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Supplemental Clauses in accordance with Section 1.4 of the General Terms and Conditions if Delivery and Service: Development of Software Products for Industrial Automation (power supply, measuring, shifting, steering)

1   Scope of application

1.1   These supplemental clauses always apply if the Contract, partially or completely, includes the planning and development of Software by Supplier to the benefit of Purchaser.

1.2   These supplemental clauses exclusively apply to the planning, development and delivery of Software by Supplier to the benefit of Purchaser.

1.3   All definitions used in the Terms and Conditions and in any other applicable supplemental clauses are incorporated into these supplemental clauses.

1.4   These supplemental clauses supplement the provisions of the Terms and Conditions. In the event of conflict between a provision in these supplemental clauses and a provision in the Terms and Conditions, the provision in the supplemental clause shall prevail.

2   Object

2.1   Purchaser may instruct Supplier with the planning, development and delivery of (i) Standard-Software, (ii) Engineering-Software, (iii) Runtime-Software and/or (iv) Embedded Software (collectively referred to as "**Software**" and in the Terms and Conditions specified as "Delivery Item").

2.2   The Software may include Open-Source-Software-Components. Supplier shall inform Purchaser thereof in the planning phase or, if this becomes apparent later, in the development phase.

2.3   The Software may include Third-Party-Software-Components. Supplier shall inform Purchaser thereof in the planning phase or, if this becomes apparent later, in the development phase.

2.4   The Software may include Customer-Software-Components. In this case, regardless of any conflicting provision in the Terms and Conditions, all claims for defects and liability on the part of Purchaser towards Supplier with respect to such Customer-Software-Components are expressly excluded.

3   Planning

3.1   In the planning phase, Purchaser shall make use of the services of Supplier in order to make the necessary preparations to perform the data processing and the Software development. The aim of the planning service provided by Supplier is to agree on all essential requirements, based on the facts and requirements determined during the planning phase in close cooperation with Purchaser, in a formal specification sheet or in any other formal or informal form (referred to as "**Scope of Work**"). The Scope of Work forms the basis for the subsequent Software development.

3.2   In the planning phase, Purchaser shall provide Supplier with the necessary information on the actual state in the intended fields of application, on business policy and procedural goals and priorities, and on all other specifications within Purchaser's sphere for the preparation of the Scope of Work. For this purpose, there will be direct and close coordination throughout the planning phase regarding the services provided by Supplier and the wishes, proposals and instructions of Purchaser. Purchaser is therefore fully involved in the planning phase.

3.3   If Supplier notices during the planning phase that the intended configuration has to be modified due to the facts, requirements and software features that have been worked out in the meantime, the Supplier shall inform Purchaser thereof within a reasonable time and make alternative proposals. The Supplier and the Purchaser shall immediately decide on any modifications resulting from such instructions affecting the price, preparation and content of the Scope of Work.

4   Development

4.1   Supplier shall develop the Software substantially on the basis of the Scope of Work.

4.2   During the development phase, Supplier shall carry out further programming, in particular coding, testing and integration. At regular and reasonable intervals, Supplier shall inform Purchaser about the status of the programming work and the compliance with the requirements to the Software. Delays and change requests shall be communicated to Purchaser within a reasonable period of time.

4.3   During the development phase, Purchaser shall again provide Supplier with all information required within a reasonable period of time in order to enable Supplier to fulfil its obligations in accordance with the Contract.

5   Acceptance

5.1   Every Software developed shall be subject to acceptance.

5.2   Supplier shall notify Purchaser in writing of the completion and availability for acceptance of the Supplier's work.

5.3   The terms, procedure and duration of acceptance may be determined in the Scope of Work. Furthermore, partial acceptance of quantifiable partial services can be agreed upon in the Scope of Work.

5.4   Acceptances and partial acceptances shall always be recorded in writing. After successful completion of the acceptance, Purchaser shall confirm the acceptance by countersigning the acceptance protocol. Notwithstanding the above, Software development shall be deemed accepted fourteen (14) days after written notification of availability for acceptance by Supplier unless any deviations or faults are presented, if the acceptance procedure is delayed for reasons for which Supplier is not responsible or if the Purchaser does not confirm the acceptance within the set period and omits to notify at least one defect or fault, or if the Purchaser is taking the Delivery Item in professional use, the Delivery Item shall be deemed to have been accepted.

5.5   During the time period used by Supplier for the elimination of errors identified in the acceptance test, the acceptance procedure is considered suspended. Supplier shall correct errors within a reasonable time and free of charge (referred to as "**Correction**") and notify Purchaser of the completion of the Correction. Subsequently, the acceptance procedure is carried out again. Insignificant non-conformities are no reason for refusal of acceptance.

5.6   If the Correction fails in spite of a letter of notice sent by Purchaser to Supplier where he grants a reasonable and adequate period of time and warns Supplier that failure of Correction might lead to termination of the non-accepted services, Purchaser is entitled to withdraw from the development phase regarding the affected service.

5.7   In the planning phase and in the development phase, the Parties can agree on partial acceptance of quantifiable partial services which have to be accepted individually according to Section 5, in order to ensure the good continuation of the development phase. In this case, Sections 5 only apply to partial services not yet accepted.

6   Management of the project

6.1   Unless otherwise expressly agreed in writing between the Parties, the Parties designate project managers that are authorized during the planning phase and the development phase to issue binding declarations in all project matters. The Parties shall also agree on substitution rules for these project managers. The project managers monitor and coordinate the work on an ongoing basis and inform each other about its progress in regular meetings. The Parties make the aforementioned arrangements in writing.

6.2   The Parties shall provide sufficient and qualified personnel for mutual cooperation. The Parties are aware of the fact that a fruitful cooperation in the planning phase and the development phase requires an intensive involvement of Purchaser.

7   Remuneration

7.1   The remuneration to which Supplier is entitled shall be determined in the price section of the Contract. All prices and / or rates shall apply exclusive VAT at the statutory rate valid on the day the service is provided.

7.2   Unless the Parties have expressly agreed otherwise in writing, all services provided by Supplier shall be remunerated on a time and material basis in accordance with the "JUMO service charge rates" valid at the time the service is provided. These shall be annexed to the Contract.

8   Amendments

8.1   If during the development phase Purchaser considers that technical amendments are useful or necessary, Purchaser shall inform Supplier thereof immediately. In this case, the Parties shall discuss the consequences of these amendments with respect to the content and the performance of the Contract. If there is no agreement between the Parties on the amendment and its consequences, the original agreement remains valid.

8.2   If the terms, content or scope of the Scope of Work are amended by mutual agreement after the conclusion of the Contract, each Party can claim the mutual adjustment of the remuneration and the timetable. The criteria used at the time of the conclusion of the Contract to evaluate the performance of Supplier shall apply in this case. Purchaser is never entitled to unilaterally modify the Contract.

9   Liability for defects

9.1   Supplier warrants that the Software does not contain any material defects that invalidate or significantly reduce its suitability for the contractually agreed use.

9.2   Purchaser is aware that according to the state of art it is not possible to develop Software that is completely free of errors.

9.3   Without prejudice to Section 9.12, Supplier shall repair any reproducible errors of the Software for which Supplier is responsible in accordance with Sections 9.5 and 9.6.

9.4   Purchaser shall describe any defects in as much details as possible

9.5   The Correction shall be carried out at the discretion of Supplier (i) by troubleshooting, (ii) by licensing a new Software version or (iii) by identifying ways of avoiding the impact of the error. In order to be able to invoke the rights under the Contract, a new software version has to be implemented by Purchaser within the time stipulated by the Supplier.

9.6   The Correction shall take place at the discretion of Supplier at Purchaser's premises or at Supplier's premises. If Supplier chooses to repair the defect at Purchaser's premises, Purchaser must provide a suitable environment and suitable operating personnel free of charge, insofar as this is necessary, in order to carry out the Correction within a reasonable period of time. Purchaser must provide Supplier with the documents and information available to him for Correction.

9.7   Purchaser must notify material defects to Supplier immediately in detail and in writing in order to have the right to claim damages and compensation.

9.8   For Software that is provided for testing, demo or validation purposes, Supplier is liable only if it has fraudulently concealed the defect, in case of injury to life, body or health and in case of intentional or grossly negligent breach of duty by Supplier.

9.9   The liability for material defects does not extend to:

–   defects caused by deviations from the agreed use of the Software as specified in the documentation;

–   non-material deviations from the agreed functionalities for the agreed use;

–   non-material impairment of usability;

–   deviations that could have been identified during the acceptance tests;

–   damages that arise after acceptance as a result of faulty or negligent treatment, excessive use or resulting from special external influences, which are not foreseen by the Contract;

–   improper alterations or extensions of the Software by Purchaser or third parties and the consequences thereof.

9.10   In the case of Embedded-Software, claims for defects only exist if they can be reproduced on the reference hardware or target hardware specified in the Contract. If an error indicated by Purchaser is not reproducible, due to incorrect operation by Purchaser or excluded from the liability for any other reason, Supplier is entitled to charge Purchaser an appropriate fee for the inspection and reimbursement of the resulting transport, travel and accommodation expenses.

9.11   If data carriers provided by Supplier are defective, Purchaser can only request Supplier to replace the defective data carriers with error-free versions.

9.12   Claims for Correction shall be raised to the Supplier within twelve (12) months from the occurrence, unless otherwise regulated under mandatory applicable law.

9.13   Any claims of Purchaser for reimbursement of expenses required for Correction, in particular transport, travel, labor and material expenses, are excluded insofar as such expenses occurred when the Delivery Item is subsequently relocated to a location other than Purchaser's place of business unless the relocation is inherent to its agreed use.

9.14   Without prejudice to Section 10, other warranty claims by Purchaser against Supplier than those agreed under this Section 9 are expressly excluded.

10   Intellectual property rights

10.1   Without prejudice to Section 11 or any specific agreement entered into between the Parties in the subject matter, insofar as intellectual property rights arise during the planning phase or the development phase, shall vest in the Supplier.

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10.2 Unless expressly agreed otherwise in writing between the Parties, Supplier is obliged to provide its services free of intellectual property rights and copyrights of third parties (called "**Property Rights**"), excluding Third-Party-Software-Components and Open-Source-Software-Components under Section 11 below, only in the country of the place of delivery. If a third party raises justified claims against Purchaser for infringement of Property Rights by Software created by Supplier and used in accordance with the Contract, Supplier shall be liable towards Purchaser within the period specified in Section 9.12 as follows:

- Supplier will, at its discretion and expenses:
   • either obtain a license for the Software in question,
   • change the Software so that the Property Right are not violated any more, or
   • replace the Software in question.
   If this is not possible for Supplier on reasonable terms, Purchaser is entitled to termination or price reduction;
- Supplier's obligation to pay damages is governed by Section 9 of the Terms and Conditions;
- The above-mentioned obligations of Supplier only exist if Purchaser immediately informs Supplier about the claims enforced by a third party in writing. If Purchaser discontinues the use of the Software for reasons of mitigation or other important reasons, Purchaser is obliged to inform the third party that the cessation of use does not constitute an acknowledgment of an infringement of Property Rights.

10.3 Claims of Purchaser are excluded if the Purchaser is responsible for the infringement of Property Rights.

10.4 Claims of Purchaser are furthermore excluded if the infringement of Property Rights is caused due to specific instructions of Purchaser, by an unauthorized use of the Software or by the Software being altered by Purchaser or used together with products or Customer-Software not provided or approved by Supplier.

11   Intellectual property rights of third parties

11.1 Insofar as the Software contains Third-Party-Software-Components, the intellectual property rights relating to such Third-Party-Software-Components remain exclusively with the manufacturer of the Third-Party-Software.

11.2 Insofar as the Software contains Open-Source-Software-Components, the intellectual property rights relating to such Open-Source-Software-Components will be handled in accordance with the license terms of such Open-Source-Software, which Supplier transfers to Purchaser.

12   License conditions

12.1 All terms and conditions of use and licensing of the Software are governed by the supplemental clauses "*Licensing of Software Products for Industrial Automation (power supply, measuring, shifting, steering)*", available under http://EG13-se.jumo.info.

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