

# General Conditions

## for the Supply of Products and Services of the Electrical and Electronics Industry ("Grüne Lieferbedingungen" – GL)\*

for commercial transactions between businesses

recommended by ZVEI e. V.

as of January 2022



### Article I: General Provisions

- <sup>1</sup> Legal relations between Supplier and Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as "Supplies") shall be solely governed by the present GL. <sup>2</sup> The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. <sup>3</sup> The scope of delivery shall be determined by the congruent mutual written declarations.
- <sup>1</sup> The Supplier herewith reserves any industrial property rights and/or copyrights and rights of use pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). <sup>2</sup> The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. <sup>3</sup> Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.
- <sup>1</sup> The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. <sup>2</sup> Without express agreement the Purchaser may make one back-up copy of standard software.
- Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.
- The term „claim for damages" used in the present GL also includes claims for indemnification for useless expenditure.

### Article II: Prices, Terms of Payment, and Set-Off

- Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.
- If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. for traveling and transport as well as allowances.
- Payments shall be made free Supplier's paying office.
- The Purchaser may set off only those claims which are undisputed or non-appealable.

### Article III: Retention of Title

- The items pertaining to the Supplies ("Retained Goods") for which the purchase price claim is due immediately or for which a payment period of up to and including 30 days after delivery, delivery with installation/assembly or receipt of invoice has been agreed for the due date of the purchase price claim shall remain the property of the Supplier until payment has been made in total.
- <sup>1</sup> In all other cases, the items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled.

<sup>2</sup> If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.

- For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
- <sup>1</sup> Should Purchaser resell Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. <sup>2</sup> If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Supplier.
- (a) <sup>1</sup> Purchaser may process, amalgamate or combine Retained Goods with other items. <sup>2</sup> Processing is made for Supplier. <sup>3</sup> Purchaser shall store the new item thus created for Supplier, exercising the due care of a diligent business person. <sup>4</sup> The new items are considered as Retained Goods.  
(b) <sup>1</sup> Already today, Supplier and Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of Supplier, Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. <sup>2</sup> In this respect, the new items are considered as Retained Goods.  
(c) <sup>1</sup> The provisions on the assignment of claims according to No. 4 above shall also apply to the new item. <sup>2</sup> The assignment, however, shall only apply to the amount corresponding to the value invoiced by Supplier for the Retained Goods that have been processed, combined or amalgamated.  
(d) Where Purchaser combines Retained Goods with real estate or movable goods, it shall, without any further declaration being necessary to this effect, also assign to Supplier as security its claim to consideration for the combination, including all collateral rights for the pro-rata amount of the value the combined Retained Goods have on the other combined items at the time of the combination.
- <sup>1</sup> Until further notice, Purchaser may collect assigned claims relating to the resale. <sup>2</sup> Supplier is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified

\* The original German text shall be the governing version.

indications for overindebtedness or pending insolvency of Purchaser. <sup>3</sup> In addition, Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.

7. <sup>1</sup> The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. <sup>2</sup> If a reasonable interest can be proven, Purchaser shall, without undue delay, provide Supplier with the information and/or Documents necessary to assert the claims it has against its customers.
8. <sup>1</sup> Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. <sup>2</sup> The Purchaser shall be obliged to return the Retained Goods. <sup>3</sup> The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

#### **Article IV: Time for Supplies; Delay**

1. <sup>1</sup> Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. <sup>2</sup> If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to:
  - (a) force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout);
  - (b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
  - (c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or
  - (d) the fact that Supplier does not receive its own supplies in due time or in due formsuch times shall be extended accordingly.
3. If the Supplier is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which due to the Delay could not be put to the intended use.
4. <sup>1</sup> Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above are excluded in all cases of delayed Supplies, even upon expiry of a time set to the Supplier to effect the Supplies. <sup>2</sup> This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. <sup>3</sup> Rescission of the

contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

5. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.
6. <sup>1</sup> If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. <sup>2</sup> The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

#### **Article V: Passing of Risk**

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - (a) if the delivery does not include assembly or erection, at the time when it is shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense;
  - (b) if the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.
2. The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

#### **Article VI: Assembly and Erection**

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

1. Purchaser shall provide at its own expense and in due time:
  - (a) all earth and construction work and other ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labor, 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 Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier 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 Purchaser shall unsolicitedly make available 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. <sup>1</sup> Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption. <sup>2</sup> Access roads and the site of assembly or erection must be level and clear.
  4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Supplier or the erection personnel.
  5. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in written form if assembly, erection or commissioning has been completed.
  6. <sup>1</sup> If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. <sup>2</sup> The same consequences as upon acceptance arise if and when the Purchaser lets the two-week period expire or the Supplies are put to use after completion of agreed test phases, if any.

#### Article VII: Receiving Supplies

The Purchaser shall not refuse to receive Supplies due to minor defects.

#### Article VIII: Defects as to Quality

The Supplier shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects",) as follows:

1. <sup>1</sup> The Supplies are free from Defects if upon the passing of the risk they comply with the subjective requirements, the objective requirements and the installation requirements pursuant to Sec. 434 German Civil Code ("Bürgerliches Gesetzbuch"). <sup>2</sup> If the parties have agreed on the quality of the Supplies ("Beschaffenheitsvereinbarung"), the question whether the Supplies meet the objective requirements shall be determined exclusively by such agreement. <sup>3</sup> Sentence 2 shall not apply if the last contract in the supply chain is a sale of consumer goods.
2. Defective parts or defective services shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.
3. <sup>1</sup> Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. <sup>2</sup> This shall not apply:
  - where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), and Sec. 634a para.1 No.2 BGB (defects of a building),
  - in the case of intent,
  - in the case of fraudulent concealment of the Defect or
  - non-compliance with guaranteed characteristic ("Beschaffenheitsgarantie").
 Claims for the reimbursement of expenses on the part of the Purchaser in accordance with Sec. 445a BGB (entrepreneur's right of recourse) shall likewise be subject to a statute of limitations of 12 months from the start of the statutory statute of limitations, provided the last contract in the supply chain is not a sale of consumer goods.
4. <sup>1</sup> The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung", "Hemmung") and re-commencement of limitation periods shall be unaffected. <sup>2</sup> The suspension of the statute of limitations according to Sec. 445b para. 2 BGB (limitation of right of recourse) shall in any case end no later than 5 years after the date on which the Supplier delivered the concerned item to the seller. <sup>3</sup> This shall not apply if the last contract in the supply chain is a sale of consumer goods or in cases that are according to No. 3 Sentence 2 above.
5. Notifications of Defect by the Purchaser shall be given in written form without undue delay.
6. <sup>1</sup> In the case of claims for Defects, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. <sup>2</sup> The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. <sup>3</sup> Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.
7. The Supplier shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") within a reasonable period of time.
8. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 12 shall be unaffected.
9. <sup>1</sup> There shall be no claims based on Defect including but not limited in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. <sup>2</sup> Claims based on defects attributable to improper modifications, installation/ removal, or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
10. <sup>1</sup> The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies. <sup>2</sup> This applies accordingly to claims for the reimbursement of expenses on the part of the Purchaser in accordance with Sec. 445a BGB (entrepreneur's right of recourse), provided the last contract in the supply chain is not a sale of consumer goods.

11. The Purchaser's right of recourse against the Supplier pursuant Sec. 445a BGB (entrepreneur's right of recourse) is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects.

12. <sup>1</sup>The Purchaser shall have no claim for damages based on Defects. <sup>2</sup>This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Supplier. <sup>3</sup>The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. <sup>4</sup>Any other or additional claims of the Purchaser exceeding the claims provided for in this Article VIII, based on a Defect, are excluded.

#### **Article IX: Industrial Property Rights and Copyrights; Defects in Title**

1. <sup>1</sup> Unless otherwise agreed, the Supplier shall provide the Supplies in the country of the place of delivery only, without infringing any third-party industrial property rights and copyrights (hereinafter referred to as "IPR"). <sup>2</sup> If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Article VIII No. 3 and in accordance with No.4 as follows:

(a) <sup>1</sup> The Supplier 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 Supplies such that they no longer infringe the IPR or replace them. <sup>2</sup> If this would be impossible for the Supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions;

(b) The Supplier's liability to pay damages is governed by Article XII;

(c) <sup>1</sup> The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. <sup>2</sup> If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it 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.

2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.

3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.

4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VIII Nos. 6, 7, 10, and 11 shall apply mutatis mutandis in the event of an infringement of an IPR.

5. Where other defects in title occur, Article VIII shall apply mutatis mutandis.

6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article IX, based on a defect in title, are excluded.

#### **Article X: Conditional Performance**

1. The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.

2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

#### **Article XI: Impossibility of Performance; Adaptation of Contract**

1. <sup>1</sup> To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. <sup>2</sup> The Purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. <sup>3</sup> This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. <sup>4</sup> The Purchaser's right to rescind the contract shall be unaffected.

2. <sup>1</sup> Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. <sup>2</sup> To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. <sup>3</sup> The same applies if required export permits are not granted or cannot be used. <sup>4</sup> If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

#### **Article XII: Other Claims for Damages**

1. Unless otherwise provided for in the present GL, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.

2. <sup>1</sup> This does not apply if liability is based on:

(a) the German Product Liability Act ("Produkthaftungsgesetz");

(b) intent;

(c) gross negligence on the part of the owners, legal representatives or executives;

(d) fraud;

(e) failure to comply with a guarantee granted;

(f) negligent injury to life, limb or health; or

(g) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichten").

<sup>2</sup> However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

3. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

#### **Artikel XIII: Venue and Applicable law**

1. <sup>1</sup> If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. <sup>2</sup> However, the Supplier may also bring an action at the Purchaser's place of business.

2. This contract and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

#### **Article XIV: Severability Clause**

<sup>1</sup> The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. <sup>2</sup> This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

# Supplementary Clause: Extended Retention of Title\*

Model Contract of ZVEI – German Electrical and Electronic Manufacturers' Association

- as of June 2011 -



The following Basic and Extended Retention of Title shall be agreed:

1. The items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. Should Purchaser resell Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Supplier.
  - 4.a) Purchaser may process, amalgamate or combine Retained Goods with other items. Processing is made for Supplier. Purchaser shall store the new item thus created for Supplier, exercising the due care of a diligent business person. The new items are considered as Retained Goods.
    - b) Already today, Supplier and Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of Supplier, Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.
    - c) The provisions on the assignment of claims according to No. 3 above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by Supplier for the Retained Goods that have been processed, combined or amalgamated.
  - d) Where Purchaser combines Retained Goods with real estate or movable goods, it shall, without any further declaration being necessary to this effect, also assign to Supplier as security its claim to consideration for the combination, including all collateral rights for the pro-rat amount of the value the combined Retained Goods have on the other combined items at the time of the combination.
5. Until further notice, Purchaser may collect assigned claims relating to the resale. Supplier is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of Purchaser. In addition, Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.
6. The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide Supplier with the information and/or Documents necessary to assert the claims it has against its customers.
7. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

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# Ergänzungsklausel: Erweiterter Eigentumsvorbehalt

Vertragsmuster des ZVEI - Zentralverband Elektrotechnik- und Elektronikindustrie e.V.

Stand: Juni 2011



Es wird folgender einfacher und erweiterter Eigentumsvorbehalt vereinbart:

1. Die Gegenstände der Lieferungen (Vorbehaltsware) bleiben Eigentum des Lieferers bis zur Erfüllung sämtlicher ihm gegen den Besteller aus der Geschäftsverbindung zustehenden Ansprüche. Soweit der Wert aller Sicherungsrechte, die dem Lieferer zustehen, die Höhe aller gesicherten Ansprüche um mehr als 20 % übersteigt, wird der Lieferer auf Wunsch des Bestellers einen entsprechenden Teil der Sicherungsrechte freigeben; dem Lieferer steht die Wahl bei der Freigabe zwischen verschiedenen Sicherungsrechten zu.
2. Während des Bestehens des Eigentumsvorbehalts ist dem Besteller eine Verpfändung oder Sicherungsübereignung untersagt und die Weiterveräußerung nur Wiederverkäufern im gewöhnlichen Geschäftsgang und nur unter der Bedingung gestattet, dass der Wiederverkäufer von seinem Kunden Bezahlung erhält oder den Vorbehalt macht, dass das Eigentum auf den Kunden erst übergeht, wenn dieser seine Zahlungsverpflichtungen erfüllt hat.
3. Veräußert der Besteller Vorbehaltsware weiter, so tritt er bereits jetzt seine künftigen Forderungen aus der Weiterveräußerung gegen seine Kunden mit allen Nebenrechten - einschließlich etwaiger Saldoforderungen - sicherungshalber an den Lieferer ab, ohne dass es weiterer besonderer Erklärungen bedarf. Wird die Vorbehaltsware zusammen mit anderen Gegenständen weiter veräußert, ohne dass für die Vorbehaltsware ein Einzelpreis vereinbart wurde, so tritt der Besteller denjenigen Teil der Gesamtpreisforderung an den Lieferer ab, der dem vom Lieferer in Rechnung gestellten Preis der Vorbehaltsware entspricht.
- 4.a) Dem Besteller ist es gestattet, die Vorbehaltsware zu verarbeiten oder mit anderen Gegenständen zu vermischen oder zu verbinden. Die Verarbeitung erfolgt für den Lieferer. Der Besteller verwahrt die dabei entstehende neue Sache für den Lieferer mit der Sorgfalt eines ordentlichen Kaufmanns. Die neue Sache gilt als Vorbehaltsware.
- b) Lieferer und Besteller sind sich bereits jetzt darüber einig, dass bei Verbindung oder Vermischung mit anderen, nicht dem Lieferer gehörenden Gegenständen dem Lieferer in jedem Fall Miteigentum an der neuen Sache in Höhe des Anteils zusteht, der sich aus dem Verhältnis des Wertes der verbundenen oder vermischten Vorbehaltsware zum Wert der übrigen Ware zum Zeitpunkt der Verbindung oder Vermischung ergibt. Die neue Sache gilt insoweit als Vorbehaltsware.
- c) Die Regelung über die Forderungsabtretung nach Nr. 3 gilt auch für die neue Sache. Die Abtretung gilt jedoch nur bis zur Höhe des Betrages, der dem vom Lieferer in Rechnung gestellten Wert der verarbeiteten, verbundenen oder vermischten Vorbehaltsware entspricht.
- d) Verbindet der Besteller die Vorbehaltsware mit Grundstücken oder beweglichen Sachen, so tritt er, ohne dass es weiterer besonderer Erklärungen bedarf, auch seine Forderung, die ihm als Vergütung für die Verbindung zusteht, mit allen Nebenrechten sicherungshalber in Höhe des Verhältnisses des Wertes der verbundenen Vorbehaltsware zu den übrigen verbundenen Waren zum Zeitpunkt der Verbindung an den Lieferer ab.
5. Bis auf Widerruf ist der Besteller zur Einziehung abgetretener Forderungen aus der Weiterveräußerung befugt. Bei Vorliegen eines wichtigen Grundes, insbesondere bei Zahlungsverzug, Zahlungseinstellung, Eröffnung eines Insolvenzverfahrens, Wechselprotest oder begründeten Anhaltspunkten für eine Überschuldung oder drohende Zahlungsunfähigkeit des Bestellers, ist der Lieferer berechtigt, die Einziehungsermächtigung des Bestellers zu widerrufen. Außerdem kann der Lieferer nach vorheriger Androhung unter Einhaltung einer angemessenen Frist die Sicherungsabtretung offenlegen, die abgetretenen Forderungen verwerten sowie die Offenlegung der Sicherungsabtretung durch den Besteller gegenüber dem Kunden verlangen.
6. Bei Pfändungen, Beschlagnahmen oder sonstigen Verfügungen oder Eingriffen Dritter hat der Besteller den Lieferer unverzüglich zu benachrichtigen. Bei Glaubhaftmachung eines berechtigten Interesses hat der Besteller dem Lieferer unverzüglich die zur Geltendmachung seiner Rechte gegen den Kunden erforderlichen Auskünfte zu erteilen und die erforderlichen Unterlagen auszuhändigen.
7. Bei Pflichtverletzungen des Bestellers, insbesondere bei Zahlungsverzug, ist der Lieferer nach erfolglosem Ablauf einer dem Besteller gesetzten angemessenen Frist zur Leistung neben der Rücknahme auch zum Rücktritt berechtigt; die gesetzlichen Bestimmungen über die Entbehrlichkeit einer Fristsetzung bleiben unberührt. Der Besteller ist zur Herausgabe verpflichtet. In der Rücknahme bzw. der Geltendmachung des Eigentumsvorbehalts oder der Pfändung der Vorbehaltsware durch den Lieferer liegt kein Rücktritt vom Vertrag, es sei denn, der Lieferer hätte dies ausdrücklich erklärt.

# Software Clause for the Provision of Standard Software Forming an Integral Part of Supplies\*

Amending the "General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry" ("GL")\*\*

as of: January 2022

## 1. Scope of Application of the Software Clause

- (a) <sup>1</sup>This Software Clause shall apply exclusively to the provision of standard software for a limited or unlimited period as a part of or in connection with related hardware (such software hereinafter referred to as "Software"), as well as to the entire Supplies, to the extent that a breach of contract has its cause in the Software. <sup>2</sup> Furthermore, hardware shall be solely subject to the conditions of the GL.
- (b) Firmware is not "Software" within the meaning of this Software Clause.
- (c) The GL shall apply to those matters not specifically covered by this Software Clause.
- (d) <sup>1</sup> The Supplier does not assume any obligation to perform services by virtue of this Software Clause. <sup>2</sup> Such services require a separate agreement.

## 2. Documentation

Article I No. 2 GL shall be supplemented as follows:

<sup>1</sup> The provision of documentation requires a separate agreement in writing. <sup>2</sup> If documentation is to be provided, the term "Software" hereinafter shall also include the documentation.

## 3. Rights to Use

Article I No. 3 GL shall be replaced as follows:

- (a) <sup>1</sup> The Supplier grants the Purchaser the non-exclusive right to use the Software in accordance with the Agreement. <sup>2</sup> Unless otherwise agreed, the right to use refers to the country of destination of the hardware and within the territory of the European Union or of another signatory state to the Agreement on the European Economic Area. <sup>3</sup> The right to use is limited to the agreed period of time, in the absence of such agreement, the right to use shall be unlimited in time.
- (b) <sup>1</sup> The following supplementary conditions shall apply where the right to use is subject to a time limit:  
<sup>2</sup> The Purchaser shall use the Software solely on the hardware referred to in the contract documents (e.g. software product sheet), in the absence of such reference, the use shall be limited to the respective hardware supplied together with the Software. <sup>3</sup> The use of the Software on any other device shall require the express prior written consent of the Supplier and shall, if used on a more powerful device, entitle the Supplier to claim an appropriate additional remuneration; this does not apply, however, to the extent and for the period in which the Purchaser uses a temporary substitute device within the agreed scope of use because of a defect in the agreed device.
- (c) <sup>1</sup> Where the contract documents refer to more than one device, the Purchaser shall not install or make useable the Software provided on more than one of these devices simultaneously (Single License), to the extent that it has not been granted a Multiple License pursuant to No. 3 (j) below. <sup>2</sup> Where more than one workplace exists for a specific device on which the Software can be used independently, the Single License shall apply to only one workplace.
- (d) The Software shall exclusively be provided in machine readable format (object code).
- (e) <sup>1</sup> The Purchaser shall be entitled to make only one copy of the Software and solely so for back-up purposes (back-up copy).  
<sup>2</sup> Any other duplication on the part of the Purchaser shall be

allowed only subject to a Multiple License pursuant to No. 3 (j) below.

- (f) <sup>1</sup> Save as provided for in Sec. 69 (e) (decompilation) of the German Copyright Act, the Purchaser shall not be entitled to modify, decompile, translate, or isolate parts of the Software. <sup>2</sup> The Purchaser shall not remove alphanumeric or other identifiers from the data medium and shall transfer such identifiers unchanged to any back-up copy.
- (g) <sup>1</sup> The Supplier grants the Purchaser the right to assign the right of use granted to it for software which is provided permanently to a third party. <sup>2</sup> The Purchaser to whom the Software has not been provided for commercial resale shall pass on the right to use the Software only together with the device it has bought in combination with the Software from the Supplier. <sup>3</sup> If the right to use is transferred to a third party, the Purchaser shall ensure that the right to use granted to the third party does not exceed the scope of rights to the Software granted to the Purchaser under this Agreement, and the Purchaser shall ensure that the third party shall be obliged to comply with at least the same obligations as are imposed herein. <sup>4</sup> When doing so, the Purchaser may not retain copies of the Software. <sup>5</sup> The Purchaser shall not be entitled to grant sublicenses. <sup>6</sup> Where the Purchaser provides the Software to a third party, the Purchaser shall ensure that any existing export requirements are observed and shall hold the Supplier harmless in this respect.
- (h) For Software for which the Supplier has only derived rights to use and that is no open source Software (third party software), the provisions of this No. 3 shall be amended and superseded by the conditions of use agreed between the Supplier and its licensor to the extent that they refer to the Purchaser (such as an end user license agreement); the Supplier shall notify the Purchaser of such conditions and make them available upon request.
- (i) <sup>1</sup> For open source Software, the provisions of this No. 3 shall be superseded by the conditions of use underlying the open source Software. <sup>2</sup> The Supplier shall make the source code available or accessible to the Purchaser only to the extent stipulated in the conditions of use underlying the open source software. <sup>3</sup> The Supplier shall notify the Purchaser of the fact that open source Software and pertaining conditions of use exist and make such conditions of use accessible to the Purchaser or, if required according to the conditions of use, provide the Purchaser with them.
- (j) <sup>1</sup> The use of the Software on more than one device or simultaneously at more than one workplace shall require a separate agreement on the right to use. <sup>2</sup> The same shall apply if the Software is used in networks even if the Software is not copied for this purpose. <sup>3</sup> In any of the afore-mentioned instances (hereinafter referred to as "Multiple License"), the following provisions (aa) and (bb) shall apply in addition to and superseding the provisions of this No. 3 (a) to (i):
- (aa) <sup>1</sup> Multiple License requires that the Supplier expressly confirms in writing the number of admissible copies that the Purchaser may make of the Software provided and the number of devices and/or workplaces where the Software may be used. <sup>2</sup> No. 3 (g) second sentence shall be applicable to Multiple Licenses provided that they may be transferred by the Purchaser to third parties only if transferred in their totality and together with all devices on which the use of the Software is allowed.



- (bb) <sup>1</sup> The Purchaser shall observe the duplication rules provided by the Supplier together with the Multiple License. <sup>2</sup> The Purchaser shall keep records on the whereabouts of all copies made and submit them to the Supplier upon request.

#### 4. Transfer of Risk

Article V GL shall be amended as follows:

If the Software is provided via electronic communication media (e.g. via the internet) the risk shall pass when the Software leaves the sphere of influence of the Supplier (e.g. when making a download).

#### 5. Additional Obligations to Co-operate on the Part of the Purchaser and Liability

Article VI GL shall be supplemented as follows:

<sup>1</sup> The Purchaser shall take all required and reasonable measures to prevent or limit damage attributable to the Software. <sup>2</sup> In particular, the Purchaser shall make regular back-up copies of the programs and data. <sup>3</sup> To the extent the Purchaser negligently breaches this obligation, the Supplier shall not be liable for any consequences arising therefrom; this shall apply in particular to the replacement of lost or damaged data or programs. <sup>4</sup> The above provision does not imply a change in the burden of proof.

#### 6. Defects as to Quality (“the Defects”)

(1) In the case of Software provided permanently, Article VIII GL shall be replaced by the following:

- (a) <sup>1</sup> Contractual claims based on Defects of the Software are subject to a limitation period of 12 months from the start of the statutory statute of limitations. <sup>2</sup> The statutory limitation period shall apply to claims for damages based on intent and gross negligence and in the case of culpable injury to life, body or health. <sup>3</sup> Insofar as longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code (“BGB”) and in the case of intent, the fraudulently conceals the Defect or non-compliance with guaranteed characteristics (“Beschaffenheitsgarantie”) the longer statutory periods shall apply. <sup>4</sup> Claims for the reimbursement of expenses on the part of the Purchaser in accordance with Sec. 445a BGB (entrepreneur’s right of recourse) shall be subject to a limitation period of 12 months from the start of the statutory statute of limitations, provided the last contract in the supply chain is not a sale of consumer goods. <sup>5</sup> The legal provisions regarding suspension of the statute of limitations (“Ablaufhemmung”, “Hemmung”) and recommencement of limitation periods shall remain unaffected.
- (b) <sup>1</sup> The suspension of the statute of limitations according to Sec. 445b para. 2 BGB (limitation of right of recourse) shall in any case end no later than 5 years after the date on which the Supplier delivered the concerned item to the seller. <sup>2</sup> This shall not apply if the last contract in the supply chain is a sale of consumer goods or in cases that are according to Sentence 3 (a) above.
- (c) <sup>1</sup> Software is considered to be defective only if the Purchaser can prove that there are reproducible deviations from the specifications. <sup>2</sup> A Defect shall not be deemed to exist if it does not occur in the latest version supplied to the Purchaser, and the Purchaser can be reasonably expected to use it. <sup>3</sup> The Sentence above shall not apply if the last contract in the supply chain is a sale of consumer goods.

- (d) <sup>1</sup> Notifications of Defect by the Purchaser shall be given in written form without undue delay. <sup>2</sup> Defects and the relevant data processing environment shall be described as precisely as possible therein.
- (e) Claims based on Defects do not exist in the case of any of the following:
- insignificant deviations from the agreed characteristics;
  - only minor impairment of usability;
  - damage from faulty or negligent handling;
  - damage from particular external influences not assumed under the contract;
  - modifications or amendments made by the Purchaser or third parties, and any consequences resulting therefrom; or
  - incompatibility of the Software provided with the data processing environment of the Purchaser.
- (f) <sup>1</sup> In the case of defective Software, the Supplier shall be first given the opportunity to repair or replace the Software (“Nacherfüllung”) within a reasonable period of time. <sup>2</sup> The Supplier shall be entitled to choose between repair and replacement.
- (g) Unless the Supplier chooses otherwise, the Supplier will correct the Defect in the Software as follows:
- (aa) <sup>1</sup> The Supplier will provide a replacement by way of an update or an upgrade of the Software if available to the Supplier or obtainable with reasonable efforts by the Supplier. <sup>2</sup> If the Purchaser has been granted a Multiple License, it may make a corresponding number of copies of the update, or, as the case may be, upgrade.
- (bb) Until an update, or, as the case may be, upgrade is provided, the Supplier will make available to the Purchaser an interim solution bypassing the Defect, provided that this does not result in unreasonable expenditures and that the Purchaser would otherwise, due to the Defect, be unable to complete work that cannot be delayed.
- (cc) If a data medium or documentation supplied proves to be defective, the Purchaser’s right shall be limited to demanding that the Supplier replace it with a non-defective version.
- (dd) <sup>1</sup> The Supplier shall have the right to choose whether it corrects the Defect at the location of the Purchaser or at its own location. <sup>2</sup> If the Supplier chooses to correct the Defect at the Purchaser’s location, the Purchaser shall assure that the required hardware and software as well as the required operating conditions (including the required computing time) and qualified operating personnel are available. <sup>3</sup> The Purchaser shall submit to the Supplier the documents and information available to it and required for Defect correction.
- (ee) The Purchaser shall enable the Supplier access for remote maintenance if so requested.
- (ff) <sup>1</sup> The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, to the extent that expenses are increased because the subject matter of the Supplies has subsequently been brought to another location than the Purchaser’s branch office, unless doing so complies with the normal use of the Supplies. <sup>2</sup> This applies accordingly to claims for the reimbursement of expenses on the part of the Purchaser in accordance with Sec. 445a BGB (entrepreneur’s right of recourse), provided the last contract in the supply chain is not a sale of consumer goods.

- (gg) The Purchaser's right of recourse against the Supplier pursuant to Sec. 445a BGB (entrepreneur's right of recourse) is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects.
  - (h) If the Defect cannot be corrected, the Purchaser shall be entitled to rescind the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Article XII GL.
  - (i) <sup>1</sup> In the case of claims for Defects, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. <sup>2</sup> The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. <sup>3</sup> Unjustified notifications shall entitle the Supplier to reimbursement of its expenses by the Purchaser.
  - (j) <sup>1</sup> Claims for damages shall furthermore be subject to Article XII GL. <sup>2</sup> Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this No. 6, if based on a Defect, shall be excluded.
- (2) In the case of Software not provided permanently, Article VIII GL shall be replaced by the following:
- (a) <sup>1</sup> Software is considered to be defective only if the Purchaser can prove that there are reproducible deviations from the specifications. <sup>2</sup> A Defect shall not be deemed to exist if it does not occur in the latest version supplied to the Purchaser, and the Purchaser can be reasonably expected to use it.
  - (b) <sup>1</sup> Notifications of Defect by the Purchaser shall be given in written form without undue delay. <sup>2</sup> Defects and the relevant data processing environment shall be described as precisely as possible therein.
  - (c) Claims based on Defects do not exist including but not limited in the case of any of the following:
    - insignificant deviations from the agreed characteristics;
    - only minor impairment of usability;
    - damage from faulty or negligent handling;
    - damage from particular external influences not assumed under the contract;
    - modifications or amendments made by the Purchaser or third parties, and any consequences resulting therefrom; or
    - incompatibility of the Software provided with the data processing environment of the Purchaser.
  - (d) <sup>1</sup> In the case of Defective Software, the Supplier shall be first given the opportunity to repair or replace the Software ("Nacherfüllung") within a reasonable period of time. <sup>2</sup> The Supplier shall be entitled to choose between repair and replacement.
  - (e) Unless the Supplier chooses otherwise, the Supplier will correct the Defect in the Software as follows:
    - (aa) <sup>1</sup> The Supplier will provide a replacement by way of an update or an upgrade of the Software if available to the Supplier or obtainable with reasonable efforts by the Supplier. <sup>2</sup> If the Purchaser has been granted a Multiple License, it may make a corresponding number of copies of the update, or, as the case may be, upgrade.
    - (bb) Until an update, or, as the case may be, upgrade is provided, the Supplier will make available to the Purchaser an interim solution bypassing the Defect, provided that this does not result in unreasonable expenditures and that the Purchaser would otherwise, due to the Defect, be unable to complete work that cannot be delayed.
- (cc) If a data medium or documentation supplied proves to be defective, the Purchaser's right shall be limited to demanding that the Supplier replace it with a non-defective version.
  - (dd) <sup>1</sup> The Supplier shall have the right to choose whether it corrects the Defect at the location of the Purchaser or at its own location. If the Supplier chooses to correct the Defect at the Purchaser's location, the Purchaser shall assure that the required hardware and software as well as the required operating conditions (including the required computing time) and qualified operating personnel are available. <sup>2</sup> The Purchaser shall submit to the Supplier the documents and information available to it and required for Defect correction.
  - (ee) The Purchaser shall enable the Supplier access for remote maintenance if so requested.
  - (f) If repair or replacement is unsuccessful, the Purchaser is entitled to terminate the contract without notice or reduce the remuneration, irrespective of any claims for damages it may have according to Article XII GL.
  - (g) <sup>1</sup> Furthermore, the provisions of Art. XII GL shall apply in respect of claims for damages. <sup>2</sup> Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this No. 6, if based on a Defect, shall be excluded.
- ## 7. Industrial Property Rights And Copyright; Defects In Title
- Article IX GL shall be replaced by the following:
- (1) <sup>1</sup> Unless otherwise agreed, the Supplier shall provide the Supplies in the country of the place of delivery or within the territory of the European Union or of another signatory state to the Agreement on the European Economic Area without infringing any third-party industrial property rights and copyrights (hereinafter referred to as "IPR"). <sup>2</sup> If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser - in the case of Software provided for an unlimited time period within the contractual limitation period stipulated for Defects; in the case of temporarily provided Software within the statutory limitation period - as follows:
    - (a) <sup>1</sup> The Supplier 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 Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for the supplier under reasonable conditions, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.
    - (b) The Supplier's liability to pay damages is governed by Article XII GL.
    - (c) <sup>1</sup> The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. <sup>2</sup> If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it 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.

- (2) Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
- (3) Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
- (4) In addition, with respect to claims by the Purchaser pursuant to No. 7.1 (a) above, provisions of No. 6.1 (i) and No. 6.1 (f) first sentence shall apply *mutatis mutandis* in the event of an infringement of an IPR.
- (5) Where other defects in title occur, the provisions of No. 6 shall apply *mutatis mutandis*.
- (6) Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this No. 7, based on a defect in title, are excluded.