subject to the condition that the Purchaser either agrees upon complete payment in advance with its customer or retains title so that the property is transferred to the Purchaser's customer only after fulfilment of his obligation to pay. The Purchaser is not entitled to other disposals of the reserved goods, in particular not entitled to pledge the reserved goods or giving them as security.

5.4 The claims of the Purchaser arising out of the resale of the reserved goods shall be assigned to the Supplier already at this point in time; the Purchaser is authorized to collect the Page 3 of 6 claims arising out of the resale of the reserved goods for the Supplier. In case that the reserved goods are resold together with other goods which have not been supplied by the Supplier, the claim arising out of the resale of the reserved goods shall be assigned to the Purchaser only to the extent of the order value of the resale of the respective reserved goods. In case that the Purchaser inserts the claim arising out of the resale of the reserved goods into a current account relationship with its customer, the current account claim shall be deemed replaced after balancing by the account balance which shall be assigned to the Supplier to the extent of the order value of the resale of the reserved goods. In case of a resale of goods in which the Supplier holds co-ownership rights the claim arising out of the resale of the reserved goods shall be assigned to the Supplier to the extent of the order value of such co-ownership rights.

5.5 The Supplier is entitled to revoke the Purchaser's authorization to resale the reserved goods and to collect the claims arising out of the resale of the reserved goods if the Purchaser is culpably in default with payment claims arising out of the business relationship or if the Purchaser undertakes disposals of the reserved goods outside the ordinary course of business; the same applies in case of a material deterioration in the Purchaser's creditworthiness arising after the conclusion of the Contract or in case of an application to open insolvency proceedings against the Purchaser's assets.

5.6 In case of seizure of the reserved goods or similar acts or interventions by third parties which may result in the Supplier losing title to the reserved goods, the Purchaser shall inform the Supplier immediately thereof in writing.

5.7 In case the law applicable at the place where the supplied goods are delivered to does not acknowledge a retention of title or provides for additional requirements such as, without limitation, registration requirements, the Purchaser shall support the Supplier in order to fulfil these requirements or to establish a comparable security right for the Supplier's claims resulting from the respective supply.

5.8 The Purchaser shall insure the reserved goods at his expense against fire, breakage, water and theft damage.

5.9 In cases of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, the Supplier shall be entitled to take back the reserved goods. The Purchaser shall be obliged to return the reserved goods. The taking back, the assertion of the retention of title or the seizure of the reserved goods by the Supplier shall not mean a rescission of the Contract, unless expressly stated by the Supplier.

5.10 Upon entering into the Contract, the Purchaser authorizes the Supplier, if necessary, to enter or notify reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at Purchaser's costs.

### **6 Time for Delivery, Reservation of Delivery, Delay, Force Majeure**

6.1 Performance of the stipulated time for delivery is subject to the timely receipt by the Supplier of all documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as fulfilment of the agreed terms of payment and other obligations by the Purchaser, in particular those ones according to Section 9.6. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly unless the Supplier is responsible for the delay.

6.2 The Supplies shall be subject to the proviso that the Supplier receives complete and timely delivery from its sub suppliers.

6.3 "Force Majeure" shall include but is not limited to mobilization, war, civil insurrection, terrorism, acts of government, non granting of required export permissions, epidemics, strike, lock-out, raw material shortages, lack of transportation, interruption of electricity and forces of nature. If non-performance of the time for delivery is due to Force Majeure including unforeseeable, for the Supplier uncontrollable impediments, accidents or disturbances, which are not only of short-time duration and could not be avoided despite application of due care, the time for delivery shall be extended accordingly.

6.4 The purchaser may cancel firm orders for Products upon payment of a fee based on a percentage of the Dollar or EURO value (depending on which currency has been agreed upon) of the order in accordance with the following schedule:

Cancellation Notice Received

Cancellation Multiplier indicated below to be applied to the Unit Price Listed on Purchase Order to Determine Cancellation Charge.

- less than Calendar days prior to scheduled delivery date 90%
- less than 5 Calendar days prior to scheduled delivery date 75%
- less than 15 Calendar days prior to scheduled delivery date 30%
- More than 30 calendar days prior to scheduled delivery date 10%

6.5 The Purchaser is not entitled to rescind the Contract due to a delay if a) the Supplier is not responsible for the delay, b) due to the delay of the Supplier a claim for damages of the Purchaser against the Supplier amounting to at least 5 % of the net price of those Supplies which, because of the delay, could not be put to the intended use is not coming into existence and c) the delivery does not occur within a reasonable time limit given by the Purchaser of at least 12 weeks.

6.6 Any further claims and rights in consequence of a delay than per Sections 6.4 and 6.5, in particular without limitation further claims for damages of the Purchaser, are excluded. This applies also if a time limit given by the Purchaser expires.

6.7 If dispatch or delivery or pre-acceptance is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch respectively readiness for pre-acceptance by the Supplier, the Purchaser may be charged storage costs for each month thereafter up to the amount of 0.5 % of the net price of the stored Supplies but in no event shall the aggregate storage charges exceed a total of 10 % of such net price.

## 7 Transfer of Risk

7.1 Unless otherwise agreed, the risk of accidental destruction and accidental deterioration shall pass to the Purchaser, even in case of carriage free or partial deliveries, at the point in time when the Supplies are given to dispatch or when they are collected.

7.2 If the dispatch, the delivery, the beginning or completion of assembly or erection, the installation, commissioning, taking into the Purchaser's own operation or the trial run is delayed for reasons within the Purchaser's responsibility, or if the Purchaser is for other reasons in default of taking over the Supplies, the risk shall pass to the Purchaser on the date when it would have passed but for such failure of the Purchaser.

## 8 Assembly, Installation and Training

8.1 Unless otherwise agreed in writing, assembly, erection, installation of software and commissioning shall be subject to the following provisions: The Purchaser shall provide at his own expense and in a timely manner: a) all earth-moving and construction work and other ancillary services not specific to the Supplier's trade as well as the necessary skilled and unskilled labor, materials and tools, b) the equipment and materials necessary for assembly, installation and commissioning such as scaffolding, lifting equipment etc., fuels and lubricants, c) energy, water, compressed air and venting/extraction at the point of use, including connections, heating, lighting and VoC handling, d) suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel including appropriate sanitary facilities. Furthermore, the Purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the Supplier and of the assembly personnel, e) protective clothing and protective devices which are needed because of particular conditions on the site, f) in case of supply of software the hard- and software periphery pursuant to the requirements resulting from the Page 4 of 6 Purchaser's individual needs, at least according to the system requirements and versions specified in the software documentation, as far as the components are not part of the Supplies, and g) in case of supply of software any and all further provision materials specified in "Scope of Service and Delivery - Product line specific part -Software Solution and Products".

8.2 Before the start of assembly, erection, installation, or commissioning the Purchaser shall make available at his own cost and expense all necessary information concerning the location of concealed electric power, gas, compressed air and water lines or of similar installations as well as all required data concerning static and sub-surface conditions of the site.

8.3 Assembly, erection, installation and commissioning shall be, without prejudice to any further requirements, only part of the Contract if they are specified as a separate position in the contractual declaration of the Supplier.

8.4 Before the beginning of assembly, erection, installation, or commissioning the Purchaser shall provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly, erection, installation, or commissioning can be started as agreed and carried out without interruption. Access roads and the site shall be paved and clear.

8.5 If the assembly, erection, installation or commissioning is delayed by circumstances for which the Supplier is not responsible, the Purchaser shall bear the costs of waiting periods and of any additional traveling of the Supplier or the personnel that may be necessary.

8.6 The Purchaser shall certify to the Supplier at weekly intervals the hours worked by the Supplier's personnel and shall promptly confirm in writing the completion of assembly, erection, installation, or commissioning.

8.7 Content and scope of training services have to be agreed upon between the Supplier and the Purchaser in order to be part of the Contract. The Purchaser is requested to sign up for the training within 3 months subsequent to the conclusion of the Contract. Should the Purchaser fail to sign up within this period, his right to participate in training shall expire.

## 9 Taking, Acceptance, Provisions

9.1 The Purchaser shall not refuse taking or acceptance of the Supplies for insignificant defects.

9.2 In the event the Purchaser suspends unjustifiable the taking of the Supplies the Purchaser shall reimburse the Supplier all additional cost incurred due to such suspension.

9.3 For all products delivered by GPS Technologies GmbH the acceptance conditions according to the "Scope of Service and Delivery - Common Part" valid at the time of the conclusion of the Contract shall apply.

9.4 If pre-acceptance at the Suppliers premises is agreed upon between the Supplier and the Purchaser, the Supplies shall be deemed to be pre-accepted if such pre-acceptance is not carried out within two weeks after the Supplier's declaration of readiness for pre-acceptance.

9.5 If, after completion, the Supplier requests acceptance of the Supplies or declares his readiness for acceptance, such acceptance shall be carried out by the Purchaser within two weeks of the Supplier's request, failing which the Supplies shall be deemed to be accepted. Acceptance is also deemed to have taken place if the Supplies are put into use by the Purchaser.

9.6 Provisions or test material which is needed for the Supplies, for pre-acceptance or acceptance, shall be supplied by the Purchaser, at his own costs, at the latest four weeks before the pre-acceptance, acceptance or delivery. In case of the Purchaser's failure, the Supplier may postpone the time of delivery. The quality, measurements and tolerances of the test material must correspond to the production material used by the Purchaser. The Purchaser shall be responsible for any consequences resulting from the non-compliance of the test material with the production material.

## 10 Defects Liability

The Supplier shall be liable to the Purchaser for material defects including the non-compliance with express warranties or the failure of the Supplies to meet guarantees as follows, whereas in case of supply of SW material defects comprise deviations of the SW from the relevant Documentation, defects in data media or errors in the Documentation:

10.1 The Supplier shall, upon written request of the Purchaser, at his option, repair any material defects or replace any Supplies which turn out to be defective within the defects liability period for any material defect, which is due to circumstances that existed at the time the transfer of risk occurred.

10.2 The defects liability period shall be twelve (12) months from the date the transfer of risk to the Purchaser occurred.

10.3 The Purchaser shall immediately inspect the Supplies and shall notify the Supplier in writing without undue delay of any material defects. If the Purchaser does not notify the Supplier in writing without undue delay, the Supplies are deemed to have been accepted with respect to such material defects.

10.4 The Supplier shall be given adequate time and opportunity to remedy the material defect. For this purpose, the Purchaser shall grant the Supplier working access to the nonconforming Supplies without cost to the Supplier.

10.5 In case the material defect refers to a certain part of the delivery, the remedy of the material defect shall be rendered by the redelivery of a respective spare part free from defects. Costs for disassembly and reassembly including herewith related expenses shall be borne by the Supplier only to the extent the Supplier is liable for damages.

10.6 Without prejudice to Section 10.7 the place of performance regarding the remedy of material defects is the Supplier's registered office.

10.7 With regard to SW defects diagnosis and correction shall be implemented at the Supplier's premises or, at the Supplier's discretion, at the place where the SW is installed. The Purchaser shall submit the documents and information available to it and required for correction of defects to the Supplier. If the Supplier corrects the defect at the place where the SW is installed, the Purchaser shall arrange that the required hardware and software as well as the required operating statuses and qualified operating personnel are available to facilitate swift performance of the works.

10.8 The Supplier is not obligated to reimburse transportation expenses which Purchaser had to bear as expenses necessary for remedy any defect, insofar as the expenses were increased because the Supplies were subsequently transferred to a location other than the initial place of destination.

10.9 If a reasonable period of time granted to the Supplier expires without the defect being remedied, or if the Supplier fails to remedy the defect, the Purchaser shall have the right, subject to the provisions of the statutory law, to price reduction or to rescind the Contract. For claims for damages and expenses Sections 12, 13 shall apply.

10.10 The Supplier shall not be liable for material defects which only insignificantly impair the use of the respective Supplies, unsubstantial deviations of the Supplies from the specification of the Supplies (which in case of supply of SW results from the relating Documentation), natural wear and tear or damage, arising after the transfer of risk, from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, defective installation or erection not carried out by the Supplier, inappropriate foundation or particular external influences not explicitly assumed to impact on the Supplies under the Contract.

10.11 The Supplier shall not be liable for material defects caused by modifications or repairs improperly carried out by the Purchaser or third parties. In such cases the Supplier will invoice its services rendered regarding defects diagnosis and correction according to the Supplier's price sheet currently valid.

10.12 Special constructions are components of the Supplies which Page 5 of 6 are built based on a special request and specification of the Purchaser. Special constructions shall become part of the Contract by Supplier's written confirmation. The Purchaser is hereby informed that special constructions may impact the performance of the specification values as defined in the "Scope of Service and Delivery - Common Part". The availability of spare parts, documentation, service and training for special constructions is limited.

10.13 Special terms and conditions for the supply of software: a) For SW, for which a Trial License or Test License has been granted free of charge or which has been supplied for validation purposes only according to Section 3.4 free of charge, the Supplier's liability for material defects is completely excluded, unless the Supplier has fraudulently concealed the material defect. b) In the event that the Purchaser does not exercise its rights with respect to the SW, but decides to exercise said rights with respect to a Previous Version as per Section 2.6, the Supplier shall only be liable for material defects in the Previous Version to the extent to which they also occur in the SW. Claims of the Purchaser with respect to material defects in Previous Versions which are in the Purchaser's possession and which arise from license agreements concluded for such Previous Versions, shall remain unaffected. c) With respect to Class A SW, the Supplier is in the possession of the SW source code and authorized to modify same. In that case the Supplier shall correct material defects at its own discretion by providing a new SW release in which only the relevant material defects has been remedied ("ServicePack") or by supplying an upgrade in which the material defects has also been remedied. With respect to Class B SW, the Supplier is not in the possession of the SW source code or not authorized to modify same. In the event that the Supplier is in the possession of a ServicePack or a relevant Upgrade, or if the Supplier can procure a ServicePack or Upgrade with reasonable efforts, the Supplier shall correct the material defect by supplying the ServicePack or Upgrade. The SW Class is derived from the Order Data or CoL. As far as the provision of the ServicePack/Upgrade serves to eliminate material defects in the SW for which the Purchaser has copying rights, the Purchaser shall be entitled to copy the ServicePack/Upgrade in accordance with the number of copying rights granted to it. However, this regulation shall not apply to copies generated by the Purchaser with respect to which claims to material defects correction have already become time-barred. d) The Supplier shall remedy material defects in data media by replacing the defective unit with one that is free of material defects. e) Claims arising from material defects shall only be recognized if these can be reproduced on the reference hardware / target hardware specified in the Order Data or CoL. Claims arising from material defects shall not be recognized in case the material defects are in SW extensions implemented by the Purchaser via the interfaces provided by the Supplier to this end. f) In case of damaging of data medium material, the Supplier is not liable for expenditures or damages incurred due to the replacement of lost data and information. For other claims for damages and expenses Sections 12, 13 shall apply.

10.14 Any further rights and remedies of the Purchaser than those as per this Section 10 shall be excluded.

#### **11 Industrial Property Rights and Copyright, Other Defects of Title**

11.1 Unless otherwise agreed upon in writing between the parties, the Supplier shall provide the Supplies solely where the Purchaser has its seat or registered office free from third parties' industrial property rights and copyrights (hereinafter called "Intellectual Property Rights").

11.2 In the event a third party asserts legitimate claims against the Purchaser because of an infringement of Intellectual Property Rights by the Supplies in the time of transfer of risk, the Supplier shall be liable to the Purchaser as follows: a) The Supplier shall at his own option and expenses either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Intellectual Property Rights or replace the relevant Supply. If this is not reasonably possible for the Supplier, the Purchaser shall be entitled to reduce the price or to rescind the Contract after a reasonable time period given by the Purchaser has expired. For claims for damages or expenses Sections 12, 13 shall apply. b) Supplier's aforesaid obligations shall exist only provided the Purchaser has immediately notified the Supplier in writing of the claims asserted by the third party, the Purchaser has not acknowledged an infringement and all countermeasures and settlement negotiations are reserved to the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other important reasons, the Purchaser shall clarify towards the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.

11.3 Claims of the Purchaser shall be excluded if he is responsible for an infringement of Intellectual Property Rights.

11.4 Claims of the Purchaser shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Purchaser, by a use of the Supplies not foreseeable by the Supplier or by the Supplies being altered by the Purchaser or being used together with products not provided by the Supplier.

11.5 Claims due to an infringement of Intellectual Property Rights shall become time-barred in the limitation period set forth in Section 10.2. For claims for damages and expenses Sections 12, 13 shall apply. Further rights and remedies of the Purchaser than those as per this Section 11 based on an infringement of third parties' Intellectual Property Rights shall be excluded.

11.6 For other defects in title the provisions of Section 10, with the exception to Section 10.3, shall apply mutatis mutandis.

#### **12 Impossibility of Performance / Adaptation of Contract**

12.1 If it is impossible for the Supplier to carry out the Supplies for reasons for which he is responsible, the Purchaser shall be entitled to claim damages. The Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. The Purchaser shall have no additional rights, in particular neither right to rescind from nor to terminate the Contract nor to reduce the remuneration nor to claim damages.

12.2 If unforeseeable events in the context of Section 6.3 substantially change the economic implication or content of the Contract or have a substantial impact on Supplier's business, the Contract shall be adapted appropriately and in good faith. Where this is not economically reasonable, the Supplier shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, the Supplier shall be entitled to terminate the Contract when a force majeure event has continued for more than 180 days. If the Supplier wants to make use of this right of termination, he shall notify the Purchaser in writing immediately after becoming aware of the force majeure event. This notification requirement shall apply even where at first an extension of the time for delivery had been agreed between the Parties.

#### **13 Further Liability**

13.1 Any and all further rights and remedies of the Purchaser against the Supplier for whatsoever legal reason shall be excluded. In particular, the Purchaser shall not be entitled to challenge the Contract for material error, including any challenge of the Contract for any error related to defects of the Supplies. The Purchaser shall also not be entitled to claim damages or expenses, irrespective of the legal basis (contract, tort, indemnity etc.); this shall refer in particular to claims for loss of production, loss of use, loss of orders or profit, for any indirect or consequential damage.

13.2 The aforesaid shall not apply if liability is mandatory, e.g. in accordance with the Product Liability Act, in cases of intent or gross negligence by directors and officers of the Supplier. Section 13.1 shall also be applicable to Sections 6, 10, 11 and 12. Page 6 of 6

13.3 These limitations of liability shall also apply for the benefit of the Supplier's subcontractors, suppliers, agents, directors, officers and employees.

#### **14 Transfer**

14.1 Supplier may transfer the Contract concluded with the Purchaser to a third party. This transfer does not become effective if the Purchaser objects to said transfer within four (4) weeks of receipt of such notification. This shall be pointed out by Supplier in the notification.

14.2 The Purchaser shall be entitled to transfer the right to use the SW granted to it to a third party, provided that it concludes a written agreement with the third party in conformance with all of the conditions contained in Section 3 and on the proviso that it does not retain any copies of the SW. If the Purchaser has received a License Key for the SW, this key shall be supplied to the third party together with the SW. Furthermore, the third party shall be submitted the CoL together with these General Conditions for Supplies.

#### **15 Confidentiality**

Any information made available to the Purchaser by the Supplier in connection with this Contract shall be treated as confidential. The Purchaser shall use the information only for the purposes specified in this Contract. This confidentiality obligation shall not apply to information which Purchaser can demonstrate, a) is already in the public domain or becomes available to the public through no breach by Purchaser of this confidentiality undertaking or b) was in Purchaser's possession prior to receipt from Supplier without a confidentiality undertaking or c) has thereafter been legally obtained without confidentiality obligation from others or d) is independently developed by the Purchase who had no access to the information received hereunder. The obligations set forth in this Section 15 shall survive any termination of the Contract.

#### **16 Dispute Settlement / Applicable Law**

16.1 Any dispute, controversy or claim arising out of, or in relation to, this Contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The seat of arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English.

16.2 The relationship between the Supplier and the Purchaser arising out of or in connection with the present Contract, irrespective of the legal basis, shall be governed by Swiss law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

#### **17 Miscellaneous**

17.1 Mistakes, unintended gaps and contradictions in the Contract shall be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.

17.2 In the event of legal invalidity of individual stipulations, the other parts of this Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of this Contract would constitute unacceptable hardship for either party.