GENERAL TERMS AND CONDITIONS
FOR DELIVERIES, PRODUCTS AND SERVICES

§ 1 SCOPE

(1) Our "General Terms and Conditions for Deliveries, Products and Services" (hereinafter: GTCs) apply in business connections between us (companies of the F.EE Group: F.EE GmbH, F.EE GmbH Automation among others) and companies in accordance with § 14 BGB (German Civil Code) and legal persons under public law. However, our General Terms and Conditions do not apply to public contracts and to the organisation of competitions by public clients within the meaning of § 1 Paragraph 1 of the Vergabeverordnung (VgV) – Public Procurement Ordinance.

(2) Our GTCs shall apply exclusively. Unless agreed explicitly by us in writing, any conflicting, supplementary or general terms and conditions of the customer deviating from these GTCs are not applicable. Neither do they apply even if we do not explicitly contradict their applicability. Our General Terms and Conditions shall also apply even if the deliveries and services are executed without reservation in the knowledge of terms and conditions of the customer that conflict or deviate from these GTCs. Any reference made by us to correspondence of the customer that includes indication of his/her terms and conditions does not constitute acceptance of the applicability of the terms and conditions of the customer.

(3) For products not manufactured by ourselves, in particular commercial goods of other manufacturers, the terms and conditions of the respective manufacturer attached to these goods shall apply additionally.

§ 2 CONCLUSION OF THE CONTRACT, SCOPE OF DELIVERY AND SERVICES

(1) Our offers are subject to confirmation. A contract is not deemed concluded until we have given written confirmation of the order.

(2) In the absence of any other agreement, the scope of our deliveries and services (hereinafter: deliveries) shall be conclusively defined by our written confirmation of the order together with the written attachments. The terms of the order confirmation shall take precedence in the event of conflicts between these GTCs and the terms of the order confirmation. Any work that is not expressly listed or that is unforeseeable at this time is thus not part of the scope of delivery and must therefore be paid for separately should it be ordered or become necessary.

(3) The information provided by us to the subject matter of the delivery or service and its properties (so-called specifications such as weight, dimensions, serviceability, load capacity, tolerances and technical data etc.) and our depiction of the above-mentioned (e. g. information in functional specifications, drawings, calculations and illustrations etc.) are binding only if this is expressly agreed or its use for the contractually foreseen purpose requires an exact accordance. If the above-mentioned information is binding, under no circumstances does it constitute a guarantee pursuant to § 443 BGB, but simply a performance description.

In addition any statements made or promotion and advertising undertaken by our suppliers and the component manufacturers do not constitute any contractual information to the properties.

(4) Unless otherwise expressly agreed to the contrary, the following are permitted:

(a) equivalent solutions of the same quality with which the contractually foreseen purpose can be achieved and that are reasonable for the customer;

(b) deviations that are usual in the trade and such that are carried out due to technical (e. g. DIN, VDE or VDI regulations) or legal regulations or are permitted by such and/or constitute technical improvements as well as the substitution of material with material of equal quality if this does not impair usability for the contractually foreseen purpose and is reasonable for the customer.

§ 3 DELIVERY PROVISO, PARTIAL DELIVERIES

(1) Our fulfilment of the contract in respect of those delivery parts which are covered by governmental export and import stipulations is dependent on the required approvals being given. The same applies in respect to any sanctions, embargoes and national as well as international restrictions that do not permit or limit our performance. The customer is obliged to provide all documentation and information, whose compilation lies within his/her sphere of influence and that are required for the export, shipment or import.

(2) We are entitled to withdraw from the contract despite prior conclusion of a respective purchase contract with our supplier or receipt of a promise of sale by him if we ourselves do not receive the subject matter of the delivery from our supplier. We will notify the customer immediately of the delayed availability of the subject matter of the delivery and, should we wish to withdraw from the contract, will exercise our right of withdrawal immediately; in the event of withdrawal we will immediately refund the corresponding counter performance.

(3) Partial deliveries are permitted in as far as these are reasonable for the customer.

§ 4 PROPERTY RIGHTS TO DOCUMENTS; CONFIDENTIALITY

We retain ownership of all our offers, calculations, price lists, product information, drawings, plans, realisation methods and concepts and other documents and information independently of how they are transmitted to the customer and irrespective of whether this is effected in writing, electronically or verbally; the aforementioned also constitute confidential information that may not, without our approval, be passed on to any third parties nor used for any purposes other than those specified in the business relationship and that must be treated as confidential. This confidentiality obligation on the part of the customer applies for a period of 3 (three) years after our transfer of the confidential information.

§ 5 LIABILITY DUE TO IMPOSSIBILITY; CONTRACTUAL ADJUSTMENT

(1) We are liable in the case of impossibility of delivery/service in cases of wilful intent or gross negligence – also on the part our legal representatives and vicarious agents – in accordance with legal provisions. Our liability in cases of gross negligence is limited to typical foreseeable damage. With the exception of the cases mentioned in sentence 1, our liability due to impossibility for compensation for damage and wasted expenditure is limited to 10 (ten) percent of the value of that part of the delivery that cannot be put into useful operation due to said impossibility. Any other claims of the customer due to impossibility to deliver are excluded. The aforementioned limitations shall not apply for liability arising from injury to life, limb or health. This shall in no way affect the right of the customer to withdraw from the contract. A change in the burden of proof to the disadvantage of the customer is not connected to the above provisions.

(2) In as far as the cases in compliance with § 10 sentence 2 significantly change the economic importance or the content of the delivery or have a significant impact on our company, the contract shall be adjusted adequately in good faith. We are entitled to withdraw from the contract should this adjustment of contract prove not to be economically justifiable and unreasonable for one of the parties. The same shall apply in the event any necessary export licenses are not issued or cannot be used. However, should we exercise the said right of withdrawal, we are obliged to notify the customer of such after realization of the prerequisites for the respective event.

§ 6 PRICES AND ADDITIONAL COSTS

(1) Unless agreed to the contrary, our prices apply ex-works, plus VAT as applicable, packaging and loading.

(2) Furthermore, the following applies to export deliveries:

(a) The customer is liable for the costs for the necessary approvals for the use of the products and/or export and import papers, plus customs duties and fees and other public charges.

(b) For services within the European Union the customer must communicate his VAT ID number in due time before the contractually agreed time for delivery. We reserve the right to charge the respective VAT in the event the customer does not provide such in full and in due time.

(c) We are entitled to subsequently charge the applicable VAT for services outside of the European Union if the customer does not send us export clearance within one month of the respective shipment.

(3) Unless agreed to the contrary, additional charges will made for work performed outside of normal working hours. Travel and service times comprise working time.

(4) Additional deliveries and services will be charged for at the respective current cost rates that can be requested from us.

(5) We are entitled to increase the price by the actually incurred extra costs if by the agreed delivery date or service date the costs change, e. g. the applicable collective bargaining wages or material prices, if delivery has not been made within 4 (four) months after conclusion of the contract. The same shall apply in the event the

delivery is made later than 4 (four) months after the contract is concluded due to reasons for which the customer is responsible.

§ 7 TERMS OF PAYMENT, OFFSETTING/RETENTION RIGHT

(1) Payments shall be made free of charge to the designated account of F.EE. We reserve the right to demand security for payment and/or advance payments. The respective date of the invoice is deemed the start of the deadline within which an invoice falls due for payment.

(2) We are entitled, despite provisions of the customer to the contrary, to first offset the latter's older debt against payments. The customer shall be notified of the type of the offset effected. Should costs and interest already have accrued, we are entitled to first offset the payment against the costs, then against the interest and finally against the principle amount.

(3) The agreed payment rates shall become due for payments at the latest 2 (two) weeks after the target date should there be delays in the processing of the order for which the customer is responsible.

(4) The customer is only entitled to offset claims if his counter claims are legally effective or undisputed. The customer is only entitled to retention if his counter claims from the same contractual relationship are legally effective or undisputed.

§ 8 DEFAULT OF PAYMENT; CESSATION OF PAYMENT, SUBSTANTIAL DETERIORATION OF THE ECONOMIC SITUATION

(1) In the case of agreed part payments we are entitled, irrespective of the agreed due date for payment, to demand immediate payment of the total order price in full in the event of default of payment even for one instalment or bill protest, cessation of payment on the part of the customer or any other circumstances we become aware of that are grounds for serious concern that the customer is not able to fulfil the part payment agreement. Besides defaults in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency or a company maintaining business relations with the customer shall be considered proof of a significant deterioration in the customer's financial position. In such a case we are also entitled to cancel the contract and demand return of the delivery items that are still our property in accordance with § 9 (Retention of title) and compensation for the damage we have incurred.

(2) In the case of default of payment, cessation of payment or substantial deterioration in the economic situation of the customer we are entitled, without prejudice to any other rights we have, to demand security for the pre-performance we are to fulfil to the amount of our anticipated claim to remuneration including accessory claims, which shall then be set at 10 (ten) percent of the claim to remuneration to be secured in the form of a guarantee or other promise of payment from a German bank or credit insurance institute, in such a way that we allow the customer a reasonable period in which to provide this security with the declaration that on expiry of such period we shall refuse to perform and shall cancel the contract. The bank or credit insurance institute may only make payments to us if the customer recognises our claim to remuneration or has been ordered to make payment by a provisionally enforceable judgement and the conditions are present under which forced execution may be started. Should the customer not provide security within the time limit, our rights shall be determined in accordance with § 648a, 5 BGB.

(3) In the event the contract is cancelled in accordance with point (2), we are also entitled to claim compensation for the damage we incur due to our trusting in the validity of the contract. The same shall apply if a cancellation on the part of the customer coincides with the demand for security, unless such cancellation is not effected in order to avoid providing security. It is assumed that the damage will amount to 5 (five) percent of the compensation.

(4) In the event the customer is in default of payment, we are entitled to assert interest claims in compliance with § 288 (2) BGB (annual default interest to the amount of 9 (nine) percentage points above the applicable base rate of the Deutschen Bundesbank). This shall in no way affect any other rights to which we are entitled.

(5) All contractually agreed discounts and rebates of any type whatsoever shall become null and void in the event of defaults in payment or acceptance.

§ 9 RETENTION OF TITLE (RT)

(1) We shall retain the title to delivery items (goods that are subject to retention) until such time as all open claims against the customer resulting from the business relationship have been fulfilled in full. In as far as the value of all security rights to which we are entitled exceeds the amount of all secured claims by more than 20 (twenty) percent, we shall release a corresponding amount of the security rights at the request of the buyer. We are free to select which of the secured rights are to be released.

(2) During RT the customer shall treat and store the goods that are subject to retention with care and shall have all necessary measures for their maintenance and upkeep undertaken professionally at his own cost. While the goods are under retention the customer is not permitted to pawn or assign them for security and resale is only permitted to resellers within the ordinary course of business and only under the conditions that the reseller receives payment from his purchasers and makes the reservation that the title only passes to the purchaser after he has fulfilled his payment obligations.

The right to resell does not apply if the customer is in default of payment.

(3) The following shall apply if the customer resells the goods that are subject to retention:

(a) The customer here and now assigns his future claims against his purchasers arising from the resale with all ancillary rights – including any current account receivables – by way of security to us, without there being any requirement for further declaration. We hereby accept this assignment. If the goods that are subject to retention are resold in combination with other objects without a unit price having been agreed for them, the customer shall assign to us, with precedence over the remaining claim, that part of the total price claim that complies with the price of our invoice for the goods that are subject to retention.

(b) If a justified interest is made plausible, the customer must provide us with the information necessary to assert the customer's claims against his purchaser and to hand over the necessary documents.

(c) Until revoked the customer has the right to collect the assigned claims from the resale. The customer shall pass on to us without delay the payment made for the assigned claims to the amount of the secured claim. We are entitled to revoke the customers right of collection in the event of a just and legitimate cause, in particular in the event of default of payment, cessation of payment, filing of bankruptcy proceedings, protest of a bill of exchange or founded indication of excess indebtedness or impending insolvency on the part of the customer. In addition we are entitled after giving prior warning of impending disclosure and complying with a reasonable period of notice, to disclose the security assignment, realize the assigned claims and demand that the customer disclose the assignment to his purchaser.

(4) The customer is permitted to process the goods that are subject to retention or to mix or combine them with other objects. The following shall apply in the event the goods subject to retention are processed, mixed or combined:

(a) The processing, mixing or combination (hereinafter: processing) is carried out on our behalf. The customer shall keep safe the new item with the due care and diligence of a prudent businessperson. The new item constitutes an item that is subject to retention.

(b) If processing is undertaken with items not belonging to us, we are entitled to co-ownership in the new item to the ratio of the value of the processed, mixed or combined (hereinafter: processed) goods that are subject to retention to the value of the other processed items at the time of processing. If the customer becomes sole owner of the new item, the customer and F.EE hereby agree that the customer shall assign co-ownership of the new item resulting from processing to us at the ratio of the value of the processed item that is subject to retention to the other processed item at the time of processing.

(c) In the case of resale of the new item the customer here and now assigns his claims against his purchasers arising from the resale with all ancillary rights by way of security to us, without there being any requirement for further declaration. However, the assignment only applies to the amount of the value of our invoice for the processed item subject to retention. The portion of the claim assigned to us must be satisfied with priority. Point (3) (c) shall apply respectively with regard to the right of collection and the requirements for its revocation.

(d) If the customer combines the goods that are subject to retention with real estate or moveable goods, he shall also assign to us his his claim for remuneration of the combination

by way of security, including all ancillary rights, without any further special declarations being necessary, in the ratio of the value of the combined item that is subject to retention to the other combined items at the time of the combination was made. We hereby accept this assignment.

(e) The customer is liable for any costs we incur in connection with the assertion of our rights as co-owner in compliance with the provision of this point 4.

(5) The customer must notify us immediately of any seizures, confiscations or other interventions of third parties that endanger the property and forward to us copies of the respective documents (e. g. seizure record). The customer shall be liable for the costs we incur for any intervention.

(6) We are entitled, after fruitless expiry of a reasonable time limit set for performance by the customer, to withdraw from the contract and take back the delivery items if the customer violates any obligations, in particular in the case of default of payment. The legal provisions relating to the dispensability of a time limit shall remain unaffected. The customer is obliged to return the delivery items.

(7) Should the RT in compliance with the provisions above not be legally valid or unenforceable in accordance with the law of the country in which the goods subject to retention are located, such security is deemed agreed instead of the RT that comes closest to the law of that country. The customer shall take care to fulfil any action that might be required of him in this connection.

(8) If the scope of the delivery consists of software, the customer shall not acquire any title, but only the rights laid down in § 20.

§ 10 DELIVERY DEADLINES

(1) If shipment is agreed, delivery dates refer to the time of handing over of the goods to the forwarder, haulier or any other third party commissioned with the shipment. Otherwise due readiness for despatch shall suffice as fulfilment of the delivery deadline if the customer has been notified of such.

If acceptance is required, the date of acceptance is decisive, alternatively our notification of readiness for acceptance.

(2) If non-compliance with deadlines is due to cases of force majeure e. g. industrial action, in particular strike and lockouts or other interruption of operations, mobilisation, war, acts of terror, riot or any other unforeseen events, the deadlines shall be extended accordingly plus a reasonable restart period if these obstructions lead or contribute to the non-compliance. In addition cases of force majeure also include virus, programme and any other attacks of third parties on our IT systems, insofar these are effected despite observation of standard protection measures and due care, as well as all sovereign acts such as the refusal of a required governmental approval despite an application being properly filed or the imposition of an embargo, transport restriction and restrictions of energy consumption, a general shortage of raw materials and common supplies, as well as other reasons such as non-delivery or delayed delivery by our suppliers for which we are not responsible. Each party is entitled to withdraw from the contract should a case of force majeure last longer than 6 (six) months. The same shall also apply if the above-mentioned circumstances occur during an already existing delay.

(3) Observation of the delivery deadlines presupposes the timely receipt of all documents, necessary approvals and releases, in particular plans, to be provided by the customer, as well as fulfilment of the agreed terms of payment and any other obligations incumbent on the customer. In the event these conditions are not met in a timely manner, the delivery deadline shall be extended appropriately plus a reasonable restart period; this does not apply if we are responsible for the delay.

(4) In as far as deliveries and/or services are delayed for reasons for which the customer is responsible, the deadlines are deemed met, provided notification of readiness for delivery and performance is given within the agreed deadlines.

(5) Subsequent requests of the customer for modifications or expansions shall extend the delivery deadline appropriately.

§ 11 CUSTOMER'S DUTY TO DECIDE AND LIABILITY IN THE CASE OF DELAY IN DELIVERY

(1) The customer is obliged on our request to declare within a reasonable deadline whether due to the delay in delivery he will withdraw from the contract or insist on delivery.

(2) If we are in delay of delivery through our own fault, the customer is entitled to demand compensation for the resulting damage he incurs, insofar he has substantiated such damage, to the amount of 0.5 (zero point five) percent for every full week of delay, but in total not more than a maximum of 5 (five) percent of the price for that part of the delivery that could not be put into useful operation due to the delay.

(3) Claims of the customer for compensation due to delay in delivery and for compensation instead of performance that exceed the limit indicated in the previous point § 5 shall be excluded in all cases of delay in delivery, even after expiry of any period granted to us for delivery. This shall not apply in cases of wilful intent or gross negligence on our part or on that of one of our legal representatives or vicarious agents. Our liability in cases of gross negligence is, however, limited to contractually typical foreseeable damage. The aforementioned limitations shall not apply for liability arising from injury to life, limb or health. A change in the burden of proof to the disadvantage of the customer is not connected to the above provisions. The aforementioned provisions shall also apply to claims for compensation for wasted expenditure.

§ 12 DELAY IN ACCEPTANCE

(1) If the despatch or delivery is delayed at the request of the customer, the customer may be charged storage costs amounting to 0.5 (zero point five) percent of the invoice amount for every commenced month starting after expiry of one month after notification of readiness for despatch. Unless higher costs can be proved, the storage charge shall be limited to 5 (five) percent. Independently of this, the customer is obliged to make immediate payment for the delivery.

(2) The customer is liable for the payment of any costs resulting from delay if delivery, assembly, commissioning or acceptance are delayed for reasons attributable to the customer. We reserve the right to claim for other damage.

(3) We reserve the right, after the setting and fruitless expiry of a reasonable deadline for delivery or acceptance to otherwise dispose of the delivery items and to delivery the customer with an appropriate extended deadline.

§ 13 TRANSFER OF RISK

(1) Even in the case of freight paid delivery, the risk passes to the customer as follows:

(a) for deliveries without assembly or installation when these have been despatched or collected;

(b) for deliveries including installation or assembly on the day of acceptance at the customer's plant or, if so agreed, after a fault-free trial run.

(2) If despatch, delivery, start or performance of installation or assembly, acceptance in the customer's own plant or the trial run are delayed for reasons attributable to the customer or the customer is in delay of acceptance for any other reason, the risk passes to the customer on the day of notification of readiness for despatch or readiness for acceptance.

(3) The provisions relating to the transfer of risk are also applicable for partial services or other services to be performed by us.

§ 14 ASSEMBLY AND COMMISSIONING

Unless otherwise agreed in writing, the following provisions shall apply for assembly and commissioning:

(1) The customer must provide the following in good time and at his own expense:

(a) the items and materials needed for assembly and commissioning such as scaffolding, lifting devices and any other equipment, fuels and lubricants,

(b) energy and water at the place of use including all connections, heating and lighting,

(c) sufficiently dimensioned, suitable, dry and lockable rooms for the storage of machine parts, equipment, materials, tools etc. at the place of installation and suitable work and recreation rooms including sanitary facilities appropriate to the circumstances for the assembly staff; for the rest the customer must take the same measures for the protection of the property of the supplier and the assembly staff on the construction site as he would take for the protection of his own property.

(2) Before assembly work commences the customer must provide without being requested to do so all necessary information concerning

the location of hidden electricity, gas, water lines or similar installations and the required structural data.

(3) Before assembly or commissioning commences all the supplies and equipment necessary for commencing the work must be in place at the place of the installation or assembly and all preliminary work must be sufficiently progressed before setting up that assembly and commissioning can be started as agreed and be carried out without interruption.

(4) Should assembly, installation or commissioning be delayed due to circumstances for which we are not responsible, the customer is liable within a reasonable scope for the costs of waiting time and any additional transport and travelling costs incurred.

§ 15 ACCEPTANCE/RECEIPT

(1) The customer may not refuse the acceptance/receipt of the services/deliveries due to minor defects.

(2) In addition to other facts of acceptance, acceptance shall, in particular, be deemed to be made if the delivery – where applicable after an agreed trial run – is put to use, or if the customer allows a deadline stipulated by us for the acceptance to expire without giving notification of the actual existing serious defects.

(3) At our request self-contained part deliveries/services must be accepted/received separately.

§ 16 LIABILITY FOR MATERIAL DEFECTS, GUARANTEES GIVEN BY THIRD PARTIES

(1) The customer is obliged to submit to us notification of material defects in writing, indicating and describing the defect in detail, without delay, however, within 7 (seven) days after delivery in the case of obvious defects and in the case of hidden defects after these are detected, however, at the latest at the time the customer could reasonably have been expected to have detected such a defect. Claims for defects are excluded after expiry of the deadline without notification having been given. The customer is liable for any expenses we incur should the notification of a defect prove unjustified.

(2) The customer may only withhold payments to an extent that is in a reasonable ratio to the material defects encountered in the case of complaints for material defects that are undoubtedly justified.

(3) In the event the service/delivery performed by us proves defective, whereby the reason for such already existed at the time of the passing of risk, we are entitled in all cases to choose between rectifying the defect and undertaking a new delivery/new service. In the event of a replacement of parts, the replaced parts shall at our request be assigned and made available to us.

(4) We must be afforded two opportunities to effect subsequent performance within a reasonable deadline. Should both attempts at subsequent performance be unsuccessful, the customer is entitled, without prejudice to any other claims for damage in compliance with § 19, to withdraw from the contract or to reduce payment.

(5) The customer's claims for defects are excluded in the event there is an insignificant deviation from the agreed characteristics or there is a negligible impairment of usability. The same shall apply to defects that arise after the passing of risk (improper handling and use, incorrect use, excessive stressing, faulty installation and construction work, faulty fixtures, unsuitable construction ground), in the case of normal wear, in the case of damage caused by extreme and exceptional external influences (e. g. environmental influences (weather conditions, temperature, atmospheric pressure) chemical, electrical, electrochemical influences) that occur after the passing of risk, unless respective requirements have been provided for in the contract. Furthermore, claims for defects are excluded if damage occurs as a result of improper modification, repair, maintenance or operation of our deliveries and services by the customer or any third party.

(6) We shall not be liable for material defects in a delivery which we have obtained from a third party and delivered to the customer unchanged; liability in the case of wilful intent or gross negligence shall remain unaffected.

(7) In the case of defects in products from other manufacturers delivered by us that we cannot repair we shall, without prejudice to our own warranty obligation, at our own discretion either exert our claims for defects against the manufacturer or supplier (also for standard software) for the account of the customer or assign such claims to the customer.

(8) Claims of the customer for expenses necessary for the purpose of the subsequent performance, in particular transportation, travel, labour and material costs, shall be excluded if the expenses are increased because the delivered item was subsequently taken to a place other than the plant of the customer, unless such transfer complies with its intended use, of which we were notified at the time of the conclusion of the contract. In the case of a subsequent shipment of the delivery to a different location, we are liable for the above-mentioned costs only to the place of establishment of the customer in Germany. The customer himself is responsible for the remainder of the costs.

In the absence of any other agreements, we are liable for the above-mentioned costs up to the German place of the subsidiary establishment of the customer for the delivery of goods outside of the Federal Republic of Germany, alternatively to any place of delivery within Germany or our headquarters. The place for the performance of the rectification of material defects in such cases is Germany and we are only liable for costs for repair and subsequent delivery within Germany.

If a delivery is made in frames of the purchase order, we are not liable in frames of subsequent performance for any costs of mounting, dismounting, putting into operation, installation or any other consequential costs.

(9) Our suppliers or the manufacturer (guarantor) in part grant a guarantee on the basis of an independent guarantee agreement apart from our own warranty obligations. These are guarantees given by third parties. Unless otherwise expressly agreed to the contrary, we cannot be held liable under these guarantees which apply solely to the guarantor. In as far as we alone have the right to claim under these guarantees due to a contractual relationship with the guarantor, we shall assign such rights to the customer.

(10) The customer's rights of recourse pursuant to § 478 BGB are restricted to the statutory liability for defects. Any further agreements and commitments of the supplier will not be taken into consideration by us. The provisions under No. 8 apply with respect to the scope of performance in the case of recourse.

(11) Material defects in the case of software

Software is considered to have a material defect only if the customer can prove and reproduce deviations from the specified requirements. There is deemed to be no material defect if the latest software version provided by us has no defect and utilisation of the software is not unreasonable for the customer. Furthermore, the customer has no claims for material defects if the defects are caused

a) by incompatibility of our software with the data processing systems used,

b) by its use in conjunction with other software not expressly intended for and allowed by us,

c) by improper care and maintenance.

(12) Claims for damages due to material defects comply with the provisions of § 19. All further claims for damages are excluded.

§ 17 EXCLUSION AND SHORTENING OF LIMITATION

(1) If a used item is the subject of the delivery, all claims and rights pertaining to defects in the delivery – irrespective of their legal reason – are excluded. This does not apply in the cases of § 438, 1 No. 1 BGB (Legal defects on immovable goods) or § 438, 1 No. 2 BGB (Buildings, objects used in buildings). A period of limitation of one year is applicable in the case of the preceding sentence 2.

(2) If a new item is the subject of the delivery, the period of limitation for claims and rights pertaining to defects – irrespective of their legal reason – is 12 (twelve) months as of the time of the delivery in compliance with § 6 or the acceptance in compliance with § 15. This does not apply in the cases of § 438, 1 No. 2 BGB (Buildings, objects used in buildings), § 479, 1 BGB (Company's right of recourse) or § 634a, 1 No. 2 BGB (Buildings or work whose performance consists in the provision of planning or supervisory services), in the case of wilful intent, fraudulent concealment of the defect and non-compliance with a guarantee of characteristics. Statutory periods of limitation apply to the aforementioned exceptional cases. The period of limitation does not start again in the case of subsequent performance.

§ 18 INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS; DEFECTS OF TITLE

(1) Unless agreed to the contrary, we shall be obliged to perform the delivery free from defects

of title industrial property rights and copyrights of third parties (hereinafter; property rights), only in the country of the place of delivery. If a third party asserts justified claims against the customer due to the infringement of property rights resulting from the contractual use of the deliveries, we shall be liable to the customer within the period stipulated in § 17, 1 or 2 as follows:

(a) We shall, at our option and cost, either obtain a right to use the concerned deliveries, modify them to prevent an infringement of the property right, or replace them. If this is not possible under reasonable conditions, the customer shall have the statutory rights to withdraw from the contract or to reduce the contract price.

(b) Our obligation to pay compensation for damage is determined by § 19.

(c) The above obligations shall apply only on the condition that the customer immediately informs us in writing about any claims asserted by third parties, does not acknowledge any infringements, and that our right to conduct any defence measures or settlement negotiations shall be unaffected. If the customer ceases to use the delivery on the ground of claims for damages by third parties, he is obliged to notify the third party, that the cessation of use does not constitute an acknowledgement of an infringement of a property right.

(2) Claims of the customer shall be excluded insofar as he is responsible for the infringement of the property rights.

(3) Claims of the customer shall also be excluded insofar as the infringement of the property right is caused by specific customer requirements, through any use which was not foreseeable for us or because of the customer modifying the delivery or using it together with products not delivered by us.

(4) All trademarks or registered trademarks indicated in our offers, order confirmations, orders, delivery notes, invoices or any other documents, as well as all other existing industrial property rights and copyrights pertaining to our products and services shall remain our property without restriction.

(5) The customer is not permitted to undertake any actions himself or through third persons or parties that damage, infringe on or restrict the property rights pertaining to our products and goodwill. In particular he is not entitled to remove or change our labels, product and brand names or any other individual markings on our products and documents. In addition the customer is not permitted to use our product and company names (e .g. F.EE) alone or in combination with other names and markings without our prior approval.

§ 19 LIABILITY

(1) We are liable in compliance with statutory provisions in the case of wilful intent, fraud, culpable injury to life, limb or health, breaches of mandatory statutory provisions (in particular pursuant to product liability law), guarantees submitted in writing and in the case of culpable infringement of significant contractual obligations (which serve to achieve the purpose of the contract). In the case of the infringement of significant contractual obligations and in the case of gross negligence and in the absence of any other cases in compliance with sentence 1, we are liable only for contract-specific damage that was foreseeable at the time of the conclusion of the contract, whereby it is assumed that such damage does not exceed 15 (fifteen) percent of the value of the order.

(2) Without prejudice to the provisions of § 11 (2) and § 19 (1) sentence 1, neither the F.EE GmbH nor its associated companies, executives, managers, employees or representatives are liable in particular for loss of assets or consequential damage, for claims of third parties, loss of profit and loss of use, loss, breakdown and interruption of production, loss of income, dividends, interest, data, information and programmes, insofar as no mandatory statutory provisions contradict this limitation of liability.

(3) Any further claims for damages of the customer, irrespective of their legal reason, are excluded, in particular claims due to breach of obligations under the contract, due to defects and arising from or in connection to unlawful acts or violation of tort.

(4) The aforementioned provisions shall also apply to claims for compensation for wasted expenditure. The above provisions do not involve a change in the burden of proof to the disadvantage of the customer.

(5) In as far as we provide technical information or work in advisory capacity, and such information or advice is not part of our contractual scope of performance, such information or advice is provided free of charge and shall be exempt from any liability.

Neither are we liable for the actions of our assembly personnel or any other vicarious agents insofar that these are not connected with the delivery or assembly or insofar that they are not instructed by the customer.

(6) The above-mentioned provisions shall also apply in favour of our employees.

(7) Subject to the cases pursuant to § 19 (1) sentence 1 and § 17 (1) and (2), the period of limitation for claims for damages and reimbursement of expenditure is 12 (twelve) months as of their occurrence and knowledge or the grossly negligent lack of knowledge of the customer.

§ 20 SOFTWARE

(1) The respective general license terms of any software products from other suppliers that are included in the scope of delivery and that are not open source software apply, or rather the terms of use agreed between us and other suppliers and shall take precedence over the following provisions of this paragraph. We shall provide these on request of the customer should they not be available. In the event the customer is provided with open source software from other suppliers, the terms of use of the open source software shall take precedence over the provisions of this paragraph. We shall at least provide the customer with the source code on his request, insofar as this is provided for in the terms of use of the respective open source software. We shall make reference to the third party software, its type and its terms of use in a suitable manner and guarantee the availability of such.

(2) Unless contractually agreed to the contrary, the following conditions shall apply for the software products produced by us and subordinately for the software products of other suppliers that are included in the scope of delivery:

(a) General

We grant the customer a non-exclusive right to use the software programmes and accompanying documentation (together "software") covered by this contract exclusively for operation of the hardware for which it is intended or which is supplied. Unless the period of use is expressly stipulated, the right of use is unlimited. The aforementioned right of use does not include the right to rent out, translate, lend, license, distribute, publish, make the software available publically or otherwise to third parties outside of the company.

The right of use shall be granted subject to the condition precedent that the agreed payment is settled in full.

In case of the creation of a software within the scope of an overall project comprising of various works or services, in which a payment for the creation of the software has not been explicitly agreed, the right of use shall be granted subject to a condition precedent upon final acceptance of the overall work and full payment of the final invoice.

(b) Reproduction rights and access protection

1. The customer may copy the delivered software only insofar as the respective copy is necessary for the use of the software with the hardware supplied or the hardware for which it is intended, or is necessary for making a backup copy in as far as no backup copy of the software product has been supplied.

2. On principle only one single backup copy may be made and stored. This backup copy must be labelled as a copy of the software supplied and (in as far this is technically possible) provided with the copyright notice of the original data carrier.

3. If the regular backup of the entire data inventory, including the software being used is required for data security reasons or to assure the fast reactivation of the computer system after a total crash, the customer may make as many backup copies as are absolutely essential for this purpose. The relevant data carriers must be labelled accordingly. The backup copies may be used solely for archiving purposes.

4. The customer is obliged to prevent the unauthorized access of third parties to the programme and the documentation by implementing suitable precautionary measures. The original data carriers and the backup copies must be kept at a place suitable to prevent unauthorized access by third parties. The customer's employees shall be instructed emphatically with regard to compliance with these contractual conditions and to the provisions of copyright laws.

5. The customer may not make any further reproductions, which shall be deemed to include the print-out of the programme code on a printer and the photocopying of the complete manual or any significant parts of it. Any additional manuals that might be needed for employees must be procured from us.

(c) Copyrights and rights of use

1. The software supplied by us (programme and manual) is protected by copyright. All rights to the software and any other documents provided within the scope of the initiation and performance of the contract remain exclusively with us with regard to the relationship of the contractual parties.

2. Unless otherwise agreed to the contrary, the purchased software license must not be installed and used on different and independent EDP systems. The software programme supplied must not be divided into components that are then used on different computers. This applies to both networked and network-independent computers.
The customer may use the software on every piece of hardware he has at his disposal. However, if he changes the hardware, the software must be deleted from the previously used hardware.
Simultaneous read-in, storage or use on more than one hardware is not permitted. If the customer wishes to use the software on several hardware configurations at the same time, for example for use by several employees, he must purchase the respective number of programme packages.
The use of the software supplied within a network or any other multiple-station computer system is prohibited in as far as this creates the opportunity for multiple usage of the programme simultaneously. If the customer wishes to use the software within a network or other multiple-station computer system, he must prevent simultaneous multiple use by means of access protection mechanisms or he must procure a software license for each simultaneous use of the software supplied ("concurrent license"). The software supplied must therefore only be used simultaneously by the number of users indicated in the contract.

3. Unless agreed to the contrary, the following shall apply in addition to the conditions mentioned above in the event the software is purchased as a tool for programme development ("development license"):
a. With the development license the customer is permitted to develop his own programmes (applications) on the basis of the software supplied and to combine these with other programmes.
b. If the customer creates a programme under the development license, our license conditions shall apply to all programme parts of the software supplied that were combined with other programmes or programme parts, in as far as the software supplied is contained in whole or in part in the programme created by the customer.

(d) Relinquishing to third parties

1. The customer may relinquish the right of use of the software including the user manual and any other accompanying material to third parties permanently or for a limited period of time, provided the third party acquiring the software declares his agreement to the application of these contract conditions to him and the transfer of the right of use takes place only in connection with the hardware originally supplied by us for the software or the hardware for which it is intended. In the event of a relinquishment the customer must hand over to the new user all copies of programmes including any exiting backup copies that may exist or he must destroy any copies not handed over. The right of the customer to use of the programme lapses with the relinquishment.

In this case the customer is also obliged to notify us in writing of the full name and address of the purchaser and to impose on him the obligations and restrictions stipulated here.

2. The customer may not relinquish the software to third parties if there is justified reason to suspect that the third party will violate these contractual conditions, in particular that he will make prohibited copies. This shall also apply with respect to the employees of the customer.

3. Unless agreed to the contrary, the following shall apply in addition to the conditions mentioned above in the event the software is purchased as a tool for programme development ("development license"):
a. The customer must purchase a license for the resale of the software ("runtime license") for every relinquishment of rights of use to programmes he has created under the development license that contain programme parts of the software supplied or the software supplied itself.
The customer must therefore only pass on any executable programmes he has created under the development license that contain programme parts of the software supplied or the software supplied itself if and when he purchased the required runtime license.
b. The customer must obligate the third party acquiring the programmes to compliance with the conditions in accordance with (a) to (e) of this paragraph.

(e) Decompilation and programme modifications

1. The reverse translation of the relinquished programme code into other code forms (decompilation) as well as other forms of reconstruction of the various production stages of the software (reverse engineering) are not permitted.

2. Removal of the copy protection or similar mechanisms is not permitted. Only if the protective mechanism impairs or prevents error-free use of the programme and we, despite respective notification from the customer and an exact description of the error, are not able or not willing to rectify the error within a reasonable time, may the protective mechanism be removed to ensure the functionality of the programme.

Irrespective of the value of the relinquished software, the customer is obliged to notify us in writing of any removal of a copy protection or a similar protective mechanism from the programme code. The customer must describe in as much detail as possible the error of the use of the programme necessary for such an authorised modification of the programme. The obligation of description encompasses a detailed portrayal of the error symptoms encountered, the suspected cause of the error, and in particular a comprehensive description of implemented programme modification.

The customer bears the burden of proof for the interference or prevention of error-free usability by the protective mechanism.

3. Programme modifications other than those regulated in 2, in particular for the purpose of other error rectifications or expansion of the range of functions, are only permitted if the modified programme is used solely within the scope of the customer's own use. Own use in accordance with this regulation includes in particular private use by the customer. In addition own use is also considered to be utilisation for professional or economic purposes, provided this is limited to use by the customer and is not utilized externally in any commercial manner.

4. The actions mentioned in the previous point many only be assigned to commercially active third persons who are a potential competitors of ours if we cannot or do not wish to undertake the requested programme modifications against a reasonable charge. We must be granted an adequate period of time for considering the acceptance of the order.

5. Copyright marks, serial numbers, or other features serving to identify the software may not be removed or changed under any circumstances. The same shall apply to the suppression of the respective features of the display.

(f) Software maintenance

Software maintenance is not part of the software assignment. This requires a separate contractual agreement.

§ 21 FINAL PROVISIONS

(1) Sole place of jurisdiction for all direct and indirect disputes arising from this contractual relationship is Neunburg vorm Wald. We are however entitled to file suit at the customer's domicile.

(2) The legal relationship in connection with this contract shall be governed by German substantive law to the exclusion of the agreements of the UN Convention for the International Sale of Goods (CISG).

(3) Should one of the provisions of these General Terms and Conditions be or become invalid, this shall in now way affect the validity of the remaining provisions. The invalid provisions shall be replaced by valid provisions that come as legally close as possible to the intended commercial purpose of the invalid provisions.

(4) Personal data is handled in accordance with the General Data Protection Regulation. Details can be found in the data protection declaration at:
www.fee.de/en/privacy-protection

(5) All contractual agreements, including subsidiary agreements, require the written form to become valid. This written form requirement can only be waived in writing. ■