

General Terms and Conditions of Sale and Delivery of Moog GmbH

MOOG

1. Scope of application

- 1.1 These terms and conditions apply to all deliveries made by Moog GmbH ("Moog"). Deliveries shall be made exclusively subject to the following terms and conditions.
- 1.2 Deviating provisions of the purchaser shall only apply if Moog agrees thereto in writing. Delivery shall not be deemed to be consent. If Moog agrees to deviating provisions of the purchaser these shall only apply to the transaction for which they are concluded.
- 1.3 These terms and conditions apply to all future agreements with purchasers even if they are not expressly agreed in the future.
- 1.4 These terms and conditions are available in German and in English. Both versions are binding. In the event of contradictions or lack of clarity the German version shall prevail.
- 1.5 Technical documents, drawings and calculations which are provided to the purchaser in connection with the order negotiations and the execution of the agreement are confidential and shall not be used for other purposes, duplicated or disclosed to third parties by the purchaser. We reserve title, copyright and other rights in such documents.

2. Offer

- 2.1 Moog's offers shall be subject to confirmation.
- 2.2 Only written offers shall apply. Additional verbal consent or descriptions shall only apply if confirmed by Moog in writing.
- 2.3 The documents, drawings, delivery periods, weights and dimensions which are part of the offers are non-binding guidelines to the extent that they are not expressly confirmed as binding by Moog in writing.
- 2.4 Moog retains title and copyrights in offers, illustrations, drawings, calculations, samples and other documents. These may not be disclosed to third parties without Moog's express written consent. If Moog is not awarded a contract the documents shall be returned to Moog forthwith.

3. Agreement

- 3.1 The purchase agreement is concluded on written confirmation by Moog.
- 3.2 Moog's liability for defects which are the result of the documents submitted by the purchaser (e.g. illustrations, drawings, calculations) and incorrect or unclear, including verbal information provided by the Purchaser, is excluded.

4. Delivery period, delivery date and delivery

- 4.1 The delivery period shall begin when the purchaser receives the order confirmation from Moog or when Moog receives the acceptance declaration from the purchaser, but not before the purchaser has provided the licences, permits, contractual duties or other formalities or before settlement of the agreed payments.
- 4.2 The delivery date is met if the goods leave Moog's premises or the agreed place of dispatch or the purchaser has been notified that the goods are ready for dispatch by expiry of the deadline. Delivery by Moog shall be ex works (EXW Incoterms 2010). Deviating provisions must be agreed in writing.
- 4.3 In the event of delay in delivery, a 14 day subsequent delivery period shall apply ("waiting period"). The purchaser shall not be entitled to any rights owing to delayed delivery during this waiting period.
- 4.4 After expiry of the waiting period the purchaser may rescind the agreement with respect to the delayed part after setting a reasonable subsequent deadline, with the threat of refusal to accept performance if Moog does not deliver by the deadline, unless acceptance of the part performance cannot be expected of the purchaser. Further claims arising from the delay in delivery shall be determined exclusively by 8.7. of these General Terms and Conditions of Sale and Delivery.
- 4.5 At the request of Moog the Purchaser is obliged to declare within a reasonable period whether it withdraws from the agreement due to the delay in delivery and/or it demands compensation in lieu of performance or insists on performance.
- 4.6 Part deliveries are permissible to the extent that they can be reasonably expected of the purchaser.

5. Transfer of risk

- 5.1 The transfer of risk is in accordance with 4.2, i.e. in accordance with the Incoterms 2010. If the purchaser does not accept the goods and is not entitled to refuse acceptance the risk shall pass to the purchaser anyway.
- 5.2 In the event of damage to or loss of the goods during carriage, a detailed and qualified loss assessment must be carried out by the purchaser at the freight carrier forthwith once knowledge has been gained. In addition, Moog shall be informed in writing without undue delay.

6. Terms of payment

- 6.1 Where there is no special agreement, all prices are excluding packaging. The VAT applicable under the respective law shall be in addition to the prices.
- 6.2 Where not otherwise agreed in writing, Moog's invoices shall be due for payment within 14 days of the date of the invoice. If the invoices are not paid within 30 days of receipt of the invoice, at the latest 40 days after delivery, the Purchaser shall be deemed to be in default with payment and Moog can claim default interest and any further damages caused by such default.
- 6.3 All payments shall be made free of charges to Moog. If the purchaser is in default with payment, Moog is entitled to charge default interest of 8 % above the respective basic interest rate in accordance with § 247 of the German Civil Code (Bürgerliches Gesetzbuch). Moog reserves the right to assert any further default damages.
- 6.4 The purchaser may neither retain payments owing to counterclaims, nor set them off against payments, unless the counterclaim is recognised by Moog or has been determined finally and absolutely.
- 6.5 If the terms of payment are not observed by the purchaser, all open claims arising from this order shall be due immediately. In the case of part payments not received, in the case of default, or after fruitless expiry of a reasonable subsequent period, Moog is entitled to terminate the agreement, stop work and to invoice the purchaser for all services already provided and to assert claims for compensation.

7. Reservation of title

- 7.1 Moog reserves title in the goods delivered until all claims to payment arising from the business relationship between Moog and the purchaser have been settled in full. The purchaser shall treat the goods carefully; in particular, it shall insure them sufficiently at its own cost against fire, water and theft at replacement value.
- 7.2 Where goods delivered by Moog are processed by the purchaser, Moog shall be deemed to be the manufacturer without any obligations resulting from Moog and Moog shall acquire ownership in the new goods. If the goods are processed together with other materials, Moog shall acquire co-ownership on a pro rata basis of the invoice value of the goods and the value of the other materials.
- 7.3 In case of a combination or intermingling of Moog's goods with one of the purchaser's products, the co-ownership in the product will devolve to Moog proportionately to the invoice value, or in case of the absence of such, proportionately to the ordinary market value. In these cases the purchaser is deemed to be the custodian.
- 7.4 The purchaser is entitled to sell the goods in which Moog has ownership rights in the framework of proper business practice. The purchaser assigns already now all claims arising from the sale of such goods, to the extent of Moog's title in the sold goods, to Moog as security. The purchaser is entitled to collect the claims until justified revocation by Moog.
- 7.5 The purchaser shall notify Moog without undue delay of any garnishments, seizures or other disposals and interventions by third parties. If the third party cannot refund the court and out-of-court costs of third-party action opposing execution of a court decision pursuant to § 771 German Code of Civil Procedure (Zivilprozessordnung) the purchaser is liable for the shortfall incurred by Moog.
- 7.6 In the event of defaults with payments and if Moog withdraws from the agreement, the purchaser is obliged to hand over the goods under reservation of title immediately. For this event, the purchaser

hereby irrevocably permits Moog to collect the reserved goods immediately and unobstructed access to its business premises and storerooms for this purpose. Once Moog has withdrawn from the contract and has repossessed the reserved goods it may commercialise such goods freely provided that it has warned the purchaser accordingly beforehand. Any proceeds thereby realized will be offset against the amount owed by the purchaser. The purchaser shall bear the costs of commercialisation proven by Moog.

- 7.7 If the realisable value of the securities due to Moog exceeds the claims by more than 10 %, Moog shall release securities to this extent – at its discretion - at the request of the purchaser.

8. Defect warranty, liability

- 8.1 The purchaser shall inspect the goods received without undue delay on arrival, for defects and guaranteed quality. Moog shall be informed of any obvious defects of the goods in writing, no later than seven days after receipt of the goods. Latent defects shall be reported in writing no later than seven days after discovery. Otherwise, the goods shall be deemed to have been approved.
- 8.2 Unless otherwise agreed, the quality of the goods as required under the contract shall be solely as stated in the Moog product specifications which applied at the time of delivery. The quality of samples and specimens is only binding to the extent that this has been expressly agreed; the agreement must comply with written-form requirements. Statements regarding quality and durability and any other data are not guarantees ("Garantie") unless they have been agreed and designated as such in writing.
- 8.3 The purchaser shall provide Moog the opportunity to investigate the complaint; in particular it shall make damaged goods and the packaging available for inspection by Moog. If the purchaser refuses to comply with this requirement Moog may refuse to perform warranty for defective goods for the duration of such refusal.
- 8.4 If the purchaser demands subsequent performance on the grounds of a defect, Moog may choose whether to remedy the defect itself or to supply replacement goods. Replaced goods shall be returned to Moog. If subsequent performance or replacement are not possible, are refused or do not take place or fail for other reasons within Moog's sphere of responsibility before expiry of the reasonable deadline set by the purchaser, the purchaser may, at its own discretion, withdraw from the agreement or demand a reduction in the purchase price.
- 8.5 Of the costs of remedy or supply of replacement goods - to the extent that the complaint is justified - Moog shall bear the costs incurred by replacement of the replacement goods. The transport and carriage expenses shall be borne by the purchaser. Moog's duty to render subsequent performance does not include removal and assembly costs. Costs associated with unjustified complaints regarding defects shall be borne by the purchaser.
- 8.6 Moog shall not be liable for damages to or defects in the goods caused by unsuitable or incorrect use or storage, faulty assembly, commissioning, disassembly, modification or repair by the purchaser or by third parties not authorised by Moog, natural wear and tear, faulty or negligent treatment, circumstances or influences for which the purchaser is responsible, unsuitable operating materials, replacement materials, chemical, electro-chemical or electrical influences, unless Moog is in default.
- 8.7 Further-reaching claims of the purchaser, in particular for compensation in lieu of performance and for replacement of other direct or indirect damage - including concomitant or consequential damage - irrespective of legal grounds, in particular owing to the infringement of duties arising from the obligation relationship and from tort, are excluded. This shall not apply - without this being connected with a reversal of the burden of proof -, in as far as:
 - a) Moog maintains silence with malicious intent regarding a defect in title or a material defect or has assumed a guarantee for the quality of the goods,
 - b) the damage is based on intent or gross negligence on the part of Moog, its legal representatives or vicarious agents, or negligent breach on the part of such persons of duties which are prerequisites for executing of this agreement and which the purchaser can generally rely on and be entitled to rely on,
 - c) a negligent infringement of duty by Moog, its legal representatives or vicarious agents has led to damage to body, personal injury or damage to health, or
 - d) Moog is liable under statute for other reasons such as reasons in accordance with the German Product Liability Act (Produkthaftungsgesetz). If Moog is liable in accordance with the provisions of this paragraph, in the case of negligence, Moog's duty to pay compensation is restricted, in terms of amount, to the foreseeable damage typical of this type of agreement.
- 8.8 The provisions of 8.7 shall apply accordingly to direct claims of the purchaser vis-à-vis Moog's statutory representatives or vicarious agents.
- 8.9 All claims for defects asserted by the purchaser shall become statute-barred twelve months after delivery of the goods to, or performance of the service, vis-à-vis the purchaser. The limitation period shall be twelve months for replacement goods and repair. However, it shall run at least until expiry of the original limitation period for the goods supplied. The provisions of this paragraph shall not apply in as far as they concern claims for compensation or statute prescribes mandatory longer deadlines pursuant to §438 (1) no. 2 (Construction and Construction Properties (Bauwerke und Sachen für Bauwerke)), §479 (1) (Right of Recovery (Rückgriffsanspruch)), §634a (1) no. 2 (Construction Defects (Baumängel)) of the German Civil Code and §12 German Product Liability Act.

9. Force majeure

- 9.1 Each party shall not be liable for non-fulfilment of one of their contractual duties if the non-fulfilment is the result of an obstacle outside its control, in particular of one of the following reasons: fire, natural catastrophes, war, confiscation, general lack of raw materials, restriction of energy consumption, labour disputes, where no official permit is granted or where the permit is not granted in due time or where the permit is revoked, or where breaches of contract by suppliers are the result of one of these reasons outside of the control of the obliged parties, or if breaches of contract by suppliers are the result of one of these reasons. The provision applies to all contractual duties including the duties to pay compensation.

- 9.2 Each party can terminate the agreement by written notice of termination in the event that its implementation is hindered for more than six months in accordance with 9.1.

10. Miscellaneous

- 10.1 Business correspondence shall principally be in German and English.
- 10.2 The purchaser may only use the trade marks, trade names and other marks belonging to Moog with Moog's prior written consent.
- 10.3 In the event that individual provisions are invalid, the remaining provisions shall remain unaffected thereby. Should any part of a clause be invalid, this shall not affect the validity of the rest of the clause if it can be separated in terms of its content, is comprehensible in itself or if it constitutes a meaningful clause in the overall context of the agreement.

11. Place of performance, jurisdiction, applicable law

- 11.1 The legal relationships between the purchaser and Moog shall be subject to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980. Moreover, the German law of the German Civil Code/German Commercial Code (Handelsgesetzbuch) shall apply to the contractual relationships.
- 11.2 All disputes which arise in connection with this agreement shall be decided finally and bindingly by the state courts competent for the domicile of Moog. Moog reserves the right to also file a claim to the state courts competent for the domicile of the purchaser instead.

12. Observation of statute

- 12.1 Moog shall be responsible for observing the German safety regulations where there is no written agreement determining otherwise.
- 12.2 Observation and implementation of the relevant external economic provisions, and other statutes of its country and the country to which the goods are to be delivered, is the responsibility of the purchaser. The purchaser shall inform Moog of any peculiarities which arise from these provisions.

§ 1 Scope of these General Terms and Conditions for Software License

(1) MOOG GmbH, Hanns-Klemm-Straße 28, 71034 Böblingen ("Licensor") has agreed with the user of the Licensed Product ("Licensee") to grant Licensee a license to use and exploit the Moog software („Licensed Product“) subject to the terms and conditions of these General Terms and Conditions for Software License („Terms and Conditions“).

(2) The Licensed Product comprises the object code of the software and, if agreed upon, of any documentation.

§ 2 Grant of Rights

(1) Licensor hereby grants to Licensee, if the Parties did not agree otherwise, the non-exclusive, non-transferable right to use, copy, revise and decompile the Licensed Product without limitation in time and territory for Licensee's business purposes subject to the terms of these Terms and Conditions.

(2) If the Licensed Product is integrated in a product of the Licensor (e.g. valve) that is supposed to be sold by Licensee to an end-user as agreed between the Parties ("Contractual Product"), the Licensor grants, in deviation of paragraph 1, Licensee a right to sublicense the Licensed Product subject to the terms of these Terms and Conditions. In the case of sublicensing, Licensee will remain fully responsible towards Licensor for compliance with and any breach of these Terms and Conditions by the end-user.

(3) The right to use and exploit is limited to the agreed purpose of use („Purpose of Use“). If the Licensed Product is integrated in a Contractual Product, the Purpose of Use is the designated operation of the Contractual Product.

(4) The right to copy the Licensed Product granted to Licensee herein is limited to (i) the installation of the Licensed Product on a computer system which is in Licensee's immediate possession and (ii) to fulfill the Purpose of Use and (iii) a copy thereof which is required for the loading, display, running, transfer or storage of the Licensed Product as well as to the right for an authorized person to make a copy for security backup purposes, as stated in Section 69 d para. (2) German Copyright Act (Urhebergesetz – "UrhG").

(5) If the Licensed Product is integrated to the Contractual Product, the following applies in deviation of paragraph 4: The right to copy the Licensed Product granted to Licensee herein is limited to a copy thereof which is required for the loading, display, running, transfer or storage of the Licensed Product for the purpose of operating the Contractual Product.

(6) The right to decompile the Licensed Product granted to Licensee herein is only granted under the terms of Section 69 e para. (1) nos. 1 to 3 UrhG and within the limits of Section 69 e para. (2) nos. 1 to 3 UrhG.

(7) Notwithstanding the provisions of subsections 1 - 5, Licensee shall, for any Licensed Product, if and as far as it includes Open Source Software, receive licenses in accordance with the license terms applicable to such software. Both Parties agree to comply with such license terms. The Open Source Software that is part of the Licensed Product as well as the terms and conditions of such Open Source Software will be conveyed to the Licensee upon request, or made available, if this is necessary according to the applicable license terms.

(8) Further rights to use and exploit the Licensed Products are not granted to Licensee.

(9) Licensee undertakes to allow Licensor or an agent of Licensor to audit whether Licensee's use of the Licensed Product is consistent with the rights granted to Licensee herein upon request by Licensor and provided there is a legitimate interest therein and to give full co-operation to Licensor or its agent carrying out such audit.

§ 3 Delivery and Installation of Licensed Product

(1) Licensor shall deliver the necessary number of copies of the Licensed Product for the exercise of the rights to use and exploit granted to Licensee herein either together with the Contractual Product as integral part of the Contractual Product or, if the Licensed Product is not integrated in the Contractual Product, in machine readable form (at Licensor's option) either stored on a type of data storage media in common use at the time or transferred by remote data transfer.

(2) Licensee shall receive any agreed software documentation as electronic document (at Licensor's option) either stored on a type of data storage or transferred by remote data transfer in English or German.

(3) The Parties agree Licensor's registered office as the place of performance for the delivery of the Licensed Product. Licensee shall bear all costs and risks related to such delivery. Upon transfer of the Licensed Product, the risk of transportation (particularly the risk of accidental loss or destruction) of the copies of the Licensed Product passes to Licensee.

(4) Licensee is responsible for providing the system environment in accordance with the system requirements for the Licensed Product.

(5) The Licensed Product shall be installed by Licensee, if the Licensed Product is not already integrated in the Contractual Product at the time of delivery. In this case, Licensee must notify Licensor, upon request of Licensor, of the respective installation locations of the copies of the Licensed Product. This shall also apply to any later change of installation locations.

(6) All copies of the Licensed Product shall remain in the sole ownership of Licensor until the complete payment of the license fees.

§ 4 License Fees

(1) If the Licensed Product is delivered as integral part of the Contractual Product, the license fee is generally compensated with the payment of the Contractual Product. This does not apply, if the purchase order confirmation stipulates that the Licensed Product needs to be activated at a charge by means of a license key.

(2) If the Licensed Product is offered, at a charge, on a data medium or, at a charge, per remote data transmission, the license fee will be set out in the purchase order confirmation.

(3) If the Licensed Product is explicitly offered "free of charge" (e.g. configuration software that is offered free of charge per remote data transmission), the grant of rights for the Licensed Product under these Terms and Conditions shall be free of charge.

(4) The commercial payment terms of the General Terms and Conditions of Sale and Delivery of Licensor apply, if the Parties did not agree otherwise.

§ 5 Machinery Directive 2006/42/EC and necessary security measures

(1) Licensed Product does fulfill the requirements of the Machinery Directive 2006/42/EC, in particular with regard to the functional security, only then, if it is appropriately marked and is delivered with the appropriate additional documentation for the intended use, and is delivered with the necessary certificates.

(2) The Licensee carries the sole responsibility with regard to the fulfilment of the Directive mentioned in paragraph 1, in particular in cases in which the Licensed Product is used within the scope of the Machinery Directive.

(3) The Licensee carries the sole responsibility to secure the Licensed Product against third-party attacks, e.g. viruses, hacker attacks and the like.

(4) The Licensee has the obligation to secure its IT-infrastructure, in particular applications relevant to security, with suitable measures in a redundant way to prevent any data loss resulting out of the use of Licensed Product.

§ 6 Rights in Case of Defects, if Licensed Product is offered free of charge

(1) In case the Licensed Product is offered free of charge, the rights of the Licensee in case of defects shall be limited to the rights as set out in Section 523 and 524 BGB.

§ 7 Rights in Case of Defects, if Licensed Product is offered at a charge

(1) The Licensed Product provided by Licensor shall be substantially in accordance with the product description. Warranty rights in case of defects shall be excluded in case of minor or immaterial deviations from the agreed or assumed characteristics as well as in the case of just slight impairment of use.

(2) In respect of updates, upgrades and the delivery of new versions, Licensee's warranty rights in case of defects shall be limited to the new features of the update, upgrade or new version compared to the previous version release.

(3) The Licensor may remedy any product defects by methods and means of its own choice. Remedies also include any reasonable workarounds made available by Licensor to Licensee. The Licensor may also demand that Licensee shall install "bug fixes" in any software components made available to Licensee. Licensor may at its reasonable discretion determine the time for remedying any product defects.

(4) If Licensor's final attempt to remedy a product defect has failed, Licensee may demand a reduction in the price of the defective software or rescind the agreement. Whether the final attempt to remedy a product defect has failed shall be determined in consideration of the complexity of the problem and surrounding circumstances, it being agreed and understood that two failed attempts shall not be sufficient to constitute a "failed attempt" by Licensor. Any right of Licensee to remedy product defects independently or with the assistance of third parties is hereby excluded. Licensee shall have no claims for damages against Licensor except as provided in Section 7 below.

(5) Licensee shall provide Licensor with written notice of any product defects promptly upon discovery, enclosing therewith a detailed description of the defects. Any obligations of Licensee to provide notice of product defects under applicable commercial law shall remain unaffected hereby.

(6) Any claims based upon product defects are time-barred twelve (12) months after making available the Licensed Product, unless Licensor has fraudulently concealed a product defect. The statutory limitation period for any damage claims by Licensee due to product defects remains unaffected.

(7) Any claims for damages are subject to the limitations set forth under Section 7.

(8) If the defect is caused by the defective products of a supplier and the supplier does not act as an assistant in performance of Licensor, rather Licensor is merely passing on a third party product to Licensee, then Licensee's rights in case of defects shall at first hand be limited to the assignment of Licensor's rights in case of defects against its supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which Licensor is responsible. If Licensee is unable to assert his rights in case of defects against the supplier out of court,

Licensor's subsidiary liability for Licensee's rights in case of defects shall remain unaffected.

(9) Amendments or additions to the services or items delivered which Licensee carries out itself or through third parties, shall cause Licensee's rights in case of defects to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.

(10) Licensor may refuse to remedy defects or deliver replacements, until Licensee has paid the agreed fees to Licensor, less an amount which corresponds to the economic value of the defect.

(11) Product descriptions shall not be deemed guaranteed unless separately agreed in writing.

§ 8 Rights in Case of Defects in Title, if Licensed Product is offered at a charge

(1) The Licensor warrants that the Licensed Product shall not infringe any third-party rights, if used as agreed and in accordance herewith. Licensor shall not be liable under this warranty unless Licensee provides Licensor with prompt written notice of any third-party claims and allows Licensor to defend such claims and entertain settlement negotiations, if and as far as legally possible. The Licensee shall, to a reasonable extent and at no cost to Licensor, assist Licensor with the defense of any third-party claims, in particular by making available all necessary information. Any obligations of Licensee to provide notice of product defects under applicable commercial law shall remain unaffected hereby.

(2) Rights within the meaning of this Section shall only refer to rights held by third parties in the Federal Republic of Germany.

(3) If third-party rights impair the agreed use of Licensed Product by Licensee, Licensor may, at its sole option, either modify the Licensed Product such that it no longer infringes the third-party rights, or, in the alternative, acquire the legal rights necessary for use of the Licensed Product. Any right of Licensee to modify the Licensed Product independently or with the assistance of third parties is hereby excluded.

(4) Licensee shall have no claims for damages against Licensor, except as provided in Section 7.

(5) Licensee shall have no claims based upon any defects in title, if Licensed Product has been modified by Licensee or any third parties, unless Licensee can show that the infringement did not result from modification of the Licensed Product. Licensee further shall have no claims based upon any defects in title, if infringement results from any combination of the Licensed Product of Licensor with products or services of any third parties other than subcontractors of Licensor.

(6) Any claims of Licensee based upon defects in title to the Licensed Product are time-barred 12 months after the Licensed Product was made available to Licensee, unless Licensee has fraudulently concealed a defect in title; the statutory limitation period for damage claims resulting out of defects in title remains applicable.

§ 9 Liability

(1) Licensor is subject to unlimited liability for any damages caused by grossly negligent or willful misconduct of Licensor or its legal representatives or agents, or resulting from any wrongful harm to life, limb or health.

(2) Licensor assumes liability for any damages caused by ordinary negligence if, and solely to the extent, Licensor breaches any material obligation under the agreement jeopardizing achievement of the purpose of the agreement and if Licensee placed particular reliance upon performance of such obligation. In such cases, Licensor's liability shall be limited to damages reasonably foreseeable at the time the agreement was signed. Sentence 1 does not apply, if the grant of rights with regard to the Licensed Product is free of charge; in such case liability for ordinary negligence is excluded.

(3) The foregoing limitations of liability shall also inure to the benefit of the Licensor's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or torts.

(4) Any liability of Licensor for damages under the German Product Liability Act shall remain unaffected hereby.

(5) Any liability of the Licensor for lost data shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Licensee to back-up data on a regular basis according to the state of the art shall remain unaffected thereby.

(6) Unless provided otherwise in these Terms and Conditions, any and all claims of Licensee against Licensor shall be subject to a limitation period of one year from the date of accrual and the date on which Licensee discovered or, absent recklessness on the part of Licensee, would have discovered the circumstances giving rise to the claim, except for claims defined in subsections (1), (2), or (4).

§ 10 Export Control

(1) The Licensee shall, in relation to the Licensed Product, comply with all export control laws and regulations of the European Union, the United States of America and any other countries which are relevant for Licensee.

(2) The Licensee shall not sub-contract or assign the benefit of the Licensed Product, export, sell or otherwise transfer the Licensed Product to any entity based in any state that appears on restricted lists published by the states listed in paragraph 1. The same applies to individuals that are listed on any restricted list.

§ 11 Consequences of a contractual breach by Licensee

(1) Upon breach of contract by Licensee, in particular if Licensee oversteps its license rights granted under this agreement, in case of default of payment or breach of the export control clause, Licensor shall be entitled to terminate this agreement for cause without notice, and require at Licensee's expense the return of all copies of the Licensed Product in which Licensor has retained ownership, or if applicable, to demand the assignment of Licensee's right of return against third parties.

(2) In such case, upon Licensor's request, Licensee shall confirm in writing that no copies of the Licensed Product of copies thereof were retained and that all installations of the Licensed Product have been irrevocably deleted from Licensee's or third party's systems. Before the unconditional transfer of ownership, Licensee shall only dispose of rights in the Licensed Product with the written consent of Licensor.

§ 12 Final Provisions

(1) Amendments or additions to these Terms and Conditions must be made in writing to be effective. This shall also apply to amendments of this written form requirement.

(2) These Terms and Conditions shall be governed by the laws of the Federal Republic of Germany except for the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980).

(3) The courts for Licensor's registered office shall have exclusive jurisdiction over all disputes under and in connection with these Terms and Conditions, provided that Licensee is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, Licensee has no place of business or ordinary residence in the Federal Republic of Germany.

(4) Should any provision of these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining terms. The Parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in these Terms and Conditions.

(5) In case of conflict between the German and the English version of these Terms and Conditions, the German version shall prevail.