

## GENERAL TERMS AND CONDITIONS

### I. GENERAL PROVISIONS

#### 1. Scope of application of the general terms and conditions

- 1.1. Unless otherwise expressly agreed in writing between the *Parties*, the *General Terms and Conditions* shall apply to all *Contracts* between the *Client* and the *Supplier* for the sale of *Products* and/or the provision of *Services*.
- 1.2. The *General Terms and Conditions* shall also apply to all future *Contracts* between the *Supplier* and the *Client*, even if the *Supplier* does not expressly refer to the *General Terms and Conditions* in future contracts.
- 1.3. By signing a *Contract*, the *Client* waives the application of its own General Terms and Conditions of Purchase and confirms that it has taken note of and unconditionally accepts the *General Terms and Conditions*. The *Client's* reference to its own General Terms and Conditions can in no case be considered as an acceptance by the *Supplier* of the *Client's* General Terms and Conditions.
- 1.4. In the event of any inconsistency between the various contractual documents forming part of the *Contract*, the following order of precedence shall apply (in descending order): (i) *Framework Agreement* (if any), (ii) *Order Confirmation*, (iii) *General Terms and Conditions*, (iv) *Specifications*.

#### 2. Definitions

- 2.1. In the *Contract*, the terms in italics shall have the following meanings:
  - a. **Client:** the natural or legal person who placed the *Purchase Order* and who receives the *Order Confirmation*;
  - b. **Purchase Order:** document that is substantially the same as the *Client's Offer* to the *Supplier* and lists the *Services* and/or *Products* ordered by the *Client* from the *Supplier*;
  - c. **General Terms and Conditions:** these General Terms and Conditions;
  - d. **Licence terms:** the licensing terms of the Software provided by the *Supplier* to the *Client*; such provision of the *Software* by the *Supplier* to the *Client* shall be subject to the provisions of Part I "GENERAL PROVISIONS" and Part V "SOFTWARE LICENCE" of the *General Terms and Conditions*;
  - e. **Order Confirmation:** the confirmation of the order sent by the *Supplier* to the *Client*;
  - f. **Contract:** the contract concluded between the *Supplier* and the *Client*, confirmed by the *Order Confirmation*, to which the various contractual documents apply: (i) the *Framework Agreement* (if any), (ii) the *Order Confirmation*, (iii) the *General Terms and Conditions* and (iv) the *Specifications*;
  - g. **Framework Agreement:** a contractual document signed by the legal representatives of the two *Parties* under which one or more *Contracts* are concluded, regardless of what the *Parties* call that contractual document;
  - h. **Deliverable:** the agreed result (if any) of the *Services* provided by the *Supplier*;
  - i. **Intellectual property rights:** patents (including patent applications, renewals, divisions, extensions and renewals), utility models, copyrights, trade secrets, trademarks, service marks and other legally protected intellectual property rights in application of the laws, jurisdiction or bilateral or multilateral international agreements;
  - j. **Supplier:** JUMO Automation Srl with registered office in 4700 Eupen, Industriestrasse 18, Belgium, CBE number 0408.057.719;
  - k. **Confidential information:** (i) any document or information exchanged in physical form between the *Parties* and clearly marked as "confidential" or "exclusive"; (ii) any other document or information exchanged orally, visually or in machine-readable form or in non-physical form between the *Parties* and confirmed in writing as confidential or exclusive within ten (10) days of its transmission; and (iii) any document or information normally to be considered confidential; *Confidential Information* shall not include any document or information which (i) has already become public knowledge for any reason other than as a result of a transmission in breach of the Agreement, (ii) has already been brought to the attention of the receiving *Party* as non-confidential, (iii) was lawfully received by the receiving *Party* from a source other than the disclosing *Party*, provided that such source is not bound by a confidentiality obligation to the disclosing *Party* or is not otherwise prohibited from disclosing the information by a legal, contractual or fiduciary obligation, (iv) required to be disclosed by law, provided that the receiving *Party* promptly notifies the disclosing *Party* in writing of such disclosure requirement so that the disclosing party may obtain an order prohibiting or restricting such disclosure;
  - l. **Software:** a computer program contained in a *Product* or a *Deliverable* (including any documentation), i.e. a program that contains, in any form, language, notation or code, a set of instructions that enables a computer to perform a task or specific function;

- m. **Offer:** the document sent to the *Client* by the *Supplier* listing the *Services* and/or *Products* that the *Client* may order from the *Supplier*;
- n. **Party(ies):** the *Client* and/or the *Supplier*;
- o. **Product:** the *Supplier's* standard product sold under the terms of the *Contract* by the *Supplier* to the *Client*; the provisions of Section I " GENERAL PROVISIONS " and Section II "SALE OF PRODUCTS" of the *General Terms and Conditions* shall apply to the sale of *Products* by the *Supplier* to the *Client*;
- p. **Service:** the services in the broadest sense ordered by the *Client* from the *Supplier* as confirmed in the *Order Confirmation*; these may (i) in particular concern installation, implementation, development and/or support and (ii) (where applicable) result from the delivery of a *Deliverable*; the provisions of Section I " GENERAL PROVISIONS " and Section III "PROVISION OF SERVICES" of the *General Terms and Conditions* shall apply to the provision of services by the *Supplier*;
- q. **Development Services:** Services for the development of *Software* for the *Client*; the provision of *Development Services* by the *Supplier* is subject to the provisions of Parts I "GENERAL PROVISIONS" and IV "PROVISION FOR SOFTWARE DEVELOPMENT SERVICES" of the *General Terms and Conditions*;
- r. **Specifications:** the technical specifications of a *Product*, a *Deliverable* and/or the *Services* ordered by the *Client*; they shall be set out (i) in a separate contractual document and/or (ii) in the *Order Confirmation*.

### 3. Conclusion of a contract - offers

- 3.1. A *Contract* shall be deemed to have been concluded upon dispatch of the *Order Confirmation*. A *Contract* may only be amended with the express written consent of the *Parties*.
- 3.2. The *Supplier's Offers* to the *Client* and/or the *Client's Orders* are not binding on the *Supplier*.
- 3.3. The technical data, descriptions and information in the *Supplier's* advertising material and technical brochures are not contractually binding data and descriptions for the *Services* and/or *Products*, unless the *Supplier* has expressly agreed to this in writing.
- 3.4. Information regarding the applications and technical specifications of the *Products*, *Services* and/or *Deliverables* in the *Specifications* is given to the best of the *Supplier's* knowledge. Without prejudice to any information and declarations provided by the *Supplier* regarding the compatibility and possible applications of the *Products* and/or the *Deliverables*, it is the sole responsibility of the *Client* to verify the accuracy of the information and the compatibility of the *Product* and/or the *Deliverable* with the *Client's* intended purpose before using the *Product* and/or the *Deliverable*.

### 4. Price

- 4.1. Prices are net prices plus VAT, transport, insurance and packaging and are quoted in euros.
- 4.2. The prices agreed upon conclusion of the *Contract* shall apply, in particular the prices stated in the *Order Confirmation*. The value added tax applicable at the time of the provision of the *Services* and/or the sale of the *Products* shall be added to these prices. In the case of the provision of *Services* and/or the sale of *Products* abroad, other taxes specific to the country concerned may be added to the price. The prices notified to the *Client* by the *Supplier* and/or the prices agreed in the *Contract* shall only be valid until 31 December of the year in which they were notified or agreed.
- 4.3. Without prejudice to the above provisions, when concluding a *Framework Agreement*, the *Supplier* reserves the right to unilaterally adjust its prices proportionally after the conclusion of the *Framework Agreement* in the event of a change in costs due to an increase in wages, the prices of its suppliers or due to exchange rate fluctuations. Price adjustments under current and future *Contracts* are possible up to a maximum of 80% of the final price and are based on actual costs. These price adjustments will be communicated in writing before the new prices come into effect. If the *Client* does not object to the new prices within fourteen (14) days of notification, they shall be deemed accepted by the *Client*. Pursuant to Article 57 of the law of 30 March 1976 laying down rules on price adjustments, the following price adjustment formula shall apply:

$P = P_0 (a * (M/M_0) + b * (S/S_0) + c)$  ; whereas:

- P = Invoice price;
- P<sub>0</sub> = Original price at conclusion of the *Framework Agreement*;
- M<sub>0</sub> = Value of the raw material concerned at the time of conclusion of the *Framework Agreement* according to an officially recognised publication;
- M = Value of the commodity concerned at the time of conclusion of the *Contract* according to an officially recognised publication;
- S<sub>0</sub> = Reference hourly wage plus social security contributions in the metalworking industry (national or regional average as determined), as recognised by the Federal Public Service

Economy, PME, Middle Classes and Energy published by AGORIA, at the time of conclusion of the *Framework Agreement*.

- S = Reference hourly wage plus social security contributions in the metalworking industry (national or regional average as determined), as recognised by the Federal Public Service Economy, PME, Middle Classes and Energy and published by AGORIA, at the conclusion of the *Contract*;
- a – b – c: Actual cost parameter, each parameter applying only to that part of the price corresponding to the cost for which that parameter stands, and the parameter c must not be less than 0,20.

4.4. Unless the *Parties* have expressly agreed otherwise in writing, a handling charge of 40 euros shall be automatically added to any *Contract* with an order value of less than 125 euros.

4.5. Unless the *Parties* have expressly agreed otherwise in writing, the prices for *Services* notified to the *Client* by the *Supplier* are variable unit prices. Unless the *Parties* have expressly agreed otherwise in writing, the total price for *Services* notified to the *Client* by the *Supplier* is only a non-binding estimate and cannot be considered a fixed price.

## 5. Payment

5.1. Unless another payment term has been agreed, the *Supplier's* invoices shall be paid within thirty (30) days of the invoice date at the *Supplier's* registered office. After the expiry of the payment term indicated on the invoice, the *Client* shall pay, by operation of law and without prior reminder, interest on arrears at the rate of 12% per annum, as well as a lump-sum compensation of 15% of the invoice amount, with a minimum of 90.00 euros. The *Client's* payments shall be allocated as follows: (i) first to the flat-rate compensation and other charges, then (ii) to the interest and finally (iii) to the price.

5.2. If the *Supplier* grants the *Client* a discount for cash payment as a gesture of goodwill, the amount of this discount will be calculated on the basis of the final invoice amount (excluding VAT) less any special taxes for delivery abroad.

5.3. A *Party* may only set off if its claims are based on an enforceable court judgment or the other party has expressly agreed to do so.

5.4. If (i) the *Client* fails to pay an invoice due or fails to pay by the due date, or (ii) the *Supplier* receives information of concern regarding the *Client's* solvency or financial strength (e.g.: bounced cheque of the *Client*, *Client* manifestly insolvent, insolvency proceedings pending, applied for, initiated or imposed against the *Client*), the *Supplier* shall be entitled to demand payment of all outstanding claims against the *Client* at once and/or to demand security (guarantee) and to perform services and/or sell *Products* in the future only against advance payment or deposit of security. In addition, the *Supplier* shall be entitled to suspend any further provision of *Services* and/or any further sale of *Products* to the *Client* and/or to terminate the *Contract*, without the *Client* being entitled to any notice period or compensation for damages.

## 6. Delivery

6.1. Unless otherwise agreed in writing, any delivery by the *Supplier* to the *Client* shall be made "ex works" (EXW) in accordance with Incoterms (latest edition).

6.2. The deadlines stated by the *Supplier* for the delivery of *Products* or the provision of *Services* are merely indicative.

6.3. Any delivery or performance period expressly agreed between the *Parties* shall only commence after the *Supplier* has received all the information and documents it requires for the delivery or performance of the service.

6.4. Even if a delivery or performance period has been explicitly agreed, the *Client* shall not be entitled to compensation from the *Supplier* in the event of delayed delivery or performance or if delivery or performance is factually impossible, nor shall it be entitled to refuse acceptance of the delivery or performance or to terminate the *Contract* due to the fault of the *Supplier*.

6.5. The delivery or performance deadlines expressly agreed between the *Parties* presuppose the active cooperation of the *Client*.

6.6. If the *Client* fails to call for the *Products* or *Services*, fails to take delivery of or collect the *Products* or otherwise causes a delay in delivery or performance, the *Supplier* shall be entitled, without prejudice to its other rights, to claim reimbursement of the resulting costs. In addition, the *Supplier* accepts no liability whatsoever for the *Products* and/or *Deliverables* entrusted to it and not accepted by the *Client*.

## 7. Transport, packaging, transfer of risk and ownership

7.1. The *Products* and/or *Deliverables* are transported at the *Client's* risk, even if they are delivered free of charge. The *Client* is solely responsible for checking the condition of the delivery and the quantity delivered and must notify the *Supplier* as soon as possible in the event of any lack of conformity.

7.2. Notwithstanding any mandatory legal provisions to the contrary, the costs of packaging and transport shall be charged to the *Client* by the *Supplier* and the packaging shall only be taken back in the event of provisions to the contrary.

7.3. Until full payment of the price, the *Products* and/or *Deliverables* remain the property of the *Supplier*.

## 8. Intellectual property

8.1. All *Intellectual Property Rights* of the *Supplier* communicated by the *Supplier* to the *Client* in the context of the sale of a *Product*, the supply of *Products* and/or the provision of *Services* with or without the supply of *Deliverables*, as well as all corrections thereto, shall remain the sole property of the *Supplier*. Their reproduction or use without the *Supplier's* prior written consent is expressly prohibited and may result in an action for damages by the *Supplier* as well as the application of any other sanction chosen by the *Supplier*.

8.2. The *Contracts* are not intended to:

- a. transfer the *Supplier's Intellectual Property Rights* to the *Client*;
- b. transfer the *Intellectual Property Rights* to a third party;
- c. grant either *Party* the rights to make, use or sell any technology supplied by the other *Party* in a manner or for purposes not expressly within the permitted limits or restrictions of the applicable licences; or
- d. prevent or restrict the use of a technology by its owner for whatever purpose.

## 9. Warranty

9.1. If the *Products*, *Services* and/or *Deliverables* are partly manufactured by a manufacturer other than the *Supplier*, the *Supplier* shall assign to the *Client* all transferable warranties, indemnities and claims in respect of the relevant part of the *Products*, *Services* and/or *Deliverables* supplied to it by the manufacturer, including any warranties, guaranties, or indemnities for infringement of intellectual property rights of a third party, without prejudice to any mandatory provisions of law to the contrary.

9.2. Any warranty or guarantee offered under the *General Terms and Conditions* shall only apply if (i) the *Product* and/or the *Deliverable* is used and maintained in accordance with the *Supplier's* recommendations, (ii) the *Product* and/or the *Deliverable* is modified exclusively by the *Supplier* or a person appointed by the *Supplier* and (iii) the *Product* and/or the *Deliverable* is used with the utmost care. Any defect caused by improper use by the *Client*, as well as damage caused by third parties or damage resulting from an accident or other external influence are excluded from the warranty and guarantee. The replacement of consumables or normal wear and tear are also not covered by the warranty.

9.3. Notwithstanding anything to the contrary in the mandatory applicable provisions of law, the warranties and guarantees set out in Articles 9.1, 9.2, 17, 19 and 20 of the *General Terms and Conditions* are the only warranties and guarantees offered by the *Supplier* and the *Client* may only make the claims specified. The *Supplier* does not offer any other explicit or implicit warranty or guarantee for the *Products*, *Services* and *Deliverables* supplied under the *Contract*, including but not limited to commercial quality, fitness for a particular purpose or the integrity of intellectual property rights of third parties.

## 10. Liability and compensation

10.1. The exclusions and limitations of liability set out below shall not apply (i) in the event of personal injury or death resulting from negligence or through the fault of the *Supplier* or its agents, (ii) in the event of fraudulent misrepresentation and wilful misconduct or (iii) to the extent that such exclusions and limitations of liability are prohibited by mandatory applicable provisions of law (including the law of 25 February 1991 on liability for defective products).

10.2. In no event shall the *Supplier* be liable for indirect damages, incidental damages, punitive damages, incidental or consequential damages such as loss of or damage to data, loss of profits or revenue, loss of sales, business interruption costs, removal and/or reinstallation costs, replacement costs, damage to reputation or loss of clients, even if such damage was reasonably foreseeable.

10.3. Furthermore, the *Supplier* can under no circumstances be held liable in the event of use of its *Products* contrary to the agreed or usual purpose.

10.4. The *Supplier's* liability to the *Client* shall be limited to one hundred percent (100%) of the amounts paid by the *Client* to the *Supplier* under the *Contract*, whether in contract, tort or otherwise.

10.5. The exclusions of liability of the *Supplier* agreed in the above paragraphs shall also apply to the liability of its employees, workers, agents, consultants, representatives, temporary workers, suppliers and deliverers.

10.6. The *Client* agrees to indemnify, defend and hold the *Supplier* harmless in the event of any claim, action, cause of action, legal action, loss, liability, prosecution, judgment and damages, including but not limited to reasonable attorneys' fees and costs, based on or related to:

- a. Infringements of a third party's *Intellectual Property Rights* as a result of: (1) the *Supplier's* compliance with the *Client's* designs, specifications or instructions; (2) the modification of a *Product* and/or the *Deliverable* by *Parties* other than the *Supplier* or the agreed manufacturer; or

(3) the use of the *Products* and/or *Deliverables* in combination with other *Products*, except within the limits agreed in writing between the *Parties*;

- b. a breach of Articles 8, 15 and/or **Fehler! Verweisquelle konnte nicht gefunden werden.** of the *General Terms and Conditions* by the *Client*.

#### 11. Termination of the contract

- 11.1. Unless otherwise agreed in writing by the *Parties*, the *Framework Agreement* shall commence on the date of signature by both *Parties* with a term of twelve (12) months. The *Framework Agreement* shall be tacitly renewed in each case for a further twelve (12) months unless one party gives notice of termination to the other party by registered letter at least three (3) months before the expiry of the *Framework Agreement*. Such termination shall have no effect on the current *Contracts*.
- 11.2. Notwithstanding anything to the contrary in the *General Terms and Conditions*, any *Contract* may be terminated for lawful cause without notice and without notice of default by either *Party* if the other *Party*:
- a. becomes insolvent, is no longer able to meet its due obligations or requests the cessation of payments;
  - b. can no longer carry out its normal business activities;
  - c. is guilty of a serious breach of contract and fails to remedy it by registered letter within thirty (30) days of being notified of the serious breach of contract; the *Client's* failure to fulfil its payment obligation shall be deemed a serious breach of contract in this context.
- 11.3. In the event of termination within the meaning of this Article:
- a. the *Client* undertakes to pay the *Supplier* for all *Services* performed and to pay for all *Services* not yet completed pro rata to their percentage of completion;
  - b. all amounts owed to the *Supplier* for the *Products* shall become due immediately.

#### 12. Return

- 12.1. The shipping costs, including packaging, transport and insurance costs, of returns of *Products* and/or *Deliverables* to the *Supplier* for assessment or repair are to be paid by the *Client*, whether or not it is a warranty case.
- 12.2. The *Supplier* may refuse to accept such *Products* and/or *Deliverables* if the safety regulations for the substances contained in the *Client's* facilities that have come into contact with the returned *Products* and/or *Deliverables* have not been complied with.

#### 13. Export/Import

- 13.1. Certain *Products* and/or *Deliverables* sold by *Supplier*, as well as related technology and documentation, may be subject to export control laws, regulations and orders in the United States, the European Union and/or other countries (hereinafter: "**Export Regulations**"). The *Client* undertakes to comply with these *Export Regulations* and not to transfer, sell, export, re-export or import the *Products* and/or *Deliverables* and related documentation without first obtaining a licence, authorisation or permit in accordance with the *Export Regulations*. The *Client* undertakes not to export or re-export the *Products* and/or *Deliverables* and the related technology and documentation to countries or organisations where such practices are prohibited, in particular to countries or organisations subject to sanctions or embargoes imposed by the United Nations, the European Union or the United States Departments of Treasury, Commerce or State.
- 13.2. The *Client* undertakes not to use the *Products* and/or *Deliverables* and the related technologies and documents for military purposes, nuclear, biological or chemical weapons or missiles capable of carrying such weapons, or for the development of weapons of mass destruction.
- 13.3. The *Parties* undertake to cooperate in the submission of all documents and information required for the export of the *Products* and/or *Services*. Should the procurement of the documents and information required for the export of the *Products* and/or *Services* be delayed, the delivery and performance period shall be extended by the same period.

#### 14. Force majeure

- 14.1. If, for reasons reasonably beyond its control, either *Party* is unable to perform its obligations under this *Contract* or to perform them in a timely manner, it shall not be liable therefor. This implies in particular natural disasters, acts or omissions of one *Party* (towards the other *Party*), business interruptions, technical failures, epidemics, shortage of materials, strikes, blockades, traffic jams, government measures, criminal offences, exceeding of delivery deadlines or interruption of delivery by its own suppliers, as well as all situations in which the procurement of labour or raw materials is not possible within the normal networks.
- 14.2. If the delivery of the *Product* or the provision of the *Service* is delayed by more than one month in these circumstances, either *Party* shall be entitled to terminate the *Contract* in writing in respect of the quantities affected by the interruption in the delivery of the *Products* or the provision of the *Services* without owing the other *Party* any compensation.

#### 15. Confidentiality

- 15.1. Both *Parties* undertake: (i) to keep the other *Party's Confidential Information* strictly confidential, or in other words, to treat it as if it were their own *Confidential Information*, and to take at least reasonable care to safeguard such *Confidential Information*; (ii) not to disclose or disseminate the other *Party's Confidential Information* except to its own directors, officers, employees, subcontractors, intermediaries or consultants who need the *Confidential Information* to work with the *Parties* or to perform the *Contract*; (iii) inform parties to whom *Confidential Information* is disclosed of the obligation to maintain strict confidentiality under the *Contract*; (iv) not use or permit the use of the other *Party's Confidential Information* for purposes other than those specified in this *Contract*.

## 16. Miscellaneous

- 16.1. Any dispute arising from the contractual relationship between the *Supplier* and the *Client* shall be subject to the exclusive jurisdiction of the courts of the judicial district of Eupen. Subject to the mandatory application of any mandatory law to the contrary, the *Supplier* may also bring a dispute before a court having jurisdiction over the statutory seat or domicile of the *Client*.
- 16.2. Without prejudice to mandatory applicable foreign laws, the contractual relationship between the *Supplier* and the *Client* shall be governed by Belgian law to the exclusion of the United Nations Vienna Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 16.3. If one or more provisions of the present *Contract* are declared invalid, illegal or non-executable in whole or in part, the validity of the remaining terms of the *Contract* shall not be affected thereby. In such a case, the *Parties* undertake to retroactively replace the wholly or partially invalid, illegal or non-executable clause with a valid, legal and executable clause that comes as close as possible to the commercial and financial purpose of the invalid, illegal or non-executable clause.
- 16.4. The *Client* authorises the *Supplier* to subcontract, in whole or in part, the provision of the *Services* and/or the sale of the *Products* entrusted to the *Supplier*. The *Client* shall refrain from any direct contact with the *Supplier's* subcontractor for a period of one (1) year after the termination of the contractual relationship between the *Client* and the *Supplier*.
- 16.5. Unless otherwise agreed in writing between the *Parties*, the *Client* shall notify the *Supplier* of any complaints within fifteen (15) days of receipt of the *Products*, *Services* and/or *Deliverables* by registered letter with acknowledgement of receipt. After the expiry of this period, the *Products*, *Services* and/or *Deliverables* shall be deemed to have been definitively accepted and the *Client* may no longer claim any apparent defects, faults and/or lack of conformity.
- 16.6. The *Contract* contains all agreements between the *Parties* and replaces all previous agreements on the subject matter of the *Contract*.
- 16.7. All contractual obligations which by their nature continue to exist after the expiry of the *Contract* shall remain effective after the termination of the *Contract*, in particular financial obligations of one party towards the other under the *Contract*.
- 16.8. The *Supplier's* failure to challenge any letter, notice or act of the *Client* shall not constitute a waiver of any term of the *Contract*.
- 16.9. The *Parties* are independent and agree that the *Contract* does not in any way create a joint venture, agency relationship or partnership between them. Nothing in the *Contract* shall be construed as creating a relationship by virtue of which either *Party* may act on behalf of or give guarantees to the other unless the *Contract* expressly so provides.

## II. SALE OF PRODUCTS

### 17. Product warranty

- 17.1. Without prejudice to Article 9 of the *General Terms and Conditions* and the mandatory applicable legal provisions, the *Supplier* warrants for one (1) year that the *Product* at the time of delivery (i) materially complies with the *Specifications* and (ii) complies with the relevant legal provisions in the *Supplier's* industry.
- 17.2. If the *Client* invokes this warranty, he is obliged to send the defective *Product* to the *Supplier* at the *Supplier's* first request. The *Supplier* shall be liable for the transport costs of the defective *Product* if it is confirmed that the *Product* is defective.
- 17.3. In the event of a warranty claim, the *Client* shall only be entitled - at the *Supplier's* discretion - to (i) replacement of the defective *Product* with a new *Product*, which shall be delivered to the *Client* free of charge, or (ii) reimbursement of the price paid by the *Client* for the defective *Product*.

## III. PROVISION OF SERVICES

### 18. Obligations of the supplier

- 18.1. If the *Supplier* provides services to the *Client*, the *Supplier* shall have an obligation of means within the scope of the performance of the *Services*, unless the *Contract* expressly provides otherwise.

### 19. Warranty for services

- 19.1. Without prejudice to Article 9 of the *General Terms and Conditions* and the mandatory applicable provisions of law, the *Supplier* warrants for three (3) months that the *Services* (i) will be performed in a

professional and workmanlike manner, (ii) will materially comply with the *Specifications*, and (iii) will comply with the relevant legal provisions in the *Supplier's* industry.

- 19.2. In the event of a warranty claim, the *Client* shall only be entitled - at the *Supplier's* discretion - to (i) the re-performance of the *Services* free of charge or (ii) a refund of the price paid by the *Client* for the non-conforming *Services*.

## 20. Warranty for Deliverables

- 20.1. Without prejudice to Article 9 of the *General Terms and Conditions* and the mandatory applicable provisions of law, the *Supplier* warrants for (3) months that the *Deliverables* at the time of provisional acceptance of the *Deliverables* in accordance with Article 21 of the *General Terms and Conditions* that the *Deliverables* (i) materially comply with the *Specifications* and (ii) comply with the relevant legal provisions in the *Supplier's* industry.
- 20.2. If the *Client* invokes this warranty, it shall be obliged to send the defective Deliverable to the *Supplier* at the *Supplier's* first request. The *Supplier* shall be liable for any transport costs of the defective Deliverable if it is confirmed that the *Deliverable* has a defect.
- 20.3. In the event of a warranty claim, the *Client* shall - at the *Supplier's* discretion - only be entitled to (i) replacement of the defective Deliverable by a new *Deliverable*, which shall be delivered to the *Client* free of charge, (ii) repair of the defective *Deliverable* at the *Supplier's* expense or (ii) reimbursement of the price paid by the *Client* for the defective *Deliverable*.

## 21. Acceptance procedure of the Deliverables

- 21.1. If the *Supplier* is of the opinion that the *Deliverable* meets all the criteria provided for in the *Specifications*, it shall inform the *Client* as soon as possible. In this case, the *Parties* shall carry out the preliminary acceptance test within a reasonable period of time.
- 21.2. If the preliminary acceptance test is positive, the *Parties* shall immediately sign a preliminary acceptance protocol. If the preliminary acceptance test is not positive, the *Supplier* shall be entitled to make the necessary changes to the *Deliverable* at its own expense within a reasonable period of time. The *Supplier* shall inform the *Client* as soon as possible that the changes have been made. In this case, the *Parties* shall carry out a new preliminary acceptance test within a reasonable period of time. If the new preliminary acceptance test is positive, the *Parties* shall immediately sign a preliminary acceptance protocol.
- 21.3. After the expiry of three (3) months after the preliminary acceptance, the *Parties* shall sign a definitive acceptance protocol. This ends the warranty period.

## 22. Employees

- 22.1. If the *Services* are provided by employees of the *Supplier* (in the broadest sense) at the location of the *Client* or at the location of the end Client, the *Client* undertakes:
- a. to provide the *Supplier* with all guidelines and regulations relevant to access, hygiene, worker protection, safety and other issues in good time prior to the commencement of the provision of the *Services*;
  - b. to watch over the welfare (in the broadest sense) of the *Supplier's* employees in accordance with the applicable legal obligations;
  - c. that the *Client* or the end Client does not willingly or unwillingly establish a relationship of subordination to the *Supplier's* employees.
- 22.2. If the *Client's* staff (in the broadest sense) are engaged in the provision of *Services* at the *Supplier's* site, the *Supplier* undertakes:
- a. communicate to the *Costumer* in a timely manner all guidelines and regulations relevant to access, hygiene, worker protection, safety and other issues;
  - b. to watch over the welfare (in the broadest sense) of the *Client's* staff in accordance with the applicable legal obligations;
  - c. ensure that the *Supplier* does not intentionally or unintentionally establish a relationship of subordination to the *Client's* employees.

## IV. PROVISION FOR SOFTWARE DEVELOPMENT SERVICES

### 23. Subject of the contract

- 23.1. The *Client* may commission the *Supplier* with the planning, development and delivery of (i) standard software, (ii) engineering software, (iii) runtime software and/or (iv) embedded software (together hereinafter referred to as "**Software**").
- 23.2. The *Software* may contain open-source software components, which the *Supplier* shall point out to the *Client* during the planning phase or, if this only becomes apparent at a later stage, during the creation phase.
- 23.3. The *Software* may contain third-party software components, which the *Supplier* shall point out to the *Client* in the planning phase or, if this only becomes apparent at a later stage, in the creation phase.

- 23.4. The *Software* may contain *Client* software components. In this case - notwithstanding any provisions of the *General Terms and Conditions* to the contrary - all claims for defects and liability on the part of the *Client* against the *Supplier* in respect of these *Client* software components are expressly excluded.

#### **24. Planning**

- 24.1. During the planning phase, the *Client* makes use of the *Supplier's* services in order to make the necessary preparations for the data processing deployment and the corresponding *Software* creation. The aim of the planning service to be provided by the *Supplier* is to agree, on the basis of the facts and requirements to be ascertained during the planning phase, in ongoing close cooperation with the *Client*, all the essential requirements necessary, whether in a formal requirements specification or in any other formal or informal form (hereinafter referred to as the "**Requirements Agreement**"). This *Requirements Agreement* forms the basis for the subsequent software development.
- 24.2. During the planning phase, the *Client* shall provide the *Supplier* with the necessary information on the actual situation in the intended areas of application, on business policy and procedural objectives and priorities and on all other specifications within the *Client's* sphere of responsibility for the preparation of the *Requirements Agreement*. To this end, there is direct and close coordination throughout the planning phase between the *Services* provided by the *Supplier* and the *Client's* wishes, proposals and target specifications. The *Client* is therefore fully involved in the planning phase and is thus given the opportunity to influence the *Requirements Agreement* in the sense he wishes.
- 24.3. If the *Supplier* recognises during the planning phase that the intended configuration must be modified with regard to the facts, requirements and software properties that have been worked out in the meantime, it shall inform the *Client* of this within a reasonable period of time and submit alternative proposals to the *Client*. The *Client* shall decide without delay on any changes resulting from such indications for the elaboration and the content of the *Requirements Agreement*.

#### **25. Production**

- 25.1. The *Supplier* shall create the *Software* primarily on the basis of the *Requirements Agreement*.
- 25.2. Within the scope of the production phase, the *Supplier* shall carry out the further programming, in particular the coding, the tests and the integration. At regular, reasonable intervals, the *Supplier* shall inform the *Client* about the status of the programming work and compliance with the requirements for the *Software*. Emerging delays and change requirements shall be communicated to the *Client* in a reasonable time.
- 25.3. Also during the production phase, the *Client* shall provide the *Supplier* with all information required for the contractual performance within a reasonable period of time.

#### **26. Acceptance**

- 26.1. Any *Software* created is subject to acceptance.
- 26.2. The *Supplier* shall notify the *Client* in writing of the completion and readiness for acceptance of its performance.
- 26.3. The conditions, procedure and duration of the acceptance can be specified in the *Requirements Agreement*. Furthermore, partial acceptances for quantifiable partial services that can be delimited in terms of remuneration value may be agreed in the *Requirements Agreement*.
- 26.4. Acceptances and partial acceptances must be recorded. After successful performance of the acceptance, the *Client* shall declare acceptance by countersigning the acceptance protocol. *Software* creation shall be deemed to have taken place fourteen (14) days after written notification of readiness for acceptance by the *Supplier* if acceptance is delayed for reasons for which the *Supplier* is not responsible.
- 26.5. The acceptance test shall be deemed suspended for the duration of the rectification of defects. The *Supplier* shall rectify defects free of charge within a reasonable period of time (hereinafter referred to as "**Rectification**") and notify the *Client* of the completion of the *Rectification*. The acceptance test shall then be continued. Insignificant defects shall not be a reason for refusing acceptance.
- 26.6. If the *Rectification* fails despite a reasonable deadline set by the *Client* in writing with the threat of subsequently rejecting the service, the *Client* is entitled to withdraw from the production phase.
- 26.7. The *Parties* may jointly agree on partial acceptances in the planning phase and in the production phase for quantifiable partial performances which can be delimited in terms of remuneration value and which must be accepted individually in accordance with this Article 26 in order to ensure the good further progress of the production phase. In this case, Articles 26.5 and 26.6 shall only apply to the partial services not yet accepted.

#### **27. Project management**

- 27.1. Unless the *Parties* have expressly agreed otherwise in writing, the *Parties* shall appoint project managers for the planning phase and the production phase who are authorised to make binding declarations in all project matters and shall make a substitution arrangement in the event that they are prevented from doing so. The project managers shall monitor and coordinate the project work on an ongoing basis and inform

each other about its progress in regular meetings. They shall make the aforementioned arrangements in writing.

- 27.2. The *Parties* shall provide sufficient and qualified personnel for mutual cooperation. The *Parties* are aware of the fact that a successful cooperation during the planning phase and the production phase requires the intensive involvement of the *Client*.

### **28. Payment**

- 28.1. The remuneration to which the *Supplier* is entitled is regulated in the price section of the *Contract*. All prices and rates quoted are subject to value added tax at the statutory rate applicable on the date of performance.
- 28.2. Unless the *Parties* have expressly agreed otherwise in writing, all services of the *Supplier* shall be remunerated on a time and material basis in accordance with the "JUMO Service Charging Rates" valid at the time of performance of the service. These are attached to the *Contract* as an appendix.
- 28.3. In the event of the accidental loss of its services or parts thereof prior to acceptance, the *Supplier* shall be entitled to a claim for remuneration in the amount of the services provided to date.

### **29. Amendments**

- 29.1. If the *Client* considers technical changes to be relevant or necessary during the production phase, it shall notify the *Supplier* without delay. In this case, the *Parties* shall agree on the resulting modifications to the content and execution of the *Contract*. If no agreement is reached, the original agreements shall remain in force.
- 29.2. If dates or the content or scope of the *Requirements Agreement* are changed after the conclusion of the *Contract*, either party may demand the mutual adjustment of the remuneration and the schedule. The standards used for the evaluation of the *Supplier's* performance at the time of the conclusion of the *Contract* shall apply in this respect. There is no right to unilaterally order changes on the part of the *Client*.

### **30. Liability for defects**

- 30.1. The *Supplier* warrants that the *Software* does not have any material defects at the time of acceptance that would invalidate its suitability.
- 30.2. The *Client* is aware that it is not possible, given the state of the art, to create *Software* that is completely free of errors.
- 30.3. The *Supplier* shall - without prejudice to Article 30.12 - rectify all reproducible defects in the *Software* reported by the *Client* for which the *Supplier* is liable in accordance with Articles 30.5 and 30.6.
- 30.4. The *Client* shall describe any material defects in as much detail as possible.
- 30.5. The *Rectification* shall be carried out at the *Supplier's* discretion (i) by eliminating the defect, (ii) by providing a new software version or (iii) by demonstrating possibilities of avoiding the effects of the defect. A new *Software* version shall be accepted by the *Client* unless this leads to unreasonable adjustment and conversion problems for the *Client*.
- 30.6. The *Rectification* of defects shall be carried out at the *Client's* or at the *Supplier's* premises at the *Supplier's* discretion. If the *Supplier* chooses *Rectification* at the *Client's* premises, the *Client* shall provide a suitable environment as well as suitable operating personnel free of charge, insofar as this is necessary to carry out the *Rectification* within a reasonable period of time. The *Client* shall provide the *Supplier* with the documents and information required for the *Rectification* of defects.
- 30.7. The *Supplier* shall notify the *Client* of material defects immediately and in detail in writing.
- 30.8. However, the *Supplier* shall only be liable for *Software* provided for testing, demo or validation purposes if it has fraudulently concealed the material defect, in the event of injury to life, limb or health and in the event of an intentional or grossly negligent breach of duty by the *Supplier*.
- 30.9. The liability for material defects does not extend:
- to defects caused by deviations from the operating conditions intended for the *Software* and specified in the documentation;
  - in the case of only insignificant deviation from the agreed suitability for the contractually stipulated use;
  - if the impairment of usability is only insignificant;
  - in the event of damage occurring after acceptance as a result of faulty or negligent handling, excessive stress or due to special external influences which are not assumed under the *Contract*;
  - to improper modifications or extensions of the *Software* - and the resulting consequences - by the *Client* or third parties.
- 30.10. In the case of embedded software, claims for defects shall only exist if these are reproducible on the reference hardware or target hardware specified in the *Contract*. If a defect reported by the *Client* is not reproducible, is attributable to incorrect operation by the *Client* or is excluded from liability for defects for any other reason, the *Supplier* may demand reasonable remuneration from the *Client* for the inspection and reimbursement of the transport, travel and accommodation costs incurred in this connection.

- 30.11. If delivered data carriers are defective, the *Client* may only demand that the *Supplier* replace the defective copies with defect-free copies.
- 30.12. Claims for subsequent performance shall become statute-barred six (6) months after acceptance. The same applies to withdrawal and reduction. This period shall not apply if the applicable law mandatorily prescribes longer periods, in the event of intent or fraudulent concealment of the defect. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected.
- 30.13. Claims by the *Client* for expenses incurred for the purpose of *Rectification*, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the object of the delivery was subsequently taken to a place other than the *Client's* branch office, unless the transfer corresponds to its intended use.
- 30.14. Without prejudice to Article 31, further claims or claims other than those regulated in this Article 30 by the *Client* against the *Supplier* and its vicarious agents on account of a defect in title are excluded.

### 31. Intellectual property rights

- 31.1. Insofar as *Intellectual Property Rights* arise in the course of the planning phase or in the production phase, these shall - without prejudice to Article 32 - remain in full with the *Supplier*.
- 31.2. Unless the *Parties* have expressly agreed otherwise in writing, the *Supplier* is obliged to provide its services free of intellectual property rights and copyrights of third parties (hereinafter referred to as "**Proprietary Rights**") only in the country of the place of delivery. If a third party raises justified claims against the *Client* for infringement of *Intellectual Property Rights* by *Software* created by the *Supplier* and used in accordance with the *Contract*, the *Supplier* shall be liable to the *Client* within the period specified in Article 30.12 as follows:
- The *Supplier* shall, at its option and expense, for the *Software* in question:
    - either obtain a right of use
    - modify them in such a way that the property right is not infringed, or
    - replace.
- If this is not possible for the *Supplier* on reasonable terms, the *Client* shall be entitled to the statutory rights of withdrawal or reduction;
- The *Supplier's* obligation to pay damages shall be governed by Article 10 of the *General Terms and Conditions*;
  - The aforementioned obligations of the *Supplier* shall only exist insofar as the *Client* immediately notifies the *Supplier* in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for the *Supplier*. If the *Client* discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, it shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of property rights.
- 31.3. Claims of the *Client* are excluded insofar as he is responsible for the infringement of the *Property Rights*.
- 31.4. Claims of the *Client* are also excluded insofar as the infringement of the *Property Rights* is caused by special specifications of the *Client*, by an application not foreseeable by the *Supplier* or by the *Software* being modified by the *Client* or being used together with *Products* not supplied by the supplier or *Client* software.

### 32. Intellectual property rights of third parties

- 32.1. To the extent that the *Software* contains third party software components, the Intellectual Property Rights in respect of such third-party software components shall remain exclusively with the manufacturer of such third-party software.
- 32.2. Insofar as the *Software* contains open-source software components, the regulation of the intellectual property rights with regard to these open-source software components shall be handled in accordance with the terms of use of this open-source software, which the *Supplier* shall hand over to the *Client*.

## V. SOFTWARE LICENCE

### 33. Subject of the contract

- 33.1. These *Licence terms* determine the terms and conditions when (i) standard software, (ii) engineering software, (iii) runtime software and/or (iv) embedded software (hereinafter collectively referred to as "**Software**") are provided by the *Supplier* to the *Client*.
- 33.2. The *Software* may contain open-source software components, which the *Supplier* shall point out to the *Client*.
- 33.3. The *Software* may contain third-party software components, to which the *Supplier* shall draw the *Client's* attention.
- 33.4. The *Software* may contain *Client* software components. In this case, notwithstanding any provisions of these *General Terms and Conditions* to the contrary, all claims for defects and liability on the part of the *Supplier* against the *Client* in respect of these *Client* software components are excluded.

- 33.5. The *Parties* understand standard software to mean software that has been created in whole or in part by the *Supplier* and can run on different hardware.
- 33.6. The *Parties* understand engineering software to mean software for engineering such as project planning, programming, parameterisation, testing or commissioning, which has been created in whole or in part by the *Supplier*.
- 33.7. The *Parties* understand runtime software to mean software for plant and machine operation, e.g. operating systems, basic systems, system extensions or drivers, which was created in whole or in part by the *Supplier*.
- 33.8. The *Parties* understand embedded software to be firmware that has been created in whole or in part by the *Supplier* and can only be used on a specific Hardware.
- 33.9. The *Parties* understand open-source software to mean software whose source code can be viewed, modified and used publicly and by third parties in accordance with the open-source software licence conditions.
- 33.10. The *Parties* understand third-party software to mean software that was created by a third-party manufacturer and that is rented, provided or sub-licensed by the *Supplier* to the *Client*.
- 33.11. The *Parties* understand demo software to mean test versions of a software which are made available to the *Client* free of charge by the *Supplier* solely for presentation or trial purposes for use limited in time and application.

#### **34. Intellectual property rights and rights of use**

- 34.1. Unless the *Parties* have expressly agreed otherwise in writing, the *Intellectual Property Rights* in the *Software* shall remain in full with the *Supplier*, without prejudice to Articles 31 and 32.
- 34.2. Unless the *Parties* have expressly agreed otherwise in writing and without prejudice to Articles 31 and 32, the *Client* shall be compensated in accordance with the specific provisions of the *Contracts*:
- in the case of standard software, a single licence pursuant to Article 35, a multiple licence or network licence pursuant to Article 36 or an unlimited licence pursuant to Article 37;
  - in the case of engineering software, a single licence pursuant to Article 35, a multiple licence or network licence pursuant to Article 36 or an unlimited licence pursuant to Article 37, in each case in compliance with Article 39;
  - in the case of runtime software, a single licence granted in accordance with Article 35, a multi-user licence or network licence granted in accordance with Article 37 or an unlimited licence granted in accordance with Article 37, in each case subject to compliance with Article 40;
  - in the case of embedded software, a single licence granted in accordance with Article 35.

#### **35. Single licence**

- 35.1. The *Supplier* grants the *Client* the simple, non-exclusive right to use the *Software* with the devices named in the *Contract*, if any, whereby each *Software* provided to the *Client* may only be used on one device at a time.
- 35.2. If a device has several workstations at which the *Software* can be used independently, the single licence only covers one workstation.
- 35.3. The *Client* may make copies of the *Software* which may be used exclusively for backup purposes (backup copies). No copies may be made of the documentation provided. In addition, the *Client* may only reproduce the *Software* within the scope of a multiple licence or an unlimited licence.
- 35.4. The *Client* is not entitled to change the *Software*, to reverse engineer it, to translate it, to extract parts of it, to combine it with other programmes or to derive client software from it.
- 35.5. The *Client* may not remove alphanumeric and other identifiers from the data carriers and must transfer them unchanged to backup copies.
- 35.6. The *Client* undertakes (i) to store the *Software* including documentation carefully in order to exclude misuse, and (ii) to keep the *Software* secret from third parties and to oblige staff who obtain access to the *Software* accordingly to the existing confidentiality obligations and restrictions on use.
- 35.7. The *Supplier* grants the *Client* the revocable right to transfer the rights of use transferred to the *Client* to third parties. If the *Client* has acquired the *Software* together with a device, it may only pass on the *Software* to third parties for use together with this device. The *Client* shall conclude a written agreement with the third party, according to which the third party submits to the obligations arising from this *Contract*. If the *Client* transfers the *Software* to a third party, the *Client* shall be responsible for compliance with any export requirements and shall indemnify the supplier against obligations in this respect.

#### **36. Multiple licence or network licence**

- 36.1. The *Client* requires a multiple licence to use the *Software* on several devices or at several workstations at the same time. The prerequisite for a multiple licence is the granting of a single licence plus a written confirmation by the *Supplier* of the number of permissible copies which the *Client* may make of the software granted with the single licence.

- 36.2. Within the scope of the multiple licence, the *Client* is entitled to the single, non-exclusive and non-transferable right to make the number of copies of the *Software* specified in the written confirmation, as well as to use the copies made in accordance with the regulations for single licences and to make them available to third parties for use.
- 36.3. Use of the *Software* on several devices at the same time is equivalent to use in networks on several workstations without duplication of the *Software* taking place (network licence). The provisions for multiple licences shall apply accordingly to network licences. The number of permitted workstations corresponds to the number of permitted copies.
- 36.4. The *Client* shall observe the instructions for duplication provided to him by the *Supplier* together with the multiple licence. The *Client* shall keep records of the whereabouts of all reproductions and submit them to the *Supplier* on request. The *Client* shall transfer alphanumeric and other identifiers of the data carriers unchanged to all reproductions.

### **37. Unlimited licence**

- 37.1. To use the *Software* on unlimited devices or on unlimited workstations at the same time, the *Client* requires an unlimited licence. The prerequisite for an unlimited licence is the granting of a single licence plus a written confirmation by the *Supplier* of the granting of an unlimited licence.
- 37.2. In the case of an unlimited licence, the *Client* is entitled to the unlimited, non-exclusive and non-transferable right to make an unlimited number of copies of the *Software*, as well as to use the copies made in accordance with the regulations for single licences and to make them available to third parties for use.
- 37.3. The *Client* shall comply with the instructions on duplication provided to him by the *Supplier* together with the unlimited licence. The *Client* shall keep records of the whereabouts of all reproductions and submit them to the *Supplier* on request. The *Client* shall transfer alphanumeric and other identifiers of the data carriers unchanged to all reproductions.

### **38. Demo software**

- 38.1. Demo software is granted for use limited in time and application according to the demo software licence conditions. The use of the test or demo software is not permitted outside of this limited use in terms of time and application.
- 38.2. To the extent permitted by law, any warranty on the part of the *Supplier* is excluded in the case of demo software, except in the case of fraudulent concealment of a defect, in the case of injury to life, limb or health and in the case of an intentional or grossly negligent breach of duty on the part of the *Supplier*.

### **39. Engineering software**

- 39.1. The *Client* has the right to reproduce or use his own programs or data (hereinafter referred to as "*Client Applications*"), which he has created with the engineering software, free of royalties or to make them available to third parties for use.
- 39.2. Insofar as parts of the engineering software flow into the *Client Applications* when used as intended, the licence fee-free reproduction authorisation shall also apply with regard to these parts of the engineering software. Otherwise, the *Client* is not permitted to extract parts of the engineering software.
- 39.3. Notwithstanding any provision of the *General Terms and Conditions* to the contrary, all claims for defects and liability on the part of the *Client* against the *Supplier* in respect of these *Client Applications* are expressly excluded.

### **40. Runtime software**

- 40.1. If the *Client* integrates *Client Applications* - in particular with the aid of engineering software - into runtime software, the *Client* must acquire a licence to the runtime software in accordance with the intended type of use in accordance with the then valid catalogue of the *Supplier* before each installation or other reproduction of its *Client Applications* which contain runtime software or parts thereof or which it connects to a reproduction of its *Client Applications*.
- 40.2. If the *Client* leaves the aforementioned *Client Applications* to third parties for use, the following shall apply with regard to the associated runtime software: in this case, the *Client* shall completely give up the use of the *Software*, remove all installed copies of the *Software* from its devices and instances and delete all copies located on other data carriers or, at the *Supplier's* request, hand them over to the *Supplier*, unless the *Client* is legally obliged to retain them for a longer period. Any use of such retained copies is prohibited.
- 40.3. This Article 40 does not grant any right to extract parts from runtime software
- 40.4. Notwithstanding any provision of the *General Terms and Conditions* to the contrary, all claims for defects and liability on the part of the *Client* against the *Supplier* in respect of these *Client Applications* are expressly excluded.

### **41. Open-source software**

- 41.1. Notwithstanding any provision of the *General Terms and Conditions* to the contrary, this Article 41 shall always apply to the extent that open-source software is provided to the *Client* or the *Software* includes

open-source software components, in which case this Article 41 shall only apply to the open-source software component.

- 41.2. With regard to open-source software and, where applicable, software derived from open-source software, the licence conditions to which the open-source software is subject shall always take precedence. The *Supplier* shall draw the *Client's* attention to the use of open-source software and make the relevant licence conditions available to the *Client*.
- 41.3. The *Client* shall indemnify the *Supplier* against all claims and costs/expenses incurred by the *Supplier* from the use of the open-source software, insofar as the *Licence terms* for the open-source software do not prohibit this.
- 41.4. The open-source software may only be used, distributed, reproduced and modified by the *Client* in accordance with the open-source software *licence terms*. Insofar as the *licence terms* for the open-source software do not provide otherwise, this creates a direct contractual and licence relationship between (i) the *Client* and/or the end client on the one hand and (ii) the original licensor of the open-source software on the other hand.
- 41.5. The *Client* is strictly prohibited from incorporating software created by the *Supplier* or third-party software that is not open-source software into open-source software or software derived from open-source software in any form without the express prior consent of the *Supplier*.
- 41.6. Notwithstanding anything to the contrary in the *General Terms and Conditions* but without prejudice to anything to the contrary in the open-source software *Licence terms*, all claims for defects and liability on the part of the *Client* against the *Supplier* in respect of open-source software or software derived from open-source software are expressly excluded.

#### **42. Third-party software**

- 42.1. Notwithstanding any provision of the *General Terms and Conditions* to the contrary, this Article 42 shall always apply to the extent that third-party software is provided to the *Client*.
- 42.2. With respect to third-party software and, if applicable, software derived from third-party software, the licence terms to which the third-party software is subject shall always prevail.
- 42.3. The *Supplier* shall refer to the existence and the licence terms of third-party software provided in the contractual documents and make the third-party software licence terms accessible.
- 42.4. The *Supplier* assigns to the *Client* all transferable warranties, guarantees, indemnities and liabilities granted by the third-party software vendor to the *Client*.
- 42.5. Notwithstanding anything to the contrary in the *General Terms and Conditions* and without prejudice to Article 42.4, all claims for defects and liability on the part of the *Client* against the *Supplier* in respect of third-party software or in respect of software derived from third-party software are expressly excluded.

#### **43. Remuneration, duration, termination**

- 43.1. The remuneration, duration and type of licence shall be regulated in the *Contract*.
- 43.2. Unless otherwise agreed between the *Parties*, the remuneration shall be paid by the *Client* to the *Supplier* in advance.
- 43.3. Except as otherwise provided between the *Parties*, the single licence under Article 35, the multiple licence under Article 36 and the unlimited licence under Article 37 shall be granted for an unlimited period.

#### **44. Software support and maintenance**

- 44.1. Any support in relation to the *Software*, be it preventive or corrective maintenance of the *Software*, the right to patches, updates or upgrades, must be separately regulated in a software support and maintenance agreement.
- 44.2. If the *Parties* have not concluded a software support and maintenance agreement, the *Supplier* shall be remunerated by the *Client* for its services (consulting, software development, etc.) on a time basis.

#### **45. Liability for defects**

- 45.1. The *Software* whose licence the *Client* purchases is well known to the *Client*.
- 45.2. Liability for defects is regulated in accordance with Article 10 of the *General Terms and Conditions*.

#### **46. Software audit**

- 46.1. The *Supplier* may audit the *Client's* use of the *Software* (hereinafter referred to as "*Audit*") provided that the *Supplier* gives thirty (30) days' prior written notice of the *Audit*.
- 46.2. This *Audit* will take place during the *Client's* normal business hours, no more than once a year, for a maximum of two working days, the auditors may be refused by the *Client* for reasonable reasons, all the *Client's* business and trade secrets will be safeguarded, all personal data will be preserved and secured in accordance with legal obligations, the *Audit* results will be treated confidentially, and the *Supplier* will minimise the operational consequences of this *Audit* for the *Client*.
- 46.3. The *Client* undertakes to assist in the *Audit* of the *Supplier*, to support the *Supplier* to a reasonable extent and to provide the *Supplier* with sufficient access to information.

- 46.4. In addition, the *Client* undertakes to pay any underpaid remuneration within thirty (30) days of a written request to do so.
- 46.5. If payment is not made, the *Supplier* shall be entitled to terminate the *Client's* licences, as well as the corresponding contract at the *Client's* expense, for serious cause.
- 46.6. The *Client* agrees that the *Supplier* shall not be liable for any costs incurred by the *Client* in assisting with an *Audit*.