

Standard Terms and Conditions of Sale and Delivery ALBAT+WIRSAM Software GmbH

1. General

(1) The following terms and conditions only shall apply to goods and services, in particular to software and licences supplied by us in so far as the Buyer is acting in the course of a business or is a legal entity under public law. These terms and conditions shall apply to all future supplies to the Buyer.

(2) Any terms of the Buyer which contradict or deviate from the terms and conditions below shall not apply except where we have expressly agreed to the same in writing. Any unconditional supply of goods, performance of works or acceptance of payments shall not be construed as an acknowledgement of terms which deviate from the aforesaid.

(3) Insofar as is necessary for the handling of its business we shall be entitled to store and process the Buyer's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

(4) Supplies of software shall not include the Source Code.

(5) The technical specification provided by the Buyer valid on the date of shipment shall be definitive in terms of determining the quality of the goods supplied by us, which is set out in the application documentation. We shall not be bound to supply goods of any other quality.

2. Contractual Representations

Our quotations are subject to change without notice with regard to prices, quantity, delivery date, availability, technical data, specifications and descriptions of quality. The contract of sale shall be concluded with the order acknowledgement in written or email form by us Except where otherwise agreed the date of order acknowledgement shall be the contract date. Any changes, supplements and/or cancellation of a contract must be in written or email form.

3. Price

(1) Our prices and licence fees (hereinafter prices) are EXW (Incoterms 2010) but do not include packing, insurance, VAT, installation, travelling time, out of pocket expenses, overnight accommodation and training as well as travel expenses which will be charged according to the price list valid at the time the contract is made.

(2) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Buyer and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event.

4. Payment

(1) Except where otherwise agreed the Buyer shall remit the invoice amount immediately upon receipt of the goods or within 14 days of the invoice date whichever is earlier. Upon the expiration of the deadline aforesaid the Buyer shall be deemed in default of payment in accordance with section § 286 sub-section.2 Nr. 2 of the German Civil Code (BGB). We shall be entitled to interest on overdue payments in accordance with section § 288 of the German Civil Code (BGB).

(2) We shall be entitled to demand down payments or payment in advance.

5. Delivery, Place of Delivery, Force Majeure

(1) Except where otherwise agreed we supply our goods and services ex works our supply centre (EXW-Incoterms 2010). Partial delivery is expressly permitted.

(2) Except where otherwise agreed the version of the software which is current at the delivery date shall be supplied.

(3) We shall supply the software at our option either (i) by providing the Buyer with one (1) copy of the software program on an electronic data carrier together with one (1) copy of the user documentation or (ii) by notifying the Buyer of the availability of the software online together with one (1) copy of the user documentation.

(4) In terms of determining compliance with the delivery date or the passing of risk the time at which the software and the user documentation is surrendered to the carrier shall be definitive where the software is physically shipped or alternatively the time at which the software and the user documentation are made available online. Where the software or the user documentation is damaged or destroyed after risk has passed we shall supply a replacement upon refund of the copy and shipment cost.

(5) Where it has been agreed that we shall install or implement the software at the Buyer's premises the definitive date referred to in sub-clause (4) aforesaid shall be the date of transmission of the software to the Buyer's software system.

(6) The delivery date shall be extended for such period as we (i) are waiting information from the Buyer or for the Buyer to cooperate or (ii) are prevented from performing our contractual obligations due to force majeure event such as (but not limited to) strikes or lockouts at third party plants or in our own plant, intervention by governmental authorities, statutory prohibitions, fire, explosion, flood, earthquake, sabotage or other circumstances which prevent performance for which we are not responsible (acts of God) together with a reasonable start up period after the force majeure event has ceased. During such period we shall not be deemed to be in breach of our delivery obligation. We shall inform the Buyer of any such delay and of its anticipated duration without delay. Where the force majeure occurs without interruption for a period of more than 3 months both parties shall be entitled to terminate the contract for cause.

6. Delivery Dates; Default; Software Maintenance

(1) Any delivery date quoted by us is an approximate date only except where expressly otherwise agreed in writing. It is subject to timely supply by our sub-suppliers.

(2) The commencement of the delivery term quoted by us shall be subject to clarification of all technical matters and proper and timely performance by the Buyer of his obligations.

(3) Where we fail to deliver upon an agreed delivery date and such failure is caused solely by an act or omission on our part the Buyer shall grant us a reasonable extension in writing of not less than 2 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Buyer desires to rescind the contract or demand damages in lieu of performance, the Buyer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Buyer is obliged where requested by us to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

(4) We shall maintain the software only upon the execution of a separate software maintenance agreement. Except where otherwise agreed the effective date of such software maintenance agreement shall be the definitive date referred to in section 5 sub-section 4 and 5 above.

7. Intellectual Property Rights and Licence to use the Software

(1) The Buyer acknowledges that copyright and all other industrial, intellectual and marketing rights in the software, including all modifications made for the Buyer, are and shall remain the property of us or our subcontractors.

(2) Except where agreed otherwise we grant to the Buyer a revocable, non-exclusive, non-transferable, perpetual licence to use the software at a single or multi user workplace at the agreed place of destination where the software is to be used. Except where expressly agreed otherwise the licence shall be limited only to the agreed single or multi user workplace which shall be situated in the country in which the Buyer has its principle place of business. The licence to use the software shall be exercised by the maximum number of persons covered by the price paid by the Buyer under paragraph 3.

(3) The Buyer shall only use the software for its internal operations, including use in connection with companies with which it is affiliated within the meaning of paragraph 15 of the German Company Law Act (AktG) („Group of Companies“). In particular the following are not permitted except where we have previously consented thereto in writing (i) the operation of a computer centre for a third party or (ii) the placement of the software (eg as application service providing) at the disposal of external companies or groups of companies or (iii) the use of the software for the training of persons who are not employees of the Buyer or affiliated companies. Any commercial subletting is generally not permitted.

(4) Reproductions of the software are only permitted for the purpose of the contract. The Buyer shall be entitled to make back-up copies to the extent required in accordance with the generally accepted rules of technology. Back-up and on-line copies on portable data carriers shall be marked accordingly and the copyright symbol of the original data carrier shall be attached thereto. Where the Buyer is provided with the software online by means of a download, he shall be entitled to copy the software onto a data carrier. Our rights in relation to online copies shall correspond to those of a Buyer in relation to software received on a data carrier.

(5) The Buyer shall only be authorized to change, extend or adapt the software within the meaning of § 69 c) Nr. 2 the German Copyright Act (UrhG) where it is deemed by law to be indispensable.

(6) The Buyer shall only be entitled to decompile the software within the constraints of § 69 e) of the German Copyright Act (UrhG) - but not before we have failed to provide the required data and/or information within a reasonable period having been requested to so in writing – in order to establish interoperability with other hard and software.

(7) Where we provide the Buyer with supplementary software (e.g. patches, supplements to the user manual) or a new version (e.g. an update, upgrade) which replace software previously provided (“old software”), these shall be subject to these terms and conditions.

(8) Where we provide a new version of the software, the Buyer's rights in relation to the old software shall cease as soon as the Buyer actively uses the new software irrespective of the absence of an express request by us for its return. We shall grant the Buyer a three month transition period during which both versions of the software can be used in parallel.

(9) Any reproduction or reworking of the user documentation is – subject to sub sections 3 and 4 above (insofar as the documentation is integrated into the software) – not permitted.

8. Retention of Title

(1) Goods sold shall remain our property until payment of all claims under the business relationship has been received from the Buyer (Reserved Goods). In the event that the above retention of title clauses are void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed.

(2) For software supplies the following shall override paragraph 1 above: The grant of licence under section 7 is subject to full payment of all of our payment claims under the contract. The Buyer shall inform us without delay of any levies of execution, seizures or other court orders or third party intervention. In the event of any breach

by the Buyer, in particular default of payment, we shall be entitled upon the expiration of a reasonable notice period to terminate the contract with immediate effect; the statutory provisions dispensing with a fixed period of time shall remain unaffected.

9. Cessation of the Licence to use the Software

In all circumstances in which the licence to use the software ceases (e.g. rescission, subsequent supplies) the Buyer shall return the software supplied without delay and shall delete all copies made insofar as he is not under a statutory obligation to retain the same for a longer period. The Buyer shall confirm compliance with the aforesaid in writing. Section 7, sub-section 6 shall remain unaffected.

10. Non-Transferability of the Licence to use the Software

The licence granted to the Buyer is not transferable except where expressly otherwise agreed in writing. The software shall not be surrendered to third parties either temporarily or permanently or used by a third party, gratuitously or non-gratuitously, irrespective of whether the software is physically or otherwise surrendered.

11. Buyer's obligation to cooperate and furnish Information

(1) The Buyer shall inform itself as to the main functional characteristics of the software and shall bear the risk that these correspond with his requirements.

(2) The installation of an operational software environment with adequate capacity taking into account the additional load resulting from the use of the software supplied by us shall be the sole responsibility of the Buyer.

(3) The Buyer shall thoroughly test the software before putting it into operation as to the absence of defects and its operability with the existing hardware and software configuration. This shall also apply in relation to software provided under warranty or the maintenance agreement.

(4) The Buyer shall observe our instructions as to the installation and operation of the software; He shall familiarise himself regularly with current instructions given on websites accessed via www.a-w.de and shall observe the same during operation.

(5) Where the scope of our performance includes more than the simple supply of the software, the Buyer shall provide requisite assistance free of charge e.g. in the form of manpower, working space, hardware and software, data and telecommunication equipment.

(6) The Buyer shall provide us with access to the software either directly or via data transmission for the purpose of determining and remedying a fault. We shall be entitled to verify whether the software is being used in conformity with the terms of this contract by requesting information from the Buyer as to the duration and scope of use as well as access to books and documents and the Buyer's hardware and software. To this end the Buyer shall grant us access to its business premises during normal business hours.

(7) It shall be a material obligation upon the Buyer to make back-up copies of data and programs at adequate intervals, at least once per day, in machine readable form in order to ensure that such data and programs can be reproduced within a reasonable time and at reasonable expense.

(8) We shall assume that there are back-up copies of all data provided by the Buyer, with which we come into contact, unless the Buyer expressly instructs otherwise.

(9) Any loss or expense resulting from a breach of the aforesaid paragraphs shall be borne by the Buyer.

12. Liability for Defects

(1) The Buyer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal.

(2) Where the goods delivered by us are defective and the Buyer has immediately notified us of the same in writing not later than 28 days after the delivery date we shall at our option deliver a replacement or remedy the defect. The Buyer shall grant us a reasonable period of not less than 28 working days to carry out the same. This shall not apply where the limitation period set out in section 14, sub-section 1 has expired; in such circumstances any service or repair works shall be subject to payment at the rates set out in our price list current at the time of performance.

(3) The Buyer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same. In the event that we are not in a position to remedy the defect or deliver a replacement the Buyer is entitled to terminate the contract or to demand a reasonable reduction in the purchase price. Termination of the contract is only permissible where the Buyer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

(4) The Buyer shall retain a right of recourse against us within the meaning of §478 of the German Civil Code (BGB) insofar as the Buyer has not agreed terms with its customer which exceed the statutory liability for defects.

13. Damages

(1) Except where otherwise provided below any claim of the Buyer for damages other than those claims set out in sections 6 and 12 aforesaid are hereby excluded irrespective of the claim upon which it is based. In no event do we accept liability for any damage not incurred by the goods themselves nor do we accept any liability for loss of profit or any other indirect or consequential damage suffered by the Buyer. To the extent that our contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.

(2) The aforesaid limitation of liability shall not apply where the damage incurred has been caused by wilful default or by gross negligence, where personal injury has been suffered or where the damages claim is based on product liability law. It shall further

not apply where we have given a guarantee of quality in relation to the products supplied.

(3) Where we are in breach of a material term of the contract its liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Buyer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Buyer relied or could be reasonably expected to rely.

(4) Beyond the aforesaid we shall only be liable to the extent of our insurance coverage insofar as it is insured against the damage which has been incurred and subject to payment of the insurance benefit.

(5) Any other liability in damages is hereby excluded.

(6) We reserve the right to claim contributory negligence.

14. Limitation, Assignment

(1) The limitation period for claims based on sections 12 and 13 aforesaid is 1 year. The limitation period aforesaid shall not apply in relation to claims brought under section 13 sub-section 2 (liability for wilful default, gross negligence, for personal injury claims and claims under product liability laws) and where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 (BGB), rights of recourse § 479 (BGB) and building defects § 634a s.1 No.2 (BGB))

(2) Any assignment of the Buyer's claims provided for in sections 12 and 13 is not permitted. Section 354 a of the German Commercial Code (HGB) shall remain unaffected.

15. Non-Disclosure

(1) During the term and on termination of this contract the parties shall not give access to third parties nor shall they make any unauthorised use for their own commercial aims of any confidential information disclosed by the other party or of which it becomes aware during their cooperation. The same shall apply in relation to the execution and content of this contract. The parties shall ensure that the employees involved in the project are also bound by the aforesaid non disclosure obligations.

(2) The aforesaid non disclosure obligation shall not apply in relation to information which

- was already known to the other party prior to entering into this contract;
- was legally obtained from a third party;
- is or becomes the state of the art or is common knowledge;
- has been approved for release by the disclosing party.

The non-disclosure obligation for technical information shall expire 5 years after termination of this contract.

(3) Upon termination of this contract the parties shall return all confidential documents and information unrequested to the disclosing party or at their request destroy the same and provide evidence thereof. Each party undertakes to delete any software or demo versions provided by the other party without delay.

(4) The parties shall comply with data protection laws, in particular when granted access to the other party's plant or to its hardware and software. They shall ensure that their respective vicarious agents shall also comply with the aforesaid and that in particular that they are bound to data secrecy prior to commencement of their work. The parties do not aim to process or use individual related data upon the instruction of the other party. Any transfer of individual related data shall only occur in exceptional circumstances as an ancillary product of performance by the parties of their contractual obligations. Any individual related data shall be handled by the parties in conformity with data protection laws.

16. Recruitment Restriction

The Buyer may not directly or indirectly recruit, employ or otherwise engage or contact any of our employees except where the contract of employment with such employee has been terminated for at least 6 months or where we have given our prior consent to such employment in accordance with § 183 of the German Civil Code.

17. Other Matters

(1) We shall have right to subcontract any part of our obligations under this contract. We shall be liable for the work of our subcontractors as for our own work.

(2) For Buyers whose principle place of business is situated in the European Union all disputes arising out of these terms and conditions shall be resolved before the courts in Giessen, Germany. We reserve the right to sue the Buyer at its principle place of business.

For Buyers whose principle place of business is situated outside the European Union all disputes arising out of these terms and conditions shall be finally settled in accordance with the Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany. The arbitral tribunal shall consist of three arbitrators. The arbitration shall be English.

(3) The laws of the Federal Republic of Germany shall govern all the legal relationships between the Buyer and ourselves.

(4) In the event that any provision of these terms and conditions shall be found to be invalid, the validity of the remaining conditions shall remain unaffected.

(5) The temporary, limited or specific waiver of any term, provision or condition of the contract shall not be considered a waiver of any other term, condition or provision thereof, nor of any subsequent breach of the same term, condition or provision.