Supplementary Terms of Delivery for Software

The Supplementary Terms and Conditions for Software Delivery apply exclusively to the provision of individual and standard software – limited and unlimited in time – (hereinafter referred to as "Software") also as part of or in connection with a delivery of the pertaining target hardware. However, if a breach of duty or a performance disruption is not the result of a cause in the delivery of the Software itself or if the Supplementary Terms and Conditions for Software Delivery contain no regulations, then the General Terms and Conditions of Sale and Delivery of EKS InTec GmbH (hereinafter ""EKS") shall apply in the version effective as at contract conclusion.

1. Use of the software and related documentation

1.1. Software in the meaning of these Supplementary Terms and Conditions for Software Delivery is individual or standard software programmed by EKS (e.g. operation, application, configuration programs) also as part of or in connection with a delivery of the pertaining target hardware and that is delivered together with the hardware products as a part of the supply performance.

1.2. Documentation is only issued subject to a separate, written agreement. If documentation is issued, then the term "Software" also includes such documentation in the following.

1.3. Software supplied by EKS is protected by copyright. Any and all industrial property rights and rights of exploitation are held solely by EKS.

1.4. Upon payment of the agreed price, the Customer acquires a single licence, i.e. EKS grants the Customer the non-exclusive right to use the Software on just one device (target hardware) or his/her workplace, at any one time.

1.5. This right of use is limited to the period agreed upon; if no such agreement should exist, then this right of use is for an unlimited period of time.

1.6. The customer is entitled to transfer the Software from one device (target hardware) or workplace to another device (target hardware) or workplace, provided that the Software can at all times only be used with the same number of licences that have been acquired from EKS.

1.7. Should the Customer be issued with Software for which EKS possesses only derived rights of use ("third party software"), then the terms of use agreed to by EKS and its licensor shall apply in addition to, and take precedence over the provisions of item 1. EKS will indicate in the contract documents the existence and usage conditions of provided third party software and will make these available to Customer. In the event of any violation of these terms of use on the part of the Customer, not just EKS, but also EKS's licensor shall, on its own behalf, be entitled to enforce any claims and rights arising as a result.

1.8. EKS grants the Customer the right - revocable for good cause - to transfer to third parties rights of use granted to him, provided the Customer then ceases to make use of such rights. Should the Software have been purchased with a device, then the Software may only be handed on for use by third parties in conjunction with the device. The Customer must ensure that the third party is granted no rights of use on the Software over and above those granted to the Customer in accordance with these terms of delivery, and that at least the obligations arising from these terms of delivery for Software are imposed on the third party. In the event of rights of use being transferred to a third party, the Customer shall be obliged to hand over to the third party all copies issued to or made by the Customer, or to delete them.

1.9. The Customer is not entitled to grant sub-licences.

1.10. The Customer is not entitled to modify, translate, reverse engineer or disassemble the Software, create works derived from the Software, or extract parts of it. The Customer is permitted to decompile only within the bounds of § 69e UrhG (German Copyright Act).

1.11. The Customer is to start up the Software himself. Should the Customer so wish, EKS can offer support here; this service will be invoiced separately.

1.12. Provided the Software is not under copy protection, the Customer is permitted to make one copy, which may be used by the Customer for security purposes only. No copyright notice in the Software may be removed.

1.13. The Software is supplied in object code only. There is no question of the source code being provided.

1.14. Should Software be made available by electronic communication media (e.g. Internet), transfer of risk takes place at such time as the Software leaves the domain under the influence of EKS (e.g. during download).

2. Material defects in Software

2.1. The Customer acknowledges the fact that it is impossible to develop software that will work without error in every application and combination. The range of performance and functions of software products is therefore dependent on the product descriptions valid at the time the contract is entered into. Only such deviations from the product description as can be proved and reproduced by the Customer will be regarded as material defect in software products. A material defect is not deemed to exist if the defect does not occur in the most recent version of the Software supplied to the Customer, and the Customer can reasonably be expected to use the Software.

2.2. EKS will not guarantee that the Software supplied is compatible with the data processing environment used by the Customer – particularly with software and hardware products used by the Customer.

2.3. The Customer is to take all reasonable measures to prevent or limit any damage resulting from defective software. Any notification of defects must be made in writing, and give as exact a description as possible of the defect and data processing environment. The Customer is to record error reports in documents that can be checked by EKS, providing details of the occurrence and type of deviation from the description of work, and to make an active contribution towards limiting errors. The Customer is to arrange regular backups to secure programs and input data or data to be processed. Should the Customer, through negligence, fail to perform this obligation, then EKS shall not be liable for any consequences arising therefrom, in particular the retrieval of lost or damaged data or programs. This does not constitute any change in the burden of proof.

2.4. Claims for defects are subject to a limitation period of 12 months. The period of limitation for material defects shall begin with the initial start-up or installation of the Software, but in any case no later than 6 months after delivery.

2.5. If, during this period, defects occur in the Software provided by EKS, and these considerably impair either the value or efficiency of the Software, EKS will look into these errors and, at its own discretion and provided the defect is covered by warranty, remedy the situation by either eliminating the defect or supplying non-defective Software. Program errors are to be eliminated either by demonstrating to the Customer a means that can be reasonably be implemented to avoid the error, or by supplying an updated version. Alternatively, EKS can choose to provide an upgrade version. Should the Customer refuse access to licensed material for the purposes mentioned above, or fail to install the updates or upgrades provided in the user environment, subsequent performance shall not be deemed to have failed. If, in the case of a warranty claim, several replacements have been supplied in order to rectify a defect, none of which has proved successful, the Customer shall be entitled to demand a proportional reduction of the purchase price or the cancellation of the contract.

2.6. Claims made by the Customer on account of expenses incurred as a result of measures to rectify errors, in particular transport, travel, labour and material costs, shall be excluded where such expenses have been increased by the fact that the Software was subsequently transported to a location other than the premises of the Customer, unless its transport to this location was in keeping with its intended use.

2.7. Any further claims, in particular claims for compensation for damages not occurring to the Software itself, such as loss or the incorrect processing of data, are precluded from the scope given in item 4.

3. Defects of title

Unless otherwise agreed, EKS is bound to ensure that the Software is effected free of industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights") solely in the country of the place of performance. Should any third party lodge a claim against the Customer for the infringement of Property Rights by Software supplied EKS and then put to its intended use, then EKS shall be liable to the Customer, for Software supplied for an unspecified period of time within the period stipulated in item 2.4, as follows:

3.1. EKS shall have the option of, at its own expense, acquiring the right to use the Property Rights to the Software concerned, or so modifying them that there is no infringement of Property Rights, or replacing them. In this respect, item 2 shall apply accordingly. The Supplier's liability to pay damages is to be governed by item 4.

3.2. The duties of EKS described above will be applicable only insofar as the Customer notifies EKS in writing and without undue delay of any claims asserted by third parties, fails to recognise an infringement, and all EKS 's rights to any and all means of defence and settlement negotiations are retained.

3.3. Should the Customer discontinue usage of the Software in order to mitigate damages, or for any other good cause, then the Customer is obliged to advise the third party to the effect that the discontinuance of usage must not be construed as recognition of any infringement of Property Rights.

3.4. Claims lodged by the Customer shall be excluded, should the Customer be responsible for the infringement of Property Rights, or the infringement of Property Rights be due either to special preferences of the Customer, an application not foreseeable to EKS, or to the Customer's modifying the Software or using it with hardware not supplied by EKS.

3.5. In the event of any other defect of title, the provisions set out in item 2 shall apply.

4. Liability

Unless an alternative arrangement has been agreed upon in these terms, EKS shall only be liable for damages and wasted expenditure (hereinafter referred to as "Damages") incurred as a result of breach of contractual or non-contractual duties, in the event of intent or gross negligence on the part of EKS 's legal agents and performing agents, of injury to life, body or health, of wilful misconduct, of the acceptance of a guarantee or risk of procurement, in case of the absence of a guaranteed feature, of the infringement of material contractual obligations, of mandatory liability under product liability laws, or of other mandatory liability. Claims for damages resulting from breach of a material contractual obligation shall, however, be limited to damage which is foreseeable and typical for this type of contract, provided that there is no question of intent or gross negligence on the part of EKS's legal agents and performing agents, nor of injury to life, body or health, or the acceptance of a

guarantee or risk of procurement. Material contractual obligations are those, the fulfilment of which characterise the contract, and on which the Customer can depend. The above provisions shall not constitute any change to the detriment of Customer in the burden of proof.

5.   Termination

Entitlement to use the Software will terminate automatically and without notice, should the Customer fail to honour any fundamental provision of these contractual terms.

6.   Export restrictions

The export of the Software and documentation may be subject to authorisation, e.g. due to its nature or intended purpose. The Customer shall be liable for any and all infringements of export control regulations, should he utilise the Software outside of the country in which the place of business given in the Customer's delivery address is situated, and shall indemnify and hold EKS harmless from any and all claims for damages lodged by third parties on account of infringements of such export control regulations.