

## General Terms of Business (GToB)

### 1. Formation of Contract

- 1.1. RAYTHEON Anschuetz GmbH (hereinafter "SELLER") offers remain nonbinding. A contract is only formed upon your (hereinafter "BUYER") receipt of SELLER's written order confirmation. The contract is exclusively governed by SELLER's order confirmation and by these General Terms of Business ("Terms"). BUYER acknowledges the validity of such Terms by placing his order or, at the latest, by accepting the products or services sold. This shall also apply if SELLER does not expressly object to conditions of BUYER which are different from SELLER's Terms. SELLER hereby objects to counter confirmations of BUYER which refer to its general terms of business. SELLER's Terms shall govern all transactions between SELLER and BUYER including future transactions and/or transactions with regard to which SELLER does not expressly refer to SELLER's Terms when entering into the contract.

In cases where BUYER places an order with the authorization and on behalf of an end-customer, BUYER declares to be fully empowered and authorized therefor. BUYER shall, as per § 421 German Civil Code (Bürgerliches Gesetzbuch), be jointly liable for any payment and other obligations owed by the end-customer to SELLER under this order, especially in cases in which the required and aforementioned empowerment and/or authorization is in fact not existing. SELLER reserves the right to request from BUYER evidence on the alleged empowerment and/or authorization.

- 1.2. Ancillary agreements and modifications of these Terms are only valid if SELLER has confirmed them in writing.
- 1.3. Documents which SELLER has submitted in connection with offers, e.g. pictures, drawings, measurements and information concerning capacity, weight or power and space requirements are for information only and shall only become binding if expressly agreed in writing. SELLER retains proprietary rights and copyrights to these documents as well as to cost calculations. BUYER shall not make them available to third parties and shall return them, at SELLER's request, without delay.
- 1.4. In case the parties have not agreed to any specific requirements, the SELLER shall be entitled to deliver products and services following SELLER's standards. It is BUYER's responsibility to obtain sufficient information on the standards used, pursued and maintained by SELLER to evaluate whether those standards meet BUYER's requirements or not. SELLER reserves the right to make changes in the specifications and the design of products on order; SELLER shall not be obliged to make such modifications also to products which SELLER has already delivered or completed.
- 1.5. These "General Terms of Business" shall be supplemented by the INCOTERMS® 2010 provisions as published by the International Chamber of Commerce, Paris, France.

### 2. Prices and Payment

- 2.1. SELLER's prices are quoted **Free Carrier (FCA INCOTERMS® 2010)**. They do not include assembly, installation and wiring of the product and the start-up. All prices and ancillary costs are computed on the basis of SELLER's price list in force at the time of delivery unless differently agreed. BUYER shall pay statutory turnover tax (sales tax, Value Added Tax) if the sale is subject to such tax, and other public charges. The BUYER shall, to the extent applicable, provide the SELLER with a valid Value Added Tax Identification Number (VAT ID). BUYER shall assist SELLER in a suitable manner in any proceedings concerning the collection of any taxes, duties, fees or other charges, and provide SELLER with the necessary documentation.

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2.2. Payment shall be made without deductions at SELLER's place of business as follows:

For ex-stocks equipment 30 days after date of invoice

For customer configured equipment by at sight letter of credit to be opened 60 days prior to delivery and valid until 60 days after delivery against presentation of the following letter of credit documents

- invoice
- bill of lading/airway bill, whichever applies
- packing list

or

- one third one week after receipt of order confirmation,
- one third one week after our notice of readiness of shipment,
- one third one week after delivery,

For delivery of spare parts net cash 30 days after date of invoice.

Payments shall be regarded as made on the oldest obligations of BUYER. In case cost and interest have risen, a payment shall be regarded as first made on the cost, thereafter on the interest. Drafts and checks are accepted only upon special agreement and as means of payment only with all fees and charges in connection therewith to be borne by BUYER. A payment shall only be regarded as made when the amount has been credited to SELLER's account. In the event payments are effected later than agreed, SELLER is authorized, without prejudicing the assertion of further rights, to charge interest from the due date in the amount of 8 % per annum over the European Central Bank Basic Rate.

The right to assert default damages remains unprejudiced.

2.3. BUYER is not entitled to assert rights of set-off, retention of payment, or reduction of the purchase price because of defects against our claims unless BUYER's claims are the subject of a final court order, court decision or are uncontested.

2.4. All of SELLER's claims including claims for which SELLER already has accepted a draft or with regard to which instalment payments have been agreed upon shall become due and payable immediately in the event that BUYER does not meet payment conditions or if, after the contract has come into effect, circumstances become known to SELLER which adversely affect BUYER's creditworthiness.

In such case SELLER is also entitled to effect all outstanding deliveries or services only against prepayment or security. In case prepayments or security have not been effected within a reasonable period of time, SELLER may rescind the contract without prejudicing the assertion of further rights.

2.5. The BUYER is obligated to make payments to SELLER in the currency in which the invoice is made out, insofar as the laws of the Federal Republic of Germany do not decree otherwise.

2.6. SELLER reserves the right to provide the BUYER via e-mail with an electronic invoice (eg in PDF-format). The process of utilizing electronic invoices shall be deemed accepted by BUYER, unless BUYER provides SELLER with a written objection thereto within seven (7) days of receipt of the electronic invoice.

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With acceptance of the electronic invoice BUYER waives any requirement of a paper invoice. BUYER shall have the right to revoke his acceptance in receiving electronic invoices at any time.

For any paper invoice requested by BUYER the SELLER shall be entitled to charge BUYER with an administrative fee of 35,- EURO.

BUYER shall provide SELLER with an e-mail address to which the electronic invoice shall be sent. Any change in the e-mail address initially provided shall be immediately noted to SELLER in writing. Electronic invoices sent to the last known e-mail address prior to any change in the e-mail address noted to the SELLER shall be deemed received. BUYER shall further ensure unhindered delivery of the e-mail containing the electronic invoice by appropriately configuring any security measures, such as, but not limited to, firewalls, e-mail filters and the like.

BUYER is fully responsible for applying all required measures on his side in order to ensure his eligibility to claim any input tax deduction (Vorsteuerabzugsberechtigung). SELLER assumes no responsibility and liability therefor.

### 3. Delivery, Passage of Risk, Acceptance

- 3.1. All dates and periods which SELLER indicates are not binding unless the parties have expressly agreed to the contrary in writing. Periods of delivery shall commence only after all details of performance have been clarified and BUYER has supplied all documents, permits, etc. which BUYER is obliged to supply and has made the instalment payment. SELLER shall only be obliged to observe an agreed period of delivery in case and as long as BUYER complies with its contractual obligations.
- 3.2. Periods of delivery and dates are deemed as having been met if SELLER has created the prerequisites of passage of risk pursuant to these Terms before these periods have lapsed. Unforeseeable or unavoidable events such as Force Majeure, war or warlike conditions, decisions by the government, public unrest, delay in transport, strike, lockout or other interruptions of the manufacturing process, severe quality problems and other events which SELLER cannot influence, suspend, while they last, SELLER's obligation of timely delivery, to the extent they have a substantial impact on SELLER's ability to deliver. This shall also apply in the event that SELLER is in default at the time that such events happen or in the event that SELLER's suppliers are affected by such events. Current periods of delivery shall be adequately extended.

In the event the duration of such events is more than three months, either party is entitled to terminate all or part of the contract. SELLER shall adequately inform BUYER of the occurrence of such events.

- 3.3. In the event SELLER has exceeded a delivery date by more than three months and additionally a period of grace of at least two weeks, which BUYER has granted SELLER thereafter, has lapsed, BUYER is entitled to terminate the contract. Alternatively, BUYER is entitled to request compensation of the damages caused by the delay to the extent that SELLER has caused such damages by gross negligence. Such claim for damages shall not exceed 0,5 % of the value of the part of the total delivery with which SELLER is in default, per completed week of delay, but in any case no more than 5 % of such value. Further claims are excluded.
- 3.4. In the event products which are ready for shipment are not shipped for reasons for which BUYER is responsible or in case BUYER does not accept the products tendered to him, SELLER is entitled to put all or part of the products into a warehouse at BUYER's cost and risk; If SELLER keeps the products in SELLER's plant, SELLER shall be entitled to charge BUYER 0.5 % of the invoiced amount per commenced month of stocking them.

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In the event of delay of acceptance SELLER shall be also entitled to grant BUYER an adequate grace period for acceptance and to rescind the contract if the grace period has expired without result. Instead of rescinding the contract, SELLER's is also entitled to otherwise dispose of the object of delivery and to supply BUYER after the delivery period has been adequately extended. SELLER reserves the right to assert any further rights and claims.

- 3.5. Place of Performance shall be Kiel, Germany.
- 3.6. Risk of loss passes to BUYER according to the FCA delivery mode as defined by the INCOTERMS® 2010 . Once the ordered product is ready for dispatch the SELLER will inform BUYER thereof. BUYER shall within two (2) weeks of the aforesaid information notify the SELLER on the nomination of a carrier to perform the necessary pick-up as per the agreed delivery mode FCA INCOTERMS® 2010. Should the SELLER not receive any such notification or should the nominated carrier fail to take the products within the agreed time, risk shall pass on to the BUYER upon expiry of the aforementioned deadline and SELLER, such non-pick-up notwithstanding, reserves the right to invoice the intended delivery in accordance with the agreed delivery mode FCA INCOTERMS® 2010, provided that any amounts relating to the delivery are still owed.
- 3.7. Unless the parties have agreed to the contrary SELLER is entitled but not obliged to insure the product to be delivered, at BUYER's expense, against risks of transport of all kind, in particular damages caused by transport, theft, fire, water or similar causes. This insurance or SELLER's acceptance of the cost of transport does not influence the passage of risk.
- 3.8. Partial deliveries are permissible.
- 3.9. BUYER is also obliged to accept products which only show minor defects. Minor defects are defects that will not, or only insignificantly, impair the operability of the products or services. Any warranty claims remain unaffected thereby to the extent that BUYER informs SELLER within two weeks of receipt of the product or service purchased.
- 3.10. Products or services will be accepted only if this was agreed in writing or is legally provided for. If acceptance was agreed, the SELLER notifies the BUYER in writing about the readiness of the products or services for acceptance, Acceptance has to occur within a period of 14 days after receipt of notification. If, for reasons beyond the control of the SELLER, acceptance is not effected within a period of 14 days following the notification about the readiness for acceptance, the products or services shall be deemed accepted upon expiration of this period. The products or services shall also be deemed accepted, as soon as the BUYER has put them into operation.
- 3.11. If the products or services are to be subjected to an acceptance test, such tests, unless otherwise agreed, are to be performed at the premises of the SELLER. Acceptance has occurred, if BUYER has not raised justified and substantial objections by the end of the acceptance test.
- 3.12. If BUYER decides that an acceptance test is not required, or despite being notified in good time, is not present at the acceptance test for reasons for which the SELLER cannot be held responsible, the test performed by the SELLER shall be deemed a valid acceptance test.
- 3.13. In case delivery should be postponed due to reasons attributable to BUYER and should it therefore become necessary to further store the products on SELLER's premises, then BUYER shall bear all costs associated with such storage, such as, but not limited to, salaries and insurance. Despite storage SELLER shall be entitled to ask for payment in accordance with any initially agreed payment plan as if storage had not been agreed to and delivery had been conducted as initially agreed.

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- 4.1. BUYER shall comply with all applicable export laws, rules and regulations of the Federal Republic of Germany, the United States of America as well as of other countries having jurisdiction over the products and services sold. BUYER shall not violate any such laws, rules and regulations, especially by exporting or re-exporting the product(s) without holding all necessary authorizations and licenses therefor. BUYER further warrants that he will take all reasonable and appropriate steps, including, but not limited to, obtaining warranties, guarantees or other assurances, to ensure that no third person or entity purchasing or otherwise procuring the product(s) will export or re-export the same in violation of the aforementioned applicable laws, rules and regulations.
- 4.2. The delivery of the product(s) and/or service(s) ordered on the basis of this offer may be subject to the relevant export licenses being granted by the cognizant German Export Control Authority. If applicable, customer shall therefore provide SELLER with a valid and duly signed end-user certificate or end-user statement, as the case may be, within four (4) weeks of contract signing. Any detriments due to a delay in providing SELLER with the required end-user certificate or end-user statement, as the case may be, shall be for the customer's account.
- 4.3. SELLER reserves the right to not accept an order that SELLER considers in conflict with one or all of the preceding paragraphs 4.1 to 4.2 or that is in conflict with Raytheon Company policies.
- 4.4. SELLER shall be entitled to terminate or withdraw from a contract resulting from this offer with immediate effect should the required export license not be granted or should an existing one be revoked. SELLER shall also be entitled to termination or withdrawal in case of any obligation addressed in the preceding paragraph 4.1 being violated by BUYER or BUYER's customer.
- 4.5. In case SELLER refuses to accept an order due to the reasons mentioned in the preceding paragraph 4.3 or in case SELLER terminates or withdraws from a contract resulting from an offer for any of the reasons stipulated in the preceding paragraph 4.4, SELLER shall under no circumstances be liable, neither directly nor indirectly, for any repayment or compensation of costs, expenses, any other form of efforts as well as for any damages and/or losses incurred by BUYER in connection with said termination, withdrawal or refusal.

**5. Retention of Title**

- 5.1. SELLER is granted the following security until BUYER has satisfied all of its obligations arising out of the contract:

If the value of the security granted to SELLER constantly exceeds the total amount of SELLER's claims against BUYER by more than 20 %, then upon BUYER's request SELLER shall reduce the security accordingly, insofar as a partial reduction of the security is possible without giving up the security entirely.

- 5.2. SELLER retains title to all products until products are fully paid. In case SELLER loses title because of an integration of SELLER's supplied products into other systems or products, BUYER's (co-)ownership of the product resulting from the integration shall automatically be transferred to SELLER pro rata the value of SELLER's product to the value of the merged/combined product (as invoiced).—BUYER shall possess the products to which SELLER has (co-)ownership as bailee for SELLER free of charge. Products to which SELLER has (co-)ownership, hereinafter are called "retention-of-title-property".

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- 5.3. BUYER is authorized to sell and process the retention-of-title-property in the ordinary course of business as long as BUYER is not in default of payment. BUYER shall retain title to the retention-of-title-property until BUYER has been fully paid by its customer. BUYER is not authorized to pledge or transfer the property by way of security. BUYER hereby assigns to SELLER in advance BUYER's claim for the purchase price against its customer or claims for any other reason (insurance, tort) concerning the retention-of-title-property (including the claim for the balance from current accounts), as security. SELLER hereby authorizes BUYER, which authorization can be withdrawn at any time, to collect such claims that are assigned to SELLER on SELLER's behalf but in BUYER's name. This authority to collect claims can only be withdrawn in case BUYER does not correctly meet its payment obligations.

In case BUYER sells the retention-of-title-property together with other products, the assignment shall only comprise the part of the total claim which corresponds to the purchase price for the products in question as agreed upon between BUYER and SELLER plus 20 % thereof.

- 5.4. If the retention-of-title-property is attached or levied upon, the BUYER shall inform such third party of SELLER's property and shall immediately inform SELLER thereof, submitting all documents. BUYER shall bear all cost and damages.
- 5.5. In case BUYER is in default of meeting its obligations to SELLER, SELLER is entitled, without prejudice to SELLER's rights under law, to request the return of the retention-of-title-property, to dispose of it in order to pay from the proceeds thereof due and payable claims against BUYER and, the case arising, to request the assignment of claims of BUYER against third parties. In such case, BUYER shall grant SELLER or our designate immediate access to the retention-of-title-property and shall deliver it to SELLER. Neither the return nor our request of return nor our attachment of the products shall be deemed cancellation of the contract.
- 5.6. SELLER is entitled to adequately insure the retention-of-title-property at BUYER's expense until title has fully passed to BUYER.
- 5.7. BUYER shall co-operate in all measures which are necessary or beneficial for the validity or enforceability of SELLER's title retention claim abroad. In case SELLER delivers into countries in which the retention of title clause of this paragraph does not have the same effect as in the Federal Republic of Germany, BUYER shall do everything in his power to provide SELLER with other means of security of similar value.

**6. Limited Warranty**

- 6.1. (a) SELLER warrants that the products delivered pursuant to these Terms will be free of defects in material and workmanship. The warranty period starts with dispatch Free Carrier (FCA INCOTERMS® 2010). If not agreed different by single sales contract, SELLER's equipment within systems is warranted for a period of 12 month from commissioning date, but no longer than 24 month after dispatch Free Carrier (FCA INCOTERMS® 2010). SELLER does not accept any warranty either for products which were delivered in parts and which SELLER has not assembled, or for used equipment.

(b) Warranty is only accepted if commissioning was carried out by SELLER's authorised service station and after the receipt of the commissioning report in Kiel.

(c) Warranty claims for spare parts (except consumption material) become invalid 6 months after date of dispatch Free Carrier (FCA INCOTERMS® 2010), for gyrospheres 12 months after date of dispatch Free Carrier (FCA INCOTERMS® 2010).

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Lamps, fuses, paper, cartridges, ribbons, disks drive belts, magnetrons are considered consumables and are explicitly excluded from this warranty. Furthermore SELLER assumes no responsibility for faults on installation, calibrations, settings, maintenance and sea trials not conducted by SELLER.

- 6.2. SELLER's warranty obligation is restricted to the repair or, at SELLER's option, exchange of a defective product manufactured by SELLER or a company affiliated with SELLER. For third party products SELLER only accepts the warranty on the product itself; upon request SELLER will assign its warranty claims against such third party to BUYER.
- 6.3. At SELLER's request, BUYER shall return at its cost defective products under warranty or parts thereof to SELLER. For the return BUYER shall use SELLER's Return Material Authorization Form ("RMA"). RMA shall be provided by SELLER. Products returned without an RMA will not be accepted by SELLER and returned to BUYER. To the extent that SELLER accepts liability for a defect, SELLER shall bear the costs of material and wages.

In case BUYER requests that defects are repaired at a location determined by BUYER, SELLER can comply with such request; SELLER will then charge travel cost, absence compensation and, if applicable, overtime surcharge, but shall not charge for the cost of spare parts and time spent on the repair (standard-time; no overtime). Waiting time, weekend or night surcharges are not covered under warranty. SELLER shall obtain title to parts which have been replaced Spare parts are warranted parts only

- 6.4. SELLER's warranty obligation ends in the event that defective products are repaired or otherwise worked on without SELLER's prior consent. SELLER does not accept liability for defects which can be traced back to incorrect assembly or start-up by BUYER, incorrect treatment, excessive usage, natural wear and tear, lack of servicing, in particular non-compliance with operating and servicing instructions, use of inadequate materials, unusual operating conditions - in particular, chemical, electro-chemical or electrical impact - or similar causes.
- 6.5. Repairs and replacements under warranty for the originally purchased products and services do not extend the warranty period for the original product or service.
- 6.6. BUYER is only entitled to repair defects himself or by third parties in case of an imminent safety hazard and in order to prevent disproportionately large damage. SELLER shall only compensate BUYER for the necessary cost incurred for such purposes if BUYER has informed SELLER of such measures immediately in writing and if SELLER has not recommended other acceptable measures.
- 6.7. BUYER shall grant SELLER the time and opportunity required for repair and replacement as well as auxiliary personnel, free of charge. Otherwise SELLER shall be relieved from any warranty obligations regarding the specific claim.
- 6.8. In case SELLER fails to repair or replace a defective product and does not meet an adequate period of grace granted by BUYER, BUYER can request that the price for the defective product be reduced or that the contract can be terminated.
- 6.9. In case a complaint of a defect is unjustified, BUYER shall compensate SELLER for all costs incurred.
- 6.10. BUYER shall notify SELLER in writing of obvious defects without delay, but at the latest seven days after delivery, of non-obvious defects without delay after discovery.

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6.11. (a) The following provisions apply to software: SELLER warrants that the software delivered to the BUYER corresponds to SELLER's program specifications, provided it has been installed in corresponding systems and in accordance with SELLER's instructions.

(b) SELLER shall not be liable nor shall SELLER provide any warranty for software, interfaces, etc. made available to the BUYER which are produced by other manufacturers; Where appropriate SELLER shall transfer to BUYER any claims against the manufacturer concerned. Only software defects which can be reproduced at any time shall be considered to be defects covered by SELLER's warranty obligation.

(c) SELLER shall remedy software defects which substantially impair the use in accordance with the contract, at SELLER's option and depending on the extent of the defect, either by installation of an improved version of the software or by advice as to how to eliminate such defects or to avoid their effects.

(d) SELLER does not warrant that the software will function without interruption or error, that SELLER can eliminate all software defects, and that the software will correspond to the BUYER's requirements and will function without error in each configuration the BUYER selects, unless such configuration has been specified by SELLER.

(e) Claims based on a data loss shall also require that the BUYER has performed a data backup in a machine-readable form at intervals adequate to the application concerned, but not later than at the end of the day on which the software was used, to ensure the restoration of data with a reasonable expenditure.

6.12. The foregoing are the exclusive remedies of the BUYER in the event of a breach of warranty. All implied warranties including the warranties of merchantability and fitness for purpose are excluded to maximum extent permitted by law. Any claims for damages, whether contractual or statutory, shall be subject to the limitations and exclusions of liability stipulated in Section 7, in particular claims for compensation for damages not incurred by the product itself (consequential or indirect damages).

6.13. All warranty claims have to be sent to SELLER's warranty administrator. Details are specified in the Warranty Administrative Procedures and also a part of these terms.

**7. Liability, Limitation of Liability and Claims for Damages**

7.1. The SELLER shall only be liable for intent and gross negligence. In case of breach of material contract obligations, so-called "Cardinal Obligations" (Kardinalpflichten), the SELLER shall also be liable for slight negligence. For the purpose of this Contract, "material contract obligations" shall be defined as such obligations whose fulfillment make the proper execution of the Contract possible in the first place and whose observance the customer regularly relies upon and may rely upon.

In all cases of negligent acts the SELLER's liability for damages shall further be limited to the damage typically predictable at conclusion of this Contract.

7.2. In case of asserting damages due to a defect the assertion of consequential damages due to a defect, especially with regards to loss of revenue or loss of profit, is excluded if the SELLER has caused the defect in only a slightly negligent manner.

7.3. The liability for culpable damage to life, body or health as well as liability under the German Act on Product Liability (Produkthaftungsgesetz) shall remain unaffected.



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- 7.4. As far as the liability of the SELLER is excluded or limited, the same applies to the individual liability of the SELLER's employees, representatives and his vicarious agents (Erfüllungsgehilfen).
- 7.5. With respect to software, SELLER, SELLER's employees and SELLER's vicarious agents or officers, shall be liable for the loss or transformation of data caused by defective programs only insofar as this is unavoidable after BUYER has fulfilled its obligation to perform the data backup as stipulated in paragraph 6.11 hereof.
- 7.6. In case that system engineering is being provided by the BUYER or that systems designed by SELLER are amended or altered on BUYER's request or that components are being combined with systems provided by the BUYER, BUYER shall have the responsibility to assure compliance of the entire system with rules and regulations of authorities and classification societies.
- 7.7. There shall be no reversal of the burden of proof, whatsoever, associated with any liability stipulated under this paragraph 7 or any other liability stipulated under these Terms.
- 7.8. The parties acknowledge that the SELLER might rely on certain information and/or legwork associated with the products and/or services sold, especially with regards to the technical environment in which products shall be installed, to be provided by BUYER to the SELLER to adequately meet his obligations defined by these Terms. Should said information and/or legwork not be provided by BUYER in a timely and complete and comprehensive manner, then SELLER shall not be responsible and liable for any disadvantages and damages, direct or consequential, resulting therefrom.

**8. Indemnification**

- 8.1. SELLER shall defend BUYER against all claims based on alleged infringement of intellectual property rights or copyrights by SELLER's product. SELLER shall hold BUYER harmless for damages and costs imposed by a court on condition that SELLER has designed the product and that BUYER notifies SELLER of such claims without delay in writing, currently submits all required information and authorizes SELLER to take all measures of defence, in particular to enter into a settlement and to appeal a decision.
- 8.2. Alternatively, SELLER shall be entitled to fulfill the obligations in Sec. 8.1 by:
- (a) Obtaining the necessary licences, or
  - (b) In case this cannot be done at reasonable expense, rescinding the contract and returning the purchase price, or
  - (c) Supplying BUYER with modified products or parts thereof which, after they have been exchanged against the infringing product or part thereof, stop the alleged infringement.

Further rights of BUYER are excluded.

**9. Rights to Software**

- 9.1. BUYER shall be granted a non-exclusive, non-transferable licence to use programs, relating documentation and subsequent amendments exclusively in connection with the product on which BUYER initially uses such programs, documentation and amendments.
- 9.2. BUYER shall have no further rights to the programs, relating documentation or subsequent amendments; SELLER shall remain sole owner of the copyrights.

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- 9.3. BUYER shall not without the prior written consent make these programs, relating documentation and subsequent amendments available to third parties, nor – even for BUYER’s own purposes except for one back-up – copy or otherwise duplicate them. Source programs shall be made available only by separate written agreement.
- 9.4. BUYER must not hand any furnished copies of SELLER’s software any third party unless the software was delivered to be distributed within the regular course of BUYER’s business; third party shall include any affiliated company, subsidiary, daughter and/or parent company as well as any company belonging to BUYER’s group, if any.
- 9.5. The software, which BUYER has received from SELLER, whether separately, embedded or in any other way, might contain or solely consist of third party software. All rights associated with such third party software are, via these Terms, governed by separate license terms either provided to BUYER or obtainable from SELLER. BUYER is obligated to strictly obey and abide by said third party terms.

**10. Secrecy**

Unless the parties have agreed differently in writing, information which has been given to SELLER in connection with orders shall not be regarded as confidential.

**11. Consequences of Termination**

- 11.1. In the event of termination of any purchase order or contract under these Terms the BUYER shall be entitled to take over from the SELLER products and any other materials and/or parts to be provided by the SELLER which have already been delivered as well as any documents necessary to enable the BUYER to complete the System either by itself or with the help of third parties.
- 11.2. The SELLER shall be entitled to be paid for all works and services already actually performed until the date of termination as well as for any materials and parts taken over by the Customer in accordance with this Article 11.1. The parties shall jointly set up and sign a delivery protocol stating the works and services performed by the SELLER until the date of termination and the percentage value of such products, works and services in relation to the order value. In case the parties are unable to mutually agree on the value of the products, works and services already performed, both parties shall be entitled to submit the issues in dispute to an notified body such as Germanischer Lloyd (“GL”). The decision of the GL shall be final and shall have binding effect on both parties. The costs for the GL shall be borne by the parties in equal parts.
- 11.3. In the event of termination according to these Terms, the BUYER shall pay
- (a) the unpaid balance due to the SELLER for all products, works and services already performed to be determined according to the rules in Article 11.1 above;
  - (b) all reasonable costs, including a reasonable fee, incurred by the SELLER and his sub-contractors in connection with equipment, materials and/or parts already ordered prior to the date of termination and compensation for work performed on such equipment, materials and/or parts prior to the said date, provided that such costs are not covered by payment under Article 11.3 (a);
  - (c) all necessary cancellation charges and administration costs incurred by the SELLER in connection with the termination;

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- (d) any costs incurred by the SELLER for dismantling products and returning them and other materials to the SELLER's premises as well as any other evidenced expenses of the SELLER and his subcontractors directly attributable to an orderly closeout of the Purchase Order or Contract under these Terms.

Payment shall be made within a period of 30 days upon receipt of the SELLER's corresponding invoice by the BUYER.

**12. Anti-Corruption Policy – Representations and Covenants**

12.1. BUYER is aware of SELLER's obligation to comply with the anti-corruption rules relevant to the contracting parties such as, but not limited to, the U.S. Foreign Corrupt Practices Act ("FCPA"), UK Bribery Act of 2010 and the German Criminal Code, and represents that it will not use money or other consideration paid by SELLER or retained otherwise for unlawful purposes, including purposes violating anti-corruption laws, such as make or cause to be made direct or indirect payments to any public official in order to assist SELLER or anyone acting on its behalf in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage.

12.2. BUYER hereby declares that

- its members, officers, owners and employees are not public officials and does not and will not employ or otherwise compensate or offer to compensate any public officials, or make or cause another to make any direct or indirect offers or payments to any public officials, for the purpose of influencing or inducing any decision for the benefit of SELLER.

- it will not employ any sub-contractor, consultant, agent or representative in connection with sales on these terms without a thorough documented examination of his person, reputation and integrity ("Due Diligence"), and

- it will not employ any subcontractor, consultant, agent or representative who does not comply with the anti-corruption rules and in case any such violation comes to its attention it informs SELLER immediately,

12.3. BUYER will supply information within fourteen days upon a written request from SELLER concerning the counterparty's receipt and use of payments under this Agreement.

12.4. If SELLER has accepted an order already and then find out during order processing that this order is in conflict with 12.1 and or 12.2, SELLER shall have the right to terminate this order immediately without any liability for compensation or damages. In no event shall SELLER be liable for any indirect, incidental or consequential loss, such as but not limited to loss of profit or production. Any other liability other than described above is hereby expressly excluded except as required by applicable law.

**13. Applicable Law and Exclusive Place of Jurisdiction**

13.1. Exclusive Place of Jurisdiction shall be Kiel, Germany. SELLER, however, reserves the right to take legal action against BUYER at any other Place of Jurisdiction.

13.2. The law of the Federal Republic of Germany shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980.

**General Terms of Business (GToB)****14. Miscellaneous**

14.1. In case of invalidity of one of these provisions, the other provisions and stipulations between the parties shall continue in force.

14.2. BUYER is not entitled to assign any claims under this contract.