

**'Sales and Delivery Conditions' of HARTING (India) Private Limited ("Supplier")**  
For Business Use

**I. General terms and conditions**

1. The 'Sales and Delivery Conditions' shall apply to all agreements / sales concluded between the Customer and the Supplier and obligations resulting from them. They shall also apply to all future transactions even though they may not have been explicitly agreed again. Any and all terms and conditions of the Customer whether in the purchase order or otherwise are hereby explicitly objected to and fully superceded by these Sales and Delivery Conditions. Differing terms and conditions of the Customer (except additional provision specifying quantity and shipment instruction) which the Supplier has not explicitly accepted shall not be binding on the Supplier even though they may not have been explicitly objected to. The Sales and Delivery Conditions shall also apply in cases where the Supplier carries out the order without any reservations but in the knowledge of contrary or differing terms and conditions of the Customer. The parties shall confirm in writing the conclusion of contracts and agreements as well as collateral arrangements, which have not been made in writing, especially in such cases where they differ from these sales and delivery conditions.

2. These Sales and Delivery Conditions shall also apply to sales made on the basis of any trade term, in particular the Incoterms. Where deliveries are made on the basis of one of the Incoterms, those Incoterms in force shall apply. In the event of differing trade terms, these sales and delivery conditions or other explicit agreements shall prevail. In addition, except the warranties provided expressly by the Supplier all other warranties, whether express or implied, are fully disclaimed and denied. In this regard the concept of *caveat emptor* shall fully apply.

3. Where an order has to be classified as an offer within the meaning of the Indian Contract Act, 1872, the Supplier shall be entitled to accept such offer for a period of two weeks. All Supplier's offers are subject to change and not binding unless otherwise agreed on case to case basis.

**II. Extent of Delivery Obligations**

1. The Supplier shall retain all rights as to title and intellectual property rights including copyright in regard to all documents such as calculations, pictures or drawings which have been provided to the Customer in connection with the negotiation or the performance of the contract. This shall also apply to such written documents which are labelled "confidential" or which, evidently to the Customer, have confidential content. Offers and relating documentation shall not be made accessible to third parties unless the Supplier has given its prior written consent. Documents, drawings and samples etc. relating to the offer shall be returned upon demand.

2. The Supplier shall be entitled to supply goods and services in parts at all times whenever this is reasonably acceptable to the Customer. Where small amounts are ordered, the Supplier shall have the right to increase the delivery amount to the smallest packaging unit whenever this is reasonably acceptable to the Customer. Additionally, for custom-made orders and deliveries while the Customer shall not be entitled to vary the same, variations by the Supplier of +/-10 % are binding on the Customer. Where partial deliveries of certain quantities have been agreed this also applies to the respective partial delivery.

**III. Shipping/Packaging**

1. Loading and shipping shall be carried out uninsured and at the risk of the Customer ("ex works"). All deliveries shall be EXW (INCOTERMS 2000) Supplier's works. The Supplier shall make efforts to take into consideration the Customer's wishes and interests in regard to the manner of shipment and the delivery route, if the same is intimated in advance by the Customer to the Supplier and accepted by the Supplier in writing. Any additional costs arising as a result of that shall be borne by the Customer even if it has been agreed that the Supplier shall bear freight costs. The notice that goods are ready for shipment shall be equivalent to the actual shipping of goods.

2. Upon the Customer's request packaging of the goods shall be carried out with due care and shipping to the best of the Supplier's judgement, yet there shall be no corresponding contractual obligations or liabilities for the Supplier. In this case the Customer shall bear the costs.

3. Where shipping or delivery was delayed because of the request of the Customer or due to any reason attributable to the Customer, the Supplier shall store the goods for the Customer at the Customer's risk and cost. In this case consideration for the storage shall be 1 % of the invoiced amount for each month having commenced, the payment obligations starting with the month, which follows the month in which notice is given that the goods are ready for shipment. This shall be in addition and without prejudice to the right of the Supplier to otherwise dispose of the goods and claim damages from the Customer for any loss suffered thereon.

4. Upon the Customer's request and at Customer's cost the Supplier shall insure the delivery against loss, breakage, transport-and fire damage.

5. Packaging material for transport and all other packaging may not be returned to the Supplier. The Customer shall dispose of the packaging material at its own expense.

**IV. Prices**

1. Unless otherwise agreed in writing, prices shall only apply to confirmed orders and are ex works and excluding packaging. They are quoted in Euros, or local currency and are net, i.e. with applicable value added tax or goods and services tax, if any, to be added. Invoices are payable without deductions, unless otherwise agreed in writing.

2. In cases where the agreed period for delivery exceeds two months from the time of the conclusion of the contract, the Supplier shall have the right to adjust prices if after the conclusion of the contract costs have increased or decreased, especially as a result of collective bargaining agreements or changes in the price of material. Reasonable proof of such changes shall be demonstrated to the Customer upon demand.

**V. Payment Conditions/Set-offs/Rights of Retention**

1. The purchase price shall be due within 10 days from the date of the Supplier sending out the invoice (date of the invoice), unless agreed otherwise in writing by the Supplier. In cases where the goods are delivered to the Customer or to the agreed destination only after receipt of the invoice the said period for payment shall only commence upon receipt of the goods. If the Customer does not pay within the said period, it shall be in default in payment. For any loss or destruction of the goods in transit, the Customer shall be required to pay the relevant invoice within 10 days irrespective of the fact whether the Customer made or received any insurance claim or not in this regard.

2. In the case of default in payment the Supplier shall be entitled to claim annual default interest in the amount of the maximum rate allowed by law. If the Customer does not pay when the purchase price is due but where there is no default, the Supplier shall be entitled to maturity interest, which shall be the maximum rate allowed by applicable law.

3. Bills of exchange shall only be accepted if explicitly agreed in advance, subject to them being discountable. All charges relating to the presentation of the bill of exchange shall be paid by the Customer without deduction within 8 days after notification of their amount. Any and all bills of exchange and cheques are only accepted on condition that payment can be obtained from them immediately on presentation.

4. While the Supplier shall have the right of set-off and retention for all its dues, the Customer shall only have rights to set-offs and retention where its counterclaims have been confirmed by a court decision that is not appealable or where its counterclaims are either not disputed or have been acknowledged by the Supplier. Moreover, the right of retention may only be asserted by the Customer, where the counterclaim is based on the same contractual relationship.

**VI. Passing of Risk**

1. The risk of accidental damage to or loss of the contract item shall pass to the Customer upon handing over of the ready-to-ship delivery in an orderly manner to the Customer or its agent or any person who the Customer uses to perform its obligations. This shall also apply in cases where free shipment has been agreed.

2. In cases of delay in shipping or receipt which are caused by Customer requests or are the Customer's fault, the risk of accidental damage or loss shall pass to the Customer on the day of the order being ready for shipment and shall remain with the Customer for the duration of the delay. The Supplier shall, however, be obliged to procure adequate insurance upon demand and at the cost of the Customer.

3. Apart from that the risk of accidental loss or damage shall pass to the Customer upon default in payment or default in acceptance.

4. Where Software within the meaning of Clause XII of these sales and delivery conditions has been passed on by means of electronic communication (for example via the internet) risk shall pass upon the Software leaving the Supplier's sphere of control (e.g. upon downloading).

5. The above passing of risk shall be without prejudice to and without in any manner affecting the right of Retention of Title by the Supplier as provided under Clause VII below and the unpaid vendor's lien over the goods.

**VII. Retention of Title**

1. Title to the goods shall remain with the Supplier (Retention Of Title Goods) until all the Supplier's claims out of the business relationship with the Customer have been settled. In the event of a current account the retention of title shall apply to the acknowledged current balance. The Customer shall be entitled to sell the Retention Of Title Goods in the ordinary course of business as long as it fulfils its obligations out of the contractual relationship with the Supplier correctly and is in particular not in default in payment. The Customer shall not be entitled to pledge the goods or agree a transfer of ownership by way of security.

2. Where the Customer acts contrary to the contract or negligently or intentionally breaches its contractual obligations, in particular in cases of default in payment, the Supplier shall be entitled to rescind the contract and at its sole option demand the return of the Goods once the Supplier has set a reasonable period of grace for remedying the breach(es) and this period of grace has expired without the Customer remedying such breach. Any statutory provisions for cases where there is no requirement for a period of grace shall remain unaffected. Any demand for a return of Goods by the Supplier shall be deemed a rescission of the contract. The above right of Supplier shall be in addition to and reserving fully all other rights that the Supplier may have against the Customer for its default / breach.

3. In this regard the Customer fully assigns to the Supplier all its receivables arising from the selling of the Retention Of Title Goods, whether processed or not processed, against its purchasers or against third parties in the amount of the final amount of the invoice (including applicable value added tax or goods and services tax, if any). Where there is a current account agreed between the Customer and its purchaser, the assignment of future claims shall also include the acknowledged balance and in the event of the purchaser's insolvency it shall include the surplus at that time without prior acknowledgment. The Supplier accepts this assignment.

4. The Customer shall be entitled to collect the receivables following the assignment. This shall not affect the Supplier's right to collect such receivables from the Customer; it will, however, not collect the receivables as long as the Customer pays its receivables from the proceeds obtained, is not in default in payment, there is no application for the commencement of insolvency proceedings and the Customer has not stopped paying its debts. Where any of these events occur the Supplier may demand that the Customer informs it of all assigned receivables, its debtors and provides all further information necessary to collect the receivables, hands over all documentation relating to them and notifies the debtors (the third parties) of the assignment. In this regard the purchases of the Customer shall be garnishees, in relation to the Supplier in respect of the dues of the Customer.

5. Any processing or transformation of the Retention Of Title Goods shall in each case be carried out for the Supplier. In cases where the Retention Of Title Goods are processed or combined with other items not owned by the Supplier, the Supplier shall become the co-owner of the new item in a proportion which corresponds with the value of the respective Retention Of Title Good (final amount of the invoice, including applicable value added tax or goods and services tax, if any) as compared to the value of the other processed or combined item at the time of the processing or combining. To the new item arising out of the processing or the combination the same shall apply as to the Retention Of Title Good.

6. In the case of any Retention Of Title Goods being intermixed with other items not owned by the Supplier in such a way that they cannot be separated the Supplier shall become the co-owner of the new item in a proportion which corresponds with the value of the respective Retention Of Title Good (final amount of the invoice, including applicable value added tax or goods and services tax, if any) as compared to the value of the other intermixed items at the time of the mixing. Where in the event of intermixing or combining the Customer's item shall be considered the principal item, the Customer and the Supplier agree that the Customer shall transfer co-ownership of it proportionately. The Supplier hereby accepts this transfer. The Supplier's sole or co-ownership arising from this shall be kept in safe custody by the Customer for the Supplier free of charge. For the purpose of security the Customer shall also assign such receivables that arise against a third party from the combination of the contract item with real property.

7. The Customer shall handle the Retention Of Title Goods with care, keep them away from other goods and insure them sufficiently against loss, in particular loss as a result of fire, water or theft.

8. The Customer shall promptly inform the Supplier of all enforcement steps by third parties in the Retention Of Title Goods, any assigned receivables and any other security, and shall submit all documentation necessary for an intervention and realization of the dues from the garnishee debtor of the Customer. This shall also apply to any other interference. The costs for out of court actions to achieve the release and repatriation shall be borne by the Customer. This shall also apply to the costs for a justified court intervention where such costs cannot be recovered from third parties.

9. In cases where the realisable value of the existing security available with the Supplier exceeds the debt of the Customer to be secured altogether, by 15 % (i.e., the security value being 115% or more of the total debt of the Customer), the Supplier shall upon the Customer's demand release security to such extent and in such manner as the Supplier may deem fit. Therefore the release of the security shall be at the judgement and sole discretion of the Supplier.

#### **VIII. Delivery Periods, Default in Delivery, Force Majeure, Default in Acceptance**

1. Delivery dates or periods that have not been explicitly agreed as binding shall not be binding. Delivery periods given by the Supplier shall only commence once technical questions have been solved and there is written agreement regarding the details of the order. The Customer shall fulfil its obligations in an orderly and timely fashion, in particular supply necessary documentation and provisions in time, grant clearance and other consents and fulfil agreed payment plans.

2. In case of force majeure such as but not limited to natural calamities, fire, war and strike and of all other unforeseeable and unavoidable harmful events which are beyond the control of the Supplier, the delivery period shall be extended accordingly. This shall also apply in the event of late deliveries of essential raw and production materials and that of other components including delay in respect of imported goods, unless the delay is deliberately caused by the Supplier. In all such cases the Supplier shall inform the Customer promptly of the delay. Where the foregoing circumstances change the economic significance of the contract or the content of the contractual obligations in a major way or where they affect the business of the Supplier significantly or where it is becoming clear that the contract cannot be fulfilled for factual reasons, the contract shall be adapted / modified accordingly. Where this is not economically justifiable, the Supplier shall have the right to rescind the agreement in full or in part. In the knowledge of the significance of this event, the Supplier shall promptly inform the Customer of its intention to rescind, even in cases where it has initially agreed an extension of a delivery period with the Customer. All claims for damages by the Customer because of such a rescission shall be excluded and shall not be entertained by the Supplier.

3. The provisions in Clause XI shall apply accordingly to the Supplier's liability for default in delivery.

4. Where the Customer is in default in acceptance of the goods, the Supplier is entitled to demand damages for any loss arising and any additional expenses incurred. The same shall apply where the Customer intentionally or negligently violates obligations to cooperate. Besides, goods once sold cannot be returned back to the Supplier except in respect of such goods which are having manufacturing defect attributable to the Supplier.

#### **IX. Receipt and Performance**

1. Ordered items, especially products specific to the Customer, shall be received or accepted by the Customer even in cases where they have minor discrepancies unless these discrepancies affect the functionality of the item.

2. Where delivery is agreed "ex works", notice to the Customer that the goods are ready for shipment shall be deemed performance of the delivery agreement. Where delivery is agreed "free of charge" the delivery agreement shall be deemed performed once the items have been handed over to the Customer or the persons the Customer uses to perform its obligations.

#### **X. Warranties**

1. Except that goods supplied by the Supplier shall not have any manufacturing defect and that the said goods shall not infringe any third party intellectual property rights, the Supplier does not provide any other warranty, whether express or implied, and to the fullest extent permitted under the law, the Supplier hereby disclaim and disown all other conditions and warranties of sale of goods. Any after sales service or annual maintenance contract shall be agreed upon on case to case basis. In respect of the manufacturing defects also the Customer shall promptly (in any event not longer than 2 weeks from the date of receipts of the goods) examine all incoming deliveries from the Supplier and shall notify the Supplier of all defects promptly after receipt of the goods and/or the discovery of the defect.

2. Warranties shall only be deemed as they have been described and shall unmistakably be recognized, only as such.

3. In cases where the item sold shows a manufacturing defect and when such defect cannot be attributed to any cause or reason on the part of the Customer or its purchasers or reason of bad transportation, improper storage / handling, etc., the Supplier shall at its discretion be entitled to either rectify the item or to supply a new item which is free of defects within a reasonable period of grace (corrective performance). Where the Supplier is required to make the corrective performance it shall bear all expenses incurred hereby, in particular transport, labour and material costs to the extent these are not being increased by the contract item having been brought to another place than the place of performance. If the Customer has incorrectly notified a defect, the Supplier shall be entitled to recover all loss and expenses from the Customer where the Customer has recognized or has negligently failed to recognize that there is no defect but that the cause of the notified symptom lies in the Customer's own sphere of responsibility.

4. Where the corrective performance has not been carried out within an acceptable period of grace, the Customer may rescind the contract for the defective goods and return the same to the Supplier or may lower the consideration amount on mutual agreement.

5. The Supplier does not accept any product liability including bodily injury, death or accident caused by the goods and the Customer shall be fully liable to obtain appropriate insurance in this regard. Without affecting the above responsibility of the Customer and disclaimer of liability by the Supplier, in cases where the Customer raises any claim for damages alleging gross negligence on the part of the Supplier, the liability of the Supplier in such a situation would be strictly restricted to mandatory stipulations of law which parties cannot derogate by contract and besides, such liability on the part of the Supplier shall crystallize only when the gross negligence on the part of the Supplier is finally proved and determined by a court of law, with no further right of appeal.

6. There shall be no claims for defects where the discrepancy from the agreed condition is insignificant, where the impairment of use is insignificant, where there is normal wear and tear or where damages arise after the passing of risk as a consequence of incorrect or careless handling, improper use, excessive operational demands, unsuitable equipment or as a consequence of special exterior influences which in the agreement were not assumed and also where there are non-repetitive Software defects. Where the Customer or third parties have carried out amendments or repair work in the goods or any part thereof, in an incorrect manner, no claims for defects may be made for these and their results.

7. The Supplier disowns and disclaims any and all claims of the Customer based on any claim that the Customer may face from its purchaser / buyer of goods except to the extent such claims are in respect of the agreed warranty obligations of the Supplier, in which case also limitation of and restriction on liability of the Supplier as provided under sub-Clause 3 herein above shall fully apply. In any case the said purchaser / buyer of the Customer shall not have any right against or privity with the Supplier.

8. For Software that has been provided for an unlimited period in accordance with Clause XII of these Supply and Delivery Conditions the following shall additionally apply:

Only such discrepancies from the specification shall be defects that can be proven and reproduced by the Customer. No defect shall be assumed where it does not appear in the version of the Software last provided and the use of the Software can reasonably be expected from the Customer. The defect and the data processing environment in which it appears shall be described by the Customer as accurately as possible.

No claims for defects shall be assumed by the Supplier

-where there are only insignificant discrepancies from the agreed condition;

-where there are only insignificant impairments of use;

-for losses resulting from incorrect or careless handling by the Customer or by third parties;

-for losses resulting from special exterior influences which have not been assumed in the contract;

-for amendments that have been carried out by the Customer or by third parties and for the consequences arising from them;

-for extensions of the Software made by the Customer or by third parties beyond the interfaces provided by the Supplier;

The Supplier shall not be liable for the provided Software being compatible with the data processing environment used by the Customer unless the Supplier has previously examined it and has explicitly confirmed the Software's compatibility with and functionality for it.

Unless the Supplier does not choose another way of corrective performance, the corrective performance shall be carried out by rectification of the Software defect as follows:

(aa) The Supplier shall provide a new update or a new upgrade of the Software if available to the Supplier or reasonably procurable by the Supplier. If the Supplier has granted the Customer a multi-user-licence, the Customer shall be entitled to make copies of the update or upgrade provided for the rectification of the defect in an amount that corresponds to the number of users in the multi-user-licence.

(bb) The Supplier shall make available to the Customer an interim solution until an update or upgrade to circumvent the defect can be provided as long as this is possible by showing reasonable efforts and the Customer would otherwise not be able to attend to urgent matters.

(cc) Where the data carrier or documentation provided is defective, the Customer can only require that the Supplier replaces it by a data carrier or documentation free of defects.

(dd) The rectification of the defect shall, at the discretion of the Supplier, be carried out at the Supplier's or the Customer's premises. If the Supplier chooses rectification at the Customer's premises, the Customer shall provide necessary hardware and software, other operating conditions (including necessary machine time) with suitable personnel. The Customer shall provide the Supplier with all documentation and information that it holds and that are necessary for the rectification of the defect.

9. Where the Customer has notified the Supplier of a manufacturing defect it will not be entitled to withhold any payments of the Supplier, until the defect is confirmed by the Supplier. Besides, the Customer is only entitled to withhold payment where it has notified a manufacturing defect the existence of which and the responsibility of the Supplier for the same cannot be doubted.

10. Apart from that the above, Clause XI shall apply to claims for damages. Any claims of the Customer against the Supplier or the persons it uses to perform its obligations for defects other than those set out in this Clause X, are specifically excluded.

11. A period of limitation of 12 months commencing upon the passing of risk shall apply for notification of all Customer's claims and rights because of manufacturing defects, including claims for damages because of manufacturing defects. After the above said period of 12 months, the Customer shall not be entitled to notify any claim or right because of manufacturing defects in respect of the products for which the risk has already passed on before 12 months and accordingly the Supplier shall not be required to entertain any such notification of claim or right. For removal of doubt it is hereby fully clarified that this limitation for notification of claim does not in any manner restrict, restrict or curtail the right of the Customer to initiate any legal proceedings for enforcing its rights and claims that are notified within the above said period of 12 months, since after notification of the rights and claims within the above said period of 12 months the Customer shall have the benefit of statutory limitation period for enforcing its said notified rights and claims in a court of law.

#### **XI. Claims for damages**

1. All claims for damages and claims for the reimbursement of expenses in respect of goods supplied (hereafter collectively: Claims For Damages), no matter on what legal basis, in particular those based on the breach of contractual obligations and tort are excluded if they exceed the limitation of liability that is set out in these Sales and Delivery Conditions. Besides, except the repair, replacement or return of the goods having manufacturing defect, the Supplier disowns and disclaims all other liabilities and claims in relation to the goods sold to the Customer.

2. Even in respect of an allegation of gross negligence, the Supplier shall be liable only to the extent such gross negligence entails any liability on the Supplier as per mandatory provisions of law, which the parties cannot derogate by contract. Besides, in case of any claim of the Customer against the Supplier based on the allegation of gross negligence on the part of the Supplier, such gross negligence must be finally proved against the Supplier in a court of law and there being no further recourse to appeal being available to the Supplier. Except the said mandatory liability that may be bestowed upon the Supplier under statutory stipulations, which parties cannot derogate by contract, the Supplier disowns and disclaims all other liabilities and claims in relation to the Customer in respect of such allegation of gross negligence. Besides, in any such

allegation of gross negligence the Supplier shall have the defence of contributory negligence on the part of the Customer.

3. Where the Supplier has breached essential contractual obligations and was negligent without being grossly negligent, the Supplier's liability is strictly limited to the direct loss actually suffered by the Customer for such breach of contract on the part of the Supplier. All allegations of indirect loss, loss of profit, loss of business, etc., are fully disowned and disclaimed. Essential contractual obligations for the purpose of this limitation of liability clause are those that are material to ensure the carrying out of the contract, whose breach jeopardises the purpose of the contract and on which the Customer commonly relies. The foregoing provisions do not in any manner absolve the Customer from its burden of proof for having actually suffered the loss from out of such breach on the part of the Supplier.

4. Insofar as the Customer is entitled to Claims For Damages in accordance with this Clause XI these are subject to a limitation period of 12 months for the purpose of notification, i.e., as stated in sub-clause 12 of Clause X hereinabove. For all Claims For Damages that are based on allegation of gross negligence resulting in harm to one's life, physical integrity or health or the violation of essential contractual obligations, the statutory periods of limitation shall apply.

5. Where the liability for the Customer's Claims For Damages has been excluded or limited, such exclusion or limitation shall also apply to the personal liability of employees, staff, representatives and that of the persons the Supplier uses to perform its obligations.

## **XII. Software use, software supply**

1. Where any Software is incorporated or embedded in any goods purchased by the Customer, a non-exclusive right to use the said Software provided in the goods including its documentation, is granted to the Customer. The Software is provided for use on the supplied contract item/goods. The use of the Software on more than one system or in relation to any other goods is strictly prohibited. The right of use is limited to the agreed period of time, if there is no such agreement the right of use shall be for an unlimited period of time.

2. All other rights including intellectual property rights to the Software and the documentation including its copies shall remain with the Supplier or its software supplier. The Customer shall not be entitled to grant any sub-licence.

3. This Clause XII shall solely and exclusively apply to the provision of standard Software by the Supplier which is provided for use as part of or in connection with a delivery of related hardware (hereafter: Software) as well as to the overall delivery if a breach of contractual obligations or a default in performance is caused by the Software. Therefore nothing contained in this Clause XII shall apply to any individual or customized software or firmware or any hardware and in respect of such individual or customized software or firmware or any hardware provisions / terms and conditions of these sales and delivery conditions shall apply exclusively.

4. Unless otherwise expressly agreed in the contract with the Customer, the Supplier shall not take on any obligation to provide Software servicing. These shall require a separate agreement.

5. Where documentation is provided, the term "Software" shall hereafter also include the documentation in the contractually agreed format.

6. If the right of use of Software has been granted for a limited period of time, the following provisions shall additionally apply: The Customer shall only use the Software with the hardware referred to in the contractual documentation (e.g. software product note), and if there is no such reference only with the hardware supplied together with the Software. The use of the Software with other devices shall require the explicit written consent of the Supplier and shall in the case of the Software being used with a more powerful device lead to a claim of the Supplier for an adequate additional consideration; this shall not apply where and as long as the Customer temporarily uses the Software with a replacement device to the agreed extent because of a defect of the agreed device.

7. The Software shall only be provided in a machine-readable format (object code) unless otherwise agreed or if the provision of Software in source code is agreed because open-source software is incorporated in accordance with Clause XII Sub-Clause 12.

8. The Customer may only make a copy of the Software which exclusively serves back-up purposes (back-up copy). Apart from that the Customer may only copy the Software where a multi-user-licence is in place in accordance with Sub-Clause 13.

9. Except for decompilation, the Customer is not entitled to amend the Software, to reverse engineer it, to translate it or to remove parts of it. The Customer may not remove alphanumeric and other identifications from the data carrier and shall copy them unchanged to every back-up copy. Apart from that, the Customer is only entitled to copy, to rework, to translate or to change the Software from the object code into the source code in accordance with statutory provisions, if any. The Customer may not remove or amend the manufacturer information, in particular copyright notices, unless the Supplier has given its prior express consent.

10. The Customer may only pass on its right of use to the Software to third parties together with the devices or the data carrier with which it has purchased the Software from the Supplier. In the case of a transfer of the right of use to third parties, the Customer shall ensure that the third party shall not be granted any further rights of use to the Software than those to which the Customer is entitled according to this Clause XII and that the third party shall as a minimum assume the obligations regarding the Software that are set out in this contract. In this case the Customer shall not retain any copies of the Software. Where the Customer provides the Software to a third party the Customer is responsible for the compliance with any export obligations and shall indemnify the Supplier against any such obligations.

11. Where the Customer has been provided with Software for which the Supplier only has a right derived from third parties (Third Party Software) the terms of use between the Supplier and its licensor shall apply additionally to this Clause XII and shall take precedence over them. The Customer shall not indulge in any act, deed, omission or commission, which in any manner affects the Software including its source code or exposes the Supplier to any claim from the owner of the Software or any third party.

12. Where and to the extent the Customer is provided with open source software, the rights of use that the open source software is subject to shall apply in addition to the provisions of this Clause XII and shall take precedence over them. The Supplier shall upon the Customer's demand provide it with the source code if the rights of use provide for the handover of the source code. In these cases the Supplier shall refer to the existence and the terms of use of Third Party Software and open source software provided and shall make them available upon request. If the Customer breaches these terms of use the Supplier and its licensor shall both be entitled to assert any rights and claims arising from this in their own name, against the Customer and the Customer shall be fully liable to indemnify and hold the Supplier harmless in this regard for all times to come.

13. The use of the Software on various devices or at several workplaces at the same time shall require a right of use to be granted separately. The same shall apply where the Software is used in networks even though this may not involve the copying of the Software. In these cases (hereafter: Multi-User-Licences) the following provisions in lit (aa) and (bb) shall apply in addition to the foregoing provisions of this Clause XII and shall take precedence over them:

(aa) A Multi-User-Licence shall require an explicit written confirmation by the Supplier regarding the number of permitted copies which the Customer may create from the Software provided and regarding the number of devices or workplaces at which the Software can be used. For Multi-User-Licences to Software where the period of use has been limited, the Multi-User-Licences may only be transferred to third parties by the Customer if they are transferred collectively and including all devices on which the Software may be used.

(bb) The Customer shall observe the guidelines as to copying that are provided by the Supplier together with the Multi-User-Licence. The Customer shall make records of the location of all copies and shall present these to the Supplier upon demand.

## **XIII. Samples and Customer documentation**

1. Samples shall only be provided against consideration unless otherwise agreed and shall, moreover, only serve as approximate examples.

2. Where the Customer provides drawings, documents and other information it is the Customer's responsibility that the contractual use of these drawings, documents and information does not breach any intellectual property rights of any third parties.

## **XIV. Condition, end-use declaration**

1. The conclusion of the individual contracts and the respective performance of the contracts by the parties shall be subject to the condition that they do not infringe any national or international laws especially export control provisions.

2. Upon request, the Customer is obliged to provide declarations of end-use for the ordered goods and products in accordance with applicable export control provisions.

## **XV. Place of performance, place of jurisdiction, applicable law**

1. The place of performance for all obligations including return of goods, shall be within the geographical boundaries of Union of India, unless otherwise agreed.

2. This contract is made in India and shall be governed, construed and interpreted in accordance with the laws of India and the Customer and the Supplier agree to submit to the exclusive jurisdiction of the Courts at Chennai, India alone.

## **XVI. Arbitration**

Any dispute arising between the Supplier and the Customer for supply of goods or otherwise under this Sales and Delivery Conditions, shall be settled through arbitration under Indian Arbitration and Conciliation Act, 1996 by a sole arbitrator to be appointed by the Supplier. The place of arbitration shall be Chennai, India. The arbitration proceedings shall be conducted in English language.

## **XVII. Transferability of contract**

The Customer may transfer its contractual rights to third parties only upon the Supplier's prior written consent.

## **XVIII. Important**

1. If any stipulations of these Sales and Delivery Conditions is contradictory to other stipulations of this Sales and Delivery Conditions, the stipulations more favourable to the Supplier shall prevail.

2. The Supplier reserves its rights to amend, modify, alter, change or delete any of these terms and conditions and / or add any new terms and conditions. All such changes shall have prospective effect.

3. On placing an order by the Customer to the Supplier for any goods it will be deemed that the Customer has read, understood and accepted the above Sales and Delivery Conditions of the Supplier

**State: October 2009**