

General Terms and Conditions of Supply, Services and Payment (hereinafter Terms and Conditions of Supply and Payment)

1. General Provisions

- (1) For all contractual relations between the Customer and the companies Phoenix Contact GmbH & Co. KG, PHOENIX CONTACT Deutschland GmbH, PHOENIX CONTACT ELECTRONICS GmbH and/or Phoenix Feinbau GmbH & Co. KG - hereinafter "Contractor" - the Terms and Conditions set forth herein below shall apply exclusively. Any terms and conditions conflicting with or deviating from the Terms and Conditions of Supply and Payment shall not be recognized by Contractor unless the Contractor expressly consents to the application thereof in writing. The Terms and Conditions of Supply and Payment of the Contractor shall apply even if the Contractor performs delivery to Customer without reservation notwithstanding his knowledge of terms and conditions of the Customer conflicting with or deviating from these Terms and Conditions.

The Contractor shall be entitled to withdraw from the Agreement in the event the Customer disagrees with the Terms and Conditions of Supply and Payment. In such a case all claims on the part of the Customer shall be excluded.

- (2) All agreements reached between the Customer and the Contractor and for the purpose of executing this Agreement shall be laid down in the Agreement in writing.
- (3) The Terms and Conditions of Supply and Payment of the Contractor shall also apply to all future business transactions with the Customer.
- (4) The Customer shall undertake to inform the Contractor when it cannot be excluded that the products delivered by the Contractor are delivered to consumers according to § 13 BGB (German Civil Code) – also built into other products.
- (5) The Contractor reserves the unrestricted right to ownership and copyright exploitation rights, if any, for cost estimates, calculations, samples, patterns, drawings and any other documents in material or immaterial form; they may only be used by Customer for the evaluation of the quotation and may only be made accessible to third parties given the prior written approval of the Contractor. Drawings and other documentation forming part of the quotation shall be returned immediately to Contractor if the order is not placed.
- The aforementioned provision shall not apply if the listed documents are generally accessible.

2. Offers

- (1) Agreements shall only come into effect through an order confirmation of the Contractor transmitted in writing or electronically. Until then, the offers of the Contractor, especially but not limited to design, prices and deadlines, shall be subject to confirmation and not binding unless expressly defined as "binding". For the scope of the delivery or performance only the order confirmation shall be relevant.
- (2) The documents on which the offer of the Contractor is based like illustrations, drawings and weight indications are established with care but are only approximate unless otherwise expressly specified. Indicated measurements and units are not binding unless they are expressly defined as binding. Changes that only slightly modify or improve the performances shall be reserved as far as they can be reasonably expected from the Customer. The Contractor shall not be liable to the Customer for the suitability of goods and performances for an intended application presented by the Customer.
- (3) If substantial increases in commodity prices, wages, taxes, public dues and/or difficulties from laws and/or regulations occur, which certifiably significantly influence the offer calculation of the Contractor, until the order is carried out, the Contractor shall be entitled to calculate a reasonable surcharge.

3. Customer's obligation to cooperate

- (1) The Customer shall appoint a competent contact person who will be available to the Contractor to supply any necessary information, and who will take the decisions that are necessary

for executing the order or obtain them without delay. The Contractor shall involve the contact person of the Customer wherever necessary for executing the order.

- (2) The Customer shall create all prerequisites necessary for a proper completion of the order. In particular, the Customer shall guarantee that all necessary cooperation of the Customer or its vicarious agents shall be rendered in time, in the necessary scope and free of charge for the Contractor.
- (3) If the execution of the order requires the modification or extension of software of the Customer, the latter has to provide a responsible, qualified employee of its company to execute the modification and/or support the Contractor at the request of the Contractor.
- (4) If the execution of the order requires the operation of a machine of the Customer he shall provide responsible, qualified operators of its company.
- (5) The customer-specific documents needed for the execution and any other necessary in-house information must be provided by the Customer to the Contractor even without special request.
- (6) The Customer shall be liable for delays or errors in the order execution if these result from performance data submitted by him, wrong or incomplete indications or any other circumstances for which he is responsible.

4. Deliveries and Service

- (1) Delivery and/or service times shall be deemed observed when the Contractor notifies the Customer about his readiness for dispatch within the agreed deadlines and/or coordinates a date with him for rendering the service. Adequate partial deliveries or partial performances and customary or acceptable deviations from the order quantities are permissible unless the partial delivery or partial performance is of no interest to the Customer.
- (2) For delivery and performance delays due to force majeure and to events, which not only essentially complicate the delivery for the Contractor temporarily or make it impossible – this especially includes break downs, strike, lockout, official instructions, shortage of raw materials, difficulties in the energy supply, mobilization, riots, etc, even if they occur at the suppliers of the Contractor or their sub-suppliers – the Contractor shall not be liable, even for bindingly agreed deadlines and dates. They entitle the Contractor to respectively postpone the delivery and/or performance by the duration of the obstruction plus an appropriate starting-up time or to withdraw from the Agreement completely or partially because of the not yet fulfilled part.
- (3) In the event the obstruction lasts more than three months, the Customer shall be entitled to withdraw from the Agreement as regards the not yet fulfilled part following the setting of an adequate period of grace. In the event the delivery period is extended or in the event the Contractor is released from his obligation, Customer shall not be entitled to any claims for damages. Contractor can only refer to the abovementioned circumstances if he immediately notifies the Customer.
- (4) Provided that the Contractor is responsible for the non-compliance of bindingly agreed deadlines and dates or if he is in delay Customer shall be entitled to a delay compensation amounting to 0,5% for every completed week of the delay; in total, however, a maximum of 5% of the invoice value of the deliveries and performances affected by the delay.
- (5) Customer's claims for damages due to delayed deliveries as well as claims for damages instead of performance exceeding the limits specified in clause 4 (4) above shall be excluded in all cases of delayed deliveries even upon expiry of a time set to the Contractor to effect the deliveries. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the Agreement by the Customer within statutory provisions shall be limited to cases where Contractor is responsible for the delay of the delivery. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.

- (6) Customer shall declare within a reasonable period of time whether he withdraws from the Agreement due to the delayed deliveries or insists on the deliveries being carried out.
- (7) Contractor shall render his services according to state-of-the-art pursuant to the performance requirement. Requirements of the Customer must be at least in text form (email) and have to be transmitted to the Contractor before the contract is concluded.
- (8) If products are exclusively manufactured according to the specifications of the Customer the Contractor shall not check the specifications of the Customer. In this case the Contractor shall only assemble a unit from the existing products according to Customer requirements, but not check the place of application or the purpose of application; the concrete use or application as well as the functionality of the customer-specific products / solutions. Customer shall be liable for absence of defects, completeness as well as absence of intellectual property rights of third parties to the requirement specifications handed over to the Contractor. For this reason, the liability of the Contractor shall be excluded for the requirement specifications of the Customer.
- (9) Orders shall be executed by observing the principles of proper execution of work through qualified employees or service partners authorized by the Contractor. The selection of the appointed employees and service partners shall be reserved to the Contractor.
- (10) The services shall be carried out at the Customer or the Contractor to the degree necessary for the proper execution of the order. If the services are carried out at the Customer he shall provide sufficient working means and work places to the employees of the Contractor. Customer has no competence to issue instructions to the employees of the Contractor. The employees of the Contractor shall not be included in the business operations of Customer.
- (11) Contractor shall be entitled to render the performance in adequate parts as long as this does not lead to unacceptable additional expenses for the Customer.
- (12) If dispatch, acceptance or shipment is delayed at the Customer's request by more than one month after notice of the readiness for dispatch was given, the Customer may be charged, for every month commenced, storage charges amounting to 0,5 % of the price of the items of the supplies; but in no case more than a total of 5%. The contractual parties may prove that higher or, as the case may be, lower storage costs have been incurred.

5. Secrecy

- (1) Customer undertakes to keep all confidential information he received from the Contractor strictly confidential; they may only be disclosed to third parties with the express written consent of the Contractor.
- (2) Confidential are all information, facts, documents, data and/or knowledge, especially technical and/or economic information, construction documents, specifications, drawings, samples, prototypes, test results and/or any other know how (hereinafter "Confidential Information") that Customer received or will receive as a result of negotiations and/or talks from the Contractor, its General Managers, employees and/or consultants, no matter whether in writing, in text form or verbally. Confidential Information are furthermore all compilations, files, calculations, experiences, technologies, electronic, electro-magnetic or visual data carriers, prices and/or conditions in which embodiment whatsoever. Confidential Information especially comprises all copies made thereof, all self-generated material and summaries.
- (3) The obligation to secrecy shall remain effective after the termination of this Agreement. It shall not expire until and insofar the know-how in the Confidential Information is in the public domain. Accordingly, Customer shall commit its employees to secrecy.

6. Prices, Shipment, Packaging

- (1) Prices, fees as well as incidental expenses shall be calculated according to the written agreements. If there are non, Contractor shall be entitled to calculate the list prices of the current Phoenix Contact price list and fees (as per specific hourly rates of Contractor that are sent on request) valid at the day the performance is rendered. In the absence of specific prices for the relevant performance the generally accepted market price shall be deemed agreed. On principle, the prices and fees do not include commuting expenses, travel expenses, packaging expenses, freight expenses and insurance in the event the performance is rendered somewhere else than the business place of Contractor. These costs are invoiced to the Customer separately and according to the principles pursuant to clause 6 (2). All prices and fees are ex works according to INCOTERMS ® 2010 excluding packaging plus the respectively valid legal turnover tax.
If there is an accelerated way of transportation at the request of Customer the Customer shall bear any hereby arising additional costs.
- (2) Surcharges for opened packaging units are expressly reserved. In the event the minimum order value of EURO 100,00 net per order is not reached a handling lump sum of EURO 15,00 net shall be charged.
- (3) Shipment shall be effected at the risk of Customer. The risk of accidental destruction and accidental deterioration shall be passed to the forwarder with the delivery, to the Customer at the latest when leaving the plant. If the shipment is delayed for reasons the Contractor is not responsible for the passing of the risk shall be effected with the notification of the readiness to deliver.
- (4) The selection of the adequate transportation means (airplane, railway, automobile) is incumbent on the Contractor. Contractor shall choose a transportation means suitable to the cause. Any accruing expenses for assembly fitters and other personnel of the Contractor shall be regulated according to the relevant valid tax laws of the respective country (Federal Tax Sheet Part 1) for journeys abroad. For journeys within the country, the lump sum amounts for additional costs for meals in accordance with LStrR 39 shall be applied. When using a car, Euro 0.80 shall be charged for each kilometre driven.
- (5) Leasing pallets shall remain property of Contractor and have to be returned in impeccable condition with the next delivery. The return of equivalent or similar pallets shall be permitted. If the return is not effected within one month after delivery, Contractor shall invoice his costs of sales. The Customer shall be entitled to return transport packages of our deliveries to Contractor's registered office. The packages must be clean, free from foreign matters and sorted by substances. Otherwise Contractor shall be entitled to charge the Customer for the additional costs incurred for the disposal.

7. Invoicing, payment and assignment of claims

- (1) Invoices shall become due within 14 days after invoicing and delivery to Contractor without deduction. If the performance within a contract of work and service has not yet been accepted at least half of the invoice shall be due for payment.
- (2) Agreed payment periods shall be deemed observed when the amount to be paid is available to the Contractor at the due date. Cheque and bills shall only be accepted on account of performance. There is no entitlement that the Contractor accepts the aforementioned payment means.
- (3) Customer shall only have a retention right as regards claims from the same contractual relationship that are uncontested or against which no legal recourse is possible. In the latter case, Customer may retain the payment of compensation with defects of parts of the delivery or performance only to the amount that corresponds to the value of the defect delivery or performance.
- (4) Payments shall first be used by Contractor to clear older debts of Customer. In the event that interest has already been

incurred the Contractor shall be entitled to set-off the payments, first with the interest and finally with the principal claim.

- (5) If Customer delays payment Contractor shall be entitled to charge interest to the legal amount valid at the time.
- (6) In the event the solvency of Customer is doubted, especially in case of outstanding payment, suspension of payment, quest for a compromise settlement or a moratorium on the part of Customer, the whole claim of Contractor shall immediately become due. The same shall apply if insolvency procedures are opened over the assets of Customer or the opening was refused because of lack of assets. In this case, Contractor may demand advance payments or securities and revoke payment targets. After payment entry, Contractor shall completely bring about his performance towards Customer. The right to withdrawal from the Agreement shall not be affected.
- (7) An assignment of the claim or collection through third parties shall be permissible.
- (8) Customer shall only have the right to set-off claims that have become final or are uncontested.

8. Provision of Materials and Parts

Devices, machines or any other accessories provided to Customer on loan or on hire shall remain the property of Contractor. They must be clearly identified by Customer as property of Contractor and may only be used for the agreed purposes. Customer shall treat them with care and protect them against the access of third parties. Customer shall immediately inform Contractor in writing in case of loss or damage as well as with seizure or other impairments through third parties. In cases of seizure or impairments Customer shall indicate the property of Contractor. Customer shall replace Contractor all damages and costs that are generated by a possible violation of this obligation and hence necessary investment measures against accesses of third parties. If Contractor carries working material and/or working means for rendering his performance Customer shall provide him with a suitable possibility for safely storing them free of charge.

9. Retention of Title

- (1) Until the fulfilment of all claims (including any balance claims from account current) which Contractor is entitled to for any cause in law against Customer now or in future, the Contractor shall be granted the following securities which he will release on demand at his discretion as far as their value sustainable exceeds the claims by more than 10%.
- (2) The goods shall remain property of Contractor. Processing or transformation is always executed for Contractor as manufacturer, however, without obligation for him. If the (co) ownership of Contractor lapses by combination, it is agreed now already that the (co) ownership of Contractor in the uniform matter passes to Customer ad valorem (invoice value). Customer keeps the (co) property of Contractor without charge. Goods in which Contractor is entitled in (co) ownership shall in the following be referred to as Reserved Goods.
- (3) Customer shall be entitled to process and sell the Reserved Goods in the ordinary course of its business dealings as long as he is not in arrears. Pledging or collateral assignments are inadmissible. The claims resulting from further sale or a further legal justification (insurance, unlawful act) with regard to the Reserved Goods (including any balance claims from account current) Customer now already assigns as security to the full extent to Contractor. Contractor shall revocable authorize him to collect the claims assigned to Contractor for him on his behalf. This authorization for collection can be revoked only when Customer does not properly fulfil his payment obligations.
- (4) On access of third parties to the Reserved Goods, especially pledging, Customer shall point out the property of Contractor and immediately inform Contractor so that Contractor can enforce its property rights. As far as third parties are not able to

reimburse Contractor for legal or extrajudicial costs generated in this connection, Customer shall be liable for this.

- (5) On behaviour of Customer contrary to the Agreement – in particular default in payment – Contractor shall be entitled to withdraw from the Agreement and to demand the Reserved Goods.

10. Acceptance

Customer may not refuse the acceptance of deliveries due to minor defects.

11. Warranty

- (1) ALL DELIVERIES AND SERVICES OWED BY CONTRACTOR SHALL BE RENDERED CAREFULLY AND PROPERLY ACCORDING TO THE RESPECTIVE STATE-OF-THE-ART TECHNOLOGY AS WELL AS THE RELEVANT SAFETY REGULATIONS. WARRANTY SHALL NOT BE ASSUMED FOR TEST PRODUCTS NOT YET RELEASED BUT USED IN THE DEVELOPMENT STAGE BY CUSTOMER; PRE-SERIES DEVICES AND/OR PROTOTYPES OR FOR SERVICES. WITHIN HIS SERVICES, HOWEVER, CONTRACTOR SHALL ASSUME LIABILITY THAT HE WILL WORK CAREFULLY AND PROFESSIONALLY.
- (2) AFTER THE SUCCESSFUL ACCEPTANCE WITH CONTRACTS FOR WORK AND SERVICES, ONLY AN OBJECTION TO THE WORK DUE TO CONCEALED DEFECTS IS POSSIBLE. AFTER HAVING IDENTIFIED THE DEFECT IT MUST BE REPREHENDED IMMEDIATELY. IF NO COMPLAINT IS EFFECTED WITHIN TWO (2) WEEKS AFTER THE DEFECT WAS IDENTIFIED, THE WORK SHALL BE DEEMED APPROVED BY CUSTOMER. THE COMPLAINT MUST DETAIL THE DEFECTS IN WRITING.
- (3) IN PURCHASE AGREEMENTS, THE PROVISIONS OF PARA. 377 HGB (GERMAN COMMERCIAL CODE) SHALL BE APPLICABLE. A WAIVER BY CUSTOMER IS EXPRESSLY OBJECTED.
- (4) WITHIN JUSTIFIED COMPLAINTS ALL THOSE PARTS OR PERFORMANCES HAVE TO BE REMEDIED, NEWLY DELIVERED OR NEWLY RENDERED FREE OF CHARGE AT THE DISCRETION OF CONTRACTOR THAT DISPLAY A QUALITY DEFECT PROVIDED THAT ITS CAUSE ALREADY EXISTED AT THE TIME THE RISK WAS PASSED. THE EXPIRY OF THE FIXED TERM FOR NEWLY DELIVERED GOODS OR NEWLY CREATED WORKS WITH APPROPRIATE USE SHALL BE TWELVE MONTHS AFTER TRANSFER OF RISK TO CUSTOMER, WHEN THE LATTER IS A MERCHANT UNLESS ANOTHER PERIOD IS STIPULATED BY MANDATORY LAW. NOTWITHSTANDING THIS CONCERNING CONSUMERS AS WELL AS IN THE CASE OF INTENT, GROSS NEGLIGENCE OF CONTRACTOR OR IN THE EVENT OF INJURIES TO LIFE, BODY OR HEALTH THE STATUTORY PERIOD OF LIMITATION SHALL APPLY.
- (5) NOTWITHSTANDING THE FOREGOING PROVISIONS, IN CASE OF A DISCONTINUED PRODUCT THE CONTRACTOR HAS THE OPTION TO CARRY OUT THE SUPPLEMENTARY PERFORMANCE IN FORM OF A CREDIT OF THE PURCHASE PRICE, A REMEDY OR SUBSEQUENT DELIVERY.
- (6) THE CONTRACTOR SHALL BE GRANTED THE OPPORTUNITY OF TWO SUBSEQUENT PERFORMANCES WITHIN AN ADEQUATE PERIOD.
- (7) ANY CLAIMS OF CUSTOMER BECAUSE OF EXPENSES MADE NECESSARY FOR THE PURPOSE OF SUBSEQUENT PERFORMANCE, ESPECIALLY COSTS FOR TRAVEL AND TRANSPORT, LABOUR AND MATERIAL, SHALL BE EXCLUDED IF THE EXPENSES INCREASE BECAUSE THE SUBJECT OF THE DELIVERY WAS SUBSEQUENTLY BROUGHT TO ANOTHER PLACE THAN THE REGISTERED

- SEAT OF CUSTOMER UNLESS SUCH TRANSPORTATION IS CONSISTENT WITH ITS INTENDED USE.
- (8) ANY RECOURSE CLAIMS OF CUSTOMER AGAINST CONTRACTOR ACCORDING TO PARA. 478 BGB (RECOURSE OF ENTREPRENEUR) SHALL EXIST ONLY TO THE EXTENT THAT HIS CUSTOMER IS A CONSUMER, AND CUSTOMER HAS NOT ENTERED INTO ANY AGREEMENTS WITH HIS BUYER GOING BEYOND THE MANDATORY STATUTORY CLAIMS. ITEM 11 (6) SHALL APPLY MUTATIS MUTANDIS TO THE SCOPE OF THE CUSTOMER'S RECOURSE CLAIM AGAINST CONTRACTOR PURSUANT TO PARA 478 SECT. 2 BGB (GERMAN CIVIL CODE).
- (9) LIABILITY FOR ANY DAMAGES SHALL BE EXCLUDED TO THE EXTENT THEY ARE NOT EXPRESSLY DETERMINED IN THE AFOREMENTIONED PROVISIONS, ALSO TO THE EXTENT THEY DID NOT OCCUR ON THE DELIVERY ITEM ITSELF. EXCLUDED FROM THIS SHALL BE DAMAGES CAUSED BY INTENT OR GROSS NEGLIGENCE OF THE OWNERS; EXECUTIVES OR VICARIOUS AGENTS OF CONTRACTOR OR RESULTING FROM CULPABLE INFRINGEMENT OF CARDINAL OBLIGATIONS. IN THE LATTER CASE, HOWEVER, LIABILITY SHALL ONLY BE ASSUMED FOR THE TYPICALLY OCCURRING, PREDICTABLE DAMAGE. CARDINAL OBLIGATIONS SHALL BE SUCH OBLIGATIONS THE FULFILMENT OF WHICH ACTUALLY ENABLES THE DUE AND PROPER PERFORMANCE OF THIS AGREEMENT AND THE OBSERVANCE OF WHICH THE CONTRACTUAL PARTY MAY REGULARLY RELY ON. THE DISCLAIMER SHALL ALSO NOT APPLY IN CASES WHERE LIABILITY IS ASSUMED UNDER THE PRODUCT LIABILITY ACT OR FOR DAMAGES TO LIFE, BODY OR HEALTH IF THE DELIVERY ITEM IS DEFECTIVE.
- (10) THE CLAIM FOR WARRANTY EXPIRES WHEN THE RESULT OF THE PERFORMANCE AND/OR EXECUTION OR THE DELIVERY ITEM OF CONTRACTOR WAS MODIFIED. IF THE CUSTOMER REFUSES CONTRACTOR TO REVIEW AND INSPECT THE OBJECTED DEFECTS, OR IF HE RECTIFIES THEM WITHOUT PRIOR APPROVAL OF CONTRACTOR, THE CLAIM FOR WARRANTY SHALL ALSO EXPIRE UNLESS CUSTOMER HAD TO IMMEDIATELY ACT HIMSELF BECAUSE OF THE RISK OF DETERIORATION. THE CLAIM FOR WARRANTY SHALL NOT REFER TO NATURAL WEAR AND TEAR AND NOT TO DAMAGES THAT ARISE AFTER THE RISK HAS PASSED AS A RESULT OF INCORRECT OR CARELESS TREATMENT, OVERUSE, UNSUITABLE OPERATING RESOURCES AND DUE TO ELECTRICAL AND/OR MECHANICAL INFLUENCES GOING BEYOND THE PROPER USE.
- (11) SHOULD THERE BE A SERIAL DEFECT IN EXCEPTIONAL CASES, CONTRACTOR AT ITS DISCRETION SHALL REPLACE OR REPAIR THE AFFECTED DEVICES OF THIS SERIES. IF THE PRODUCT OF CONTRACTOR IN THIS CONNECTION IS BUILT IN ANOTHER PRODUCT, THE CONTRACTUAL PARTIES SHALL JOINTLY AGREE IF AND TO WHAT EXTENT THE PRODUCTS HAVE TO BE EXCHANGED OR REPAIRED BY CONTRACTOR. IN THIS CASE, CONTRACTOR SHALL REPLACE CUSTOMER'S JUSTIFIED COSTS UPON PRIOR COORDINATION AND WRITTEN AGREEMENT WITH CUSTOMER. CUSTOMER MAY CLAIM THE REGULATION OF THIS SUB-SECTION EXCLUSIVELY WITHIN THE WARRANTY PERIOD. SERIAL DEFECTS ARE DEFECTS IN WHICH THE MATERIALS AND COMPONENTS DELIVERED BY CONTRACTOR HAVE A DEFECT FREQUENCY THAT LIES DISTINCTIVELY OUTSIDE THE USUALLY EXPECTED VALUES OR THE VALUES INDICATED BY CONTRACTOR. A SERIES DEFECT ESPECIALLY EXISTS WHEN THE NUMBER OF OBJECTED MATERIALS EXCEEDS 8% OF THE QUANTITY DELIVERED WITHIN A PERIOD OF THREE MONTHS.
- (12) FOR DEFICIENCIES IN TITLE, THE FOREGOING PROVISIONS SHALL APPLY ACCORDINGLY SUBJECT TO THE PROVISIONS IN CLAUSE 18.
- 12. Liability / other claims for damages**
- (1) ANY FURTHER LIABILITY FOR DAMAGES OTHER THAN THOSE PROVIDED FOR IN CLAUSE 11 SHALL BE EXCLUDED, REGARDLESS OF THE LEGAL NATURE OF THE ASSERTED CLAIM. THIS SHALL, IN PARTICULAR, APPLY TO CLAIMS FOR DAMAGES RESULTING FROM CULPA IN CONTRAHENDO, DUE TO OTHER BREACHES OF OBLIGATIONS OR DUE TO CLAIMS IN TORT FOR THE COMPENSATION OF PROPERTY DAMAGE IN ACCORDANCE WITH § 823 BGB (GERMAN CIVIL CODE).
- (2) THE LIMITATIONS OF CUSTOMER'S CLAIMS PURSUANT TO CLAUSE 12 (1) SHALL ALSO APPLY IF CUSTOMER DOES NOT REQUIRE DAMAGES BUT PERFORMANCE, AND INSTEAD OF SAID PERFORMANCE ASSERTS USELESS EXPENDITURE.
- (3) INSOFAR AS THE LIABILITY FOR DAMAGES TOWARDS CUSTOMER IS EXCLUDED OR LIMITED THIS SHALL ALSO APPLY WITH RESPECT TO THE PERSONAL LIABILITY FOR DAMAGE OF EMPLOYEES, MEMBERS OF STAFF, CO-OPERATORS, REPRESENTATIVES AND VICARIOUS AGENTS OF CONTRACTOR.
- (4) THE COMPENSATION OF DAMAGES CAUSED TO CUSTOMER BY THE USE OF UNRELEASED TEST PRODUCTS, PRE-SERIES DEVICES AND/OR PROTOTYPES STILL IN THE DEVELOPMENT PHASE SHALL BE EXCLUDED.
- 13. Withdrawal / Cancellation**
- (1) If the delivery or performance is subsequently rendered impossible for reasons Contractor is responsible for Customer shall be entitled to withdraw from the Agreement. In the event of partial impossibility he shall be entitled to withdraw as regards the part of the contractual performance whose fulfilment has become impossible. If the partial fulfilment of the Agreement is no longer of interest to Customer he may withdraw from the Agreement as a whole. In such cases, Customer shall only be entitled to compensation in damages under the conditions stipulated in clauses 11 and 12.
- (2) In the event Contractor is not responsible for the impossibility of fulfilling the Agreement, the Agreement shall be adjusted by mutual consent as far as economically reasonable. Otherwise both contractual parties may withdraw from the Agreement fully or partially.
- (3) If the expiry of usage rights is connected with the withdrawal from the Agreement or the cancellation Customer shall undertake to immediately return to Contractor the original as well as all copies and partial copies as well as any modified copies of software programs connected with other program materials, specifications and other copy-righted documents of Contractor or to destroy them upon prior agreement with Contractor. This shall not apply as far as there are legal obligations as regards their retention. Customer shall immediately point this out to Contractor in writing. When software is returned, these "General Terms and Conditions of Delivery and Payment" shall be expanded by the provisions of the End User License Agreement (EULA) of the Contractor. In case of conflicts between the provisions of EULA and these "General Terms and Conditions of Delivery and Payment" the provisions of EULA shall take priority.
- (4) If the delivery or performance becomes subsequently impossible for reasons the Customer is responsible for; if he cancels the Agreement without the right to cancel or without a reason to cancel; or if Customer withdraws from the Agreement he shall replace Contractor any incurred expenses, costs and any other direct and indirect damages.

14. Quality Assurance

Contractor shall maintain a qualified and certified environment and quality management system according to ISO 14001 and ISO 9001.

15. Product liability

As far as Contractor is liable to pay compensation for a defect according to the provisions of the Product Liability Act, the extent of liability shall exclusively be subject to the regulations of this law. Any further liability shall expressly require a written agreement.

16. Construction modifications, illustrations and descriptions

Contractor reserves the right to modify the construction at any time; however, he is not obligated to carry out such modifications to products already delivered.

The illustrations, dimensions, descriptions, technical details as well as packaging units indicated in the respective catalogues are not binding; Contractor expressly reserves the right for modifications.

17. Copyrights

(1) As far as in the products of Contractor purchased permanently by Customer software of Contractor is employed, Customer shall receive from Contractor the non-exclusive right, unlimited in time, to use the software for the application of the product according to agreement.

The term "software" shall include the computer software, the related media, printed material, application documentation, electronic operating instructions and online operating instructions. Unless the following rulings expressly state otherwise, the term "software" shall also include the updates and upgrades that go with the original version.

As far as Contractor provides Customer with his products for a limited period, Customer shall receive the non-exclusive right of use limited in time to use the software of Contractor for the application of the product according to agreement.

As regards the remuneration for the use of the software and any possible maintenance agreements the parties shall conclude a separate agreement.

(2) Customer undertakes to ensure that everybody who uses the program observes this licence agreement. The term "Program" comprises the original program, all duplications (1 copy) thereof as well as parts of the program even if they are linked with other programs. A program consists of machine-readable instructions, audio-visual contents and the relevant licence material. Furthermore, the licence provisions of the respective program manufacturer shall be effective. In the absence of other agreements Customer may only use the program simultaneously on one computer. A "use" of the program exists when the program is in the main memory or on a storage medium of a computer. A program that is installed on a network server only for the purpose of distributing the program shall be deemed as not used.

(3) The licence fees raised by Contractor shall depend on the frequency of the use (for instance number of users); the resources (for example processor size) or a combination of both. If the access to a program is controlled by a licence administration program copies may be produced and stored on all machines that are under the control of this licence administration program but the use must not exceed the total number of permitted users or resources.

(4) Customer may run a data protection according to codes of practice and create the necessary backups of the programs. If the manual is on a data carrier it may be printed out in paper. Customer may not alter or remove any copyright notices of Contractor. Customer shall not be entitled to use, copy, process or transfer the software into another form of expression or translate it in any other way than herein described if such conversion is not stipulated by express legal provisions.

Customer shall not be entitled to rent or lease the software or to grant sub-licences.

(5) With the end of the usage right limited in time or by effectiveness of a cancellation or rescission all usage rights of the software shall expire as well as any copies or written documentations on promotion means which Customer obtained from Contractor. Customer shall delete all stored programs from its computer unless he is legally obligated to a longer retention period. The other collateral duties of Customer towards Contractor shall continue to exist beyond a possible cancellation or a termination of the Agreement.

(6) For any case of offense against one of the duties regulated under this clause 17 Customer shall pay Contractor a contractual penalty of 10 % of the overall order value to the exclusion of the plea of connection with any previous act of contravention, at least, however, EUR 5.000,00.

18. Industrial property rights/deficiencies in title

(1) As far as Contractor renders the performance covered by the Agreement in accordance with production descriptions, plans, drawings, instructions or any other documents of Customer or in accordance with devices obtained from him for reproduction, Customer shall guarantee that with the execution of the order no rights of third parties, especially no industrial property rights or copyrights (hereinafter referred to as "IPR") are infringed directly or indirectly. In particular, the non-infringement of the rights of third parties shall insofar not constitute a stipulated condition of the delivery or performance to be rendered by Contractor. Contractor shall not be obligated to independently verify conflicting rights of third parties. However, Contractor shall inform Customer about any rights of third parties that became known to him.

(2) In cases of clause 18 (1), Customer shall indemnify Contractor against any claims by third parties and compensate any damages that might accrue to Contractor upon first request.

(3) In the event a third party asserts a claim against Contractor to refrain from further performance, production or delivery of the devices covered by the Agreement in cases of clause 18 (1) with reference to a property right position, a right of use or an intellectual property due to him, Contractor shall be entitled – without examining the legal position – to withdraw from the order and demand compensation from Customer for its expenses incurred so far.

Any documents, devices and suchlike submitted to Contractor that did not lead to the order shall be returned on request against reimbursement of costs. Otherwise Contractor shall be entitled to destroy those three (3) months after having placed the offer.

(4) Unless otherwise agreed in writing, Contractor shall provide the supplies free from third parties' industrial property rights and copy-rights with respect to the country of the place of destination only. If a third party asserts a justified claim against the Customer based on an infringement of an IPR with respect to the supplies made by Contractor and than used in conformity with the Agreement, Contractor shall be liable to Customer within the time period for warranty stipulated in clause 11 (4) as follows:

a) Contractor shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the supplies concerned or whether to modify the deliveries such that they no longer infringe the IPR or replace them. If this would be impossible for the Contractor under reasonable conditions, Customer may cancel the Agreement or reduce the remuneration pursuant to the applicable statutory provision.

b) THE LIABILITY OF CONTRACTOR TO PAY DAMAGES SHALL BE GOVERNED BY CLAUSE 11 AND/OR 12.

c) The Customer shall immediately notify Contractor of any such claim asserted by the third party in writing and leave any protective measures and settlement negotiations to the discretion of Contractor. If the Customer stops using the

supplies in order to reduce the damage or for other good reason, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

- (5) Claims of Customer shall be excluded if he is himself responsible for the infringement of an IPR.
- (6) In addition, with respect to claims by the Customer pursuant to clause 18 (4) a) above, clauses 11 (6) and (8) shall apply mutatis mutandis in the event of an infringement of an IPR.
- (7) Where other defects in title occur, clause 11 shall apply mutatis mutandis.
- (8) Any other claims of the Customer against Contractor and its agents or any such claims exceeding the claims provided for in this clause 18, based on deficiencies in title, shall be excluded.

19. Obligations ElektroG (Elektrogesetz)

- (1) Customer represents and guarantees that he will effect the disposal of the goods or devices after the end of their usage, at own cost and according to all applicable legal provisions and standards. He shall waive any claim against Contractor out of, and indemnify and hold harmless Customer against any and all claims, also of third parties, in connection with § 10 sect. 2 of the German ElektroG (obligation of manufacturer to take back goods or devices).
- (2) In case Customer passes goods to commercial third parties and does not transfer by contract the obligation to effect the disposal and to reiterate such transfer of obligation to their further customers as well, Customer shall be obliged to take back and effect the disposal of the goods after end of their usage, at own cost and according to all applicable legal provisions and standards. All rights and claims of Contractor against Customer regarding said representations and guarantees, said transfer of obligations, said waivers, indemnifications and hold harmless obligations, shall not become time-barren under any statute of limitations of actions until two years after the definite end of usage of the respective goods or devices. The two year's term for suspension of the statute of limitation of action shall not begin earlier than with the receipt of written information of Customer to Contractor regarding the end of usage of the goods or devices.

20. Transmission of order

Contractor shall be entitled to pass on the order or relevant parts of the order to third parties without the prior written approval of Customer. Contractor shall be liable for the third party as for an own vicarious agent.

21. Data protection

- (1) As part of executing the Agreement, Contractor shall process the personal data of his Customers and their employees (contact data, other personal data for the performance of the Agreement). These personal data shall be collected by the sales organization of Contractor and entered into the systems of Contractor. These data shall be assigned to the legal entity of Customer and processed only by the group of companies of Contractor and the sales representatives working for them. All employees of Contractor as well as sales representatives working for him shall be committed in writing to data secrecy in accordance with § 5 BDSG (Federal Data Protection Act), and process these data pursuant to the provisions of the Federal Data Protection Act (Bundesdatenschutzgesetz). If customers receive personal data of Contractor they shall also be committed to comply with the provisions of the Federal Data Protection Act.
- (2) As part of the business relationship or initial business contact Contractor reserves the right to collect information about a customer. The results of the collected information shall exclusively be processed by the body referred to in clause 21 of these Terms and Conditions in accordance with the Federal Data Protection Act.

22. Transfer of risk

- (1) Even where delivery has been agreed freight free, the risk shall pass to the Customer as follows:
 - a) if the supplies do not include assembly or erection, at the time when the supplies are shipped or picked up by the carrier. Upon request and costs of Customer, the Contractor shall insure the supplies against the usual risks of transport;
 - b) if the supplies include assembly or erection, at the day of taking over in the own works or, if so agreed, after a fault-free trial run.
- (2) The risk shall pass to the Customer if dispatch, shipping, the start or performance of assembly or erection, the taking over in the own works or the trial run is delayed for reasons for which Customer is responsible or if the Customer has otherwise failed to accept the supplies.

23. Assembly and erection

- Unless otherwise agreed in writing, assembly and erection shall be subject to the following provisions:
- (1) Customer shall provide at its own expense and in due time:
 - a) all earth and construction work and other ancillary work outside the scope of the Contractor, including the necessary skilled and unskilled labour, construction materials and tools,
 - b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
 - c) energy and water at the point of use including connections, heating and lighting,
 - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Customer shall take all measures he would take for the protection of his own possessions to protect the possessions of the Contractor and of the erection personnel at the site,
 - e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
- (2) Before the erection work starts, the Customer shall make available of his own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- (3) Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
- (4) If assembly, erection or commissioning is delayed due to circumstances for which Contractor is not responsible, Customer shall bear the reasonable costs incurred for idle times and any additional travelling of the Contractor or the erection personnel.
- (5) Customer shall attest to the hours worked by the erection personnel towards the Contractor at weekly intervals and Customer shall immediately confirm in writing if assembly, erection or commissioning has been completed.
- (6) If, after completion, the Contractor demands acceptance of the supplies, Customer shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the supplies are put to use, after completion of an agreed test phase, if any.

24. Cessation of payment, insolvency

If a Customer ceases payment a provisional insolvency administrator shall be appointed, insolvency proceedings are opened up over his assets or if there are protests of a bill or

protests of a cheque against him Contractor shall be entitled to withdraw fully or partially from the Agreement without this giving way to any claims against the Contractor.

If Contractor withdraws from the Agreement the performances rendered so far shall be settled at contract prices.

25. Regulations on export

Customer is informed that the export of the supplied products, information, software and documents (jointly referred to as Products) according to the relevant valid export regulations of the Federal Republic of Germany, the European Union and/or the United States of America – e.g. on the basis of their nature or intended use or end destination– may be subject to authorization or excluded and violations may be prosecuted. Therefore Customer shall guarantee that all national or international relevant export regulations are strictly observed and that any necessary authorizations are obtained. In this regard Customer shall in particular check and ensure that:

- in the event the Products may only be delivered with an authorization of the respective, in particular national authorities, for an arms-related, nuclear or weapon-related technical use and/or to a military recipient, then this authorization must be obtained in advance in case of a resale;
- the relevant UN Resolutions, EC Directives and German Laws as well as lists of the respective German authorities are observed;
- no companies and persons listed in the Consolidated Screening List of the American Bureau of Industry and Security (BIS) are supplied with goods originating from the US, or US-origin software and technology, or services are rendered to them or a technology transfer is carried out with them.

In the event the aforementioned obligations are violated by the Customer he shall indemnify Contractor upon the initial request from any claims and compensate any damages which supplier or Licensor of Contractor, third parties or governmental and/or international authorities and/or organisations claim towards the Contractor.

The deliveries and services (fulfilment of the agreement) are subject to the condition that the fulfilment is not opposed by impediments due to national or international regulations, in particular export control regulations as well as embargoes or any other sanctions. The contractual parties undertake to furnish any information and documents required for the export/transfer/import. Any delays due to export testing or licensing procedures shall render any deadlines and delivery times invalid. If necessary approvals are not issued the Agreement shall be deemed not concluded with regard to the affected parts; claims for damages are excluded insofar and due to the aforementioned non-observance of deadlines.

On request, Contractor shall name Customer the relevant contacts for further information.

26. Contract language, correspondence

The contract language shall be German or English. Any correspondence and other documents shall be written in German or English. This shall also apply to all other documents. If the contractual partners in addition use another language, the German or English wording shall prevail.

27. Partial invalidity

Should parts of these General Terms and Conditions of Delivery and Payment be or become invalid, the validity of the remaining provisions shall not be affected; the same shall apply to the filling of loopholes of these General Terms and Conditions of Delivery and Payment.

28. Place of jurisdiction/applicable law

(1) **Exclusive place of jurisdiction shall be 32825 Blomberg, Germany if the Customer is a merchant.** However, Contractor shall reserve the right to assert his claims at any other permissible place of jurisdiction.

(2) In addition, exclusively non-unified German law shall be applicable, notably the BGB/HGB. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN Sales Convention) shall be excluded.

June 2014

Phoenix Contact GmbH & Co. KG
PHOENIX CONTACT Deutschland GmbH
PHOENIX CONTACT ELECTRONICS GmbH
Phoenix Feinbau GmbH & Co. KG