**General Contractual Terms and Conditions for the Sale of Standard Software
of the company Engelmann Sensor GmbH**

§ 1 Validity of the contractual terms and conditions

(1)   These General Contractual Terms and Conditions shall apply exclusively to the sale of standard software and to pre-contractual obligations in the entrepreneurial transactions, insofar as not otherwise agreed. Other contractual terms and conditions shall not become the contents of this contract, even if the company Engelmann Sensor GmbH (hereinafter referred to as "ENGELMANN") does not explicitly object hereto.

(2)   Even if reference is not made hereto, once again upon conclusion of similar contracts, the General Contractual Terms and Conditions of ENGELMANN shall apply exclusively in their version which can be called upon submission of the declaration of the purchaser under www.engelmann.de unless the contractual partners have agreed otherwise in writing.

(3)   In case of contracts with consumers only §§ 3, 4, 8 Par. 1–3 and 15 shall apply; incidentally the statutory regulations shall apply.

(4)   §§ 433 ff. BGB [German Civil Code] shall apply in addition to the delivery or the download of the standard software. §§ 611 ff. BGB shall apply to separately ordered services (e.g. installation, parameterisation, training). For the order and the acquisition of other products of Engelmann reference is made to the General Business Terms of ENGELMANN under the version which can be called at www.engelmann.de unless the contractual partners have agreed otherwise in writing.

§ 2 Conclusion of contract

(1)   Offers by ENGELMANN are without obligation and non-binding unless the offer has been described as binding in writing. A legal commitment shall only be established by a contract signed by both parties, a written order confirmation or the handover of the licence code for the standard software by ENGELMANN to the purchaser and its use by the purchaser. ENGELMANN can request written confirmation of oral contractual declarations of the orderer.

(2)   The purchaser remains bound to declarations concerning the conclusion of contracts (contractual offers) for four weeks.

§ 3 Object of contract, scope of services

(1)   The object of these contractual terms and conditions is the delivery of standard software recorded on data carriers or provided for download together with the programme description and operating instructions as well as the granting of corresponding rights of use according to § 4.

(2)   The purchaser has examined the standard software before conclusion of the contract by a 30-day use of a test version (§ 5 of these AVB) that the specifications of the software meet its wishes and needs. It is aware of the essential function features and conditions of the software.

(3)   Decisive for the scope, type and quality of the deliveries and services is the contract signed by both parties or the order confirmation of ENGELMANN, otherwise the offer of ENGELMANN. Other details or requirements shall only become a part of the contract if the contractual partners agree this in writing or ENGELMANN has confirmed these details in writing. Subsequent changes to the scope of services require the written agreement or the written confirmation by ENGELMANN.

(4)   Product descriptions, presentations, test programmes etc. are service specifications, however no guarantees. A guarantee requires the written declaration by the management of ENGELMANN which is entitled to representation.

(5)   The purchaser shall receive as end user the software consisting of the machine programme and the user manual or the operating instructions. The technology of the delivery of the software is oriented to the agreements; in the absence of another agreement the programme and manual/operating instructions shall be delivered on CD-ROM/ or on a data storage stick or made available as download by ENGELMANN. The purchaser has no entitlement to provision of the source programme.

(6)   ENGELMANN shall provide all deliveries and services according to the status of technology.

§ 4 Rights of the purchaser **to the software**

(1)   The software (programme and user manual/operating instructions) are protected by law. ENGELMANN shall be exclusively entitled to the copyright, patent rights, trademark rights and all other ancillary copyrights to the software as well as to other objects, which ENGELMANN hands over or makes accessible to the purchaser as end user within the framework of the initiation and execution of the contract in the relationship of the contractual partners. Insofar as third parties are entitled to the rights ENGELMANN has corresponding exploitation rights.

(2)   The purchaser is only entitled to process own data itself for own purposes with the programme. All data processing devices (e.g. hard disks and central units), on which the programmes are copied or taken over in full in part, temporarily or permanently, must be in the direct possession of the orderer. The purchaser is entitled to install the software as single workplace version on one single computer for one single user per acquired and delivered licence code. The use of the software on a server is only permitted if it is ensured that a simultaneous use of more than the agreed number of users is excluded. A simultaneous use of the software, which goes beyond the agreed scope, is not permitted. The purchaser undertakes to only use the software for own purposes and not to hand it over to third parties either free of charge or against payment. The purchaser may store the software on the hard disk.

(3)   The software must be used in the operating system environment released by ENGELMANN and under the recommended hardware pre-requisites.

(4)   Further contractual use regulations insofar as granted by ENGELMANN as per contract (e.g. the limitation to a number of workplaces or persons) to be set up technically and be complied with from a practical point of view. ENGELMANN hereby grants the purchaser the authorizations which are necessary for the agreed use as a simple right of use. § 14 shall apply to the duration of the right of use.

(5)   The software and the associated written material are protected under copyright law. The purchaser may make the backup copies of the programmes which are necessary for a safe operation. If the purchaser has acquired a licence for a single place version, the original data carriers (CD ROM, etc.) shall be deemed as backup copy. Insofar as the software is not fitted with copy protection, the licensee is only permitted to make one single reserve copy for backup purposes. The licensee undertakes to affect a copyright notice of ENGELMANN on the reserve copy – insofar as this is technically possible - or to record it in the copy. A copyright notice existing in the software as well as in registration numbers recorded therein may not be removed. It is explicitly prohibited to copy or otherwise reproduce the software as well as the written material in full or in part in the original or a modified form or in a form associated with other software or included in software.

(6)   The order is only entitled according to the following regulations and after execution of the following processes to forward the software or parts thereof to third parties:

- a) Only one original data carrier (cf. § 3 Par. 5) may be forwarded. Other software or the software in another status may not be forwarded.
- b) The purchaser shall delete all other copies of the software (no matter in which status), particularly on data carriers in the permanent storages or main memories. It shall finally discontinue the use. It undertakes to carry out these processes before the forwarding of the original data carrier to the third party and to confirm it immediately towards ENGELMANN in writing.
- c) The forwarding to the third party is carried out permanently, thus without entitlement to return or repurchase option.
- d) The third party declares in writing towards ENGELMANN that it shall directly comply with § 4, § 14 Par. 2 and 3, § 15 and § 16 of these AVB towards ENGELMANN.
- e) The written consent of ENGELMANN exists. ENGELMANN is obliged to grant its consent if this is not opposed by any important reasons (e.g protection against competition).

In the event of a breach by the purchaser of these regulations it shall owe ENGELMANN a conventional penalty in the volume of half of the amount, which the third party should then have paid for the software at the software house according to the then current price list, at least in the volume of half the contractually agreed purchase price.

(7)   The purchaser may only decompile the interface information of the programmes in the limits of § 69 e UrhG [Copyright Act] and only if it informed ENGELMANN of its plans in writing and made a request with a period of notice of least two weeks for provision of the necessary information. For all knowledge and information, which the purchaser receives about the software within the framework of the decompiling, § 15 shall apply. Before each involvement of third parties it shall procure for ENGELMANN a written declaration of the third party that it obliges itself directly towards ENGELMANN to comply with the regulations stipulated in §§ 4 and 15.

(8)   All other exploitation acts, in particular the rental, the provision on loan and the distribution in a physical or non-physical form, use of the software by and for third parties (e.g. outsourcing, computer center activities, Application Service Providing) are not permitted without the prior written consent of ENGELMANN .

(9)   Objects of contract, documents, proposals, test programmes etc. of ENGELMANN, which are made accessible to the purchaser before or after conclusion of the contract, shall be deemed as intellectual property and as business and trade secrets of ENGELMANN. They may not be used in the same way without the written permission of ENGELMANN and are to be kept secret according to § 15.

§ 5 Test version

(1)   ENGELMANN grants the purchaser the free possibility to use a test version of the software for 30 days. The purchaser is thus granted the non-exclusive right limited to the agreed test period, to use the software in the scope specifically stipulated in § 4 of these AVB. The limited test period shall begin with the download of the software by the purchaser or with the handover of data carrier on which the software is contained to the purchaser.

(2)   The purchaser shall not use the test version of the software productively during the test period, but only by using test data and for test purposes. ENGELMANN shall only be liable during the test period for wilful intent and gross negligence. Further claims for damages and expenses of the purchaser, no matter for what legal grounds, in particular owing to the breach of duties from the obligation and from illicit act are excluded. ENGELMANN shall only be liable for defects of quality and title of the test version of the software if ENGELMANN has maliciously failed to disclose a defect of quality and/or title to the purchaser. Liabilitiy or warranty beyond this for the freedom of the test version of the software from defects of quality and title of the is excluded.

(3)   If the purchaser decides after expiry of the test period not to purchase the software, its shall fully and finally discontinue the use and delete all copies of the software so that it cannot be restored. Insofar as the purchaser has delivered or handed over the software on a data carrier this is at the choice of ENGELMANN either to be handed over to ENGELMANN or to be destroyed.

§ 6 Service time

(1)   Details concerning delivery and service times are non-binding unless they are described as binding in writing by ENGELMANN.

(2)   Delivery and service deadlines shall be extended by the period of time, in which the purchaser is in default of payment from the contract.

§ 7 Commitment and termination of the contract

(1)   Each termination of the further exchange of services (e.g. with cancellation, reduction, termination for an important reason, damages instead of performance) must always be threatened by stating the reason and with the setting of a reasonable deadline for the remedy (usually at least two weeks) and can only be declared within two weeks after the expiry of the deadline. In the cases as ordered by law (cf. § 323 Par. 2 BGB) it is not necessary to set a deadline. A person who is fully or mainly responsible for the interference cannot request the reserve transaction.

(2)   All declarations in this respect require a written form in order to be valid.

§ 8 Remuneration, payment

(1) The agreed remuneration is due without deduction after delivery of the software on data carrier or provision by download and receipt of the invoice by the purchaser and payable within 30 days.

(2) Additional services requested by the purchaser (e.g. advice and support with the installation of the programme) will be invoiced separately by ENGELMANN.

(3) The value added tax will be added to all prices.

(4) The purchaser can only offset against claims undisputed by ENGELMANN or which have been declared final and binding. Except in the range of § 354 a HGB [German Commercial Code] the purchaser can only assign claims from this contract to third parties with the prior written consent of ENGELMANN. The purchaser shall only be entitled to a right of retention or the plea of the non-fulfilled contract within this contractual relationship.

§ 9 Duties of the purchaser

(1) The purchaser undertakes to have all objects of delivery of ENGELMANN examined immediately from delivery or from the time at which it is made accessible / provision/ download by a qualified employee in line with the regulations under the commercial code (§ 377 HGB) and to report recognised defects in writing by giving an exact description of the fault. The purchaser shall thoroughly test each module for usability in the concrete situation before it begins with the productive use.

(2) The purchaser shall take reasonable precautions for the event that the programme does not work properly in full or in part (e.g. by data backup, diagnosis of interference, regular examination of the results, emergency planning). It is its responsibility to ensure the functional capability of the working environment of the programme.

§ 10 Defects of quality

(1) The software has the agreed condition and is suitable for the use presumed as per contract, in case of no agreement for the customary use. It meets the criterion of practical usability and has the customary quality with software of this kind; it is however not free of faults. A functional impairment of the programme, which results from hardware defects, environmental conditions, faulty operation etc.

is no defect. A substantial reduction in the quality remains out of consideration.

(2) In case of defects of quality ENGELMANN can initially provide subsequent satisfaction. The subsequent satisfaction is carried out at the choice of ENGELMANN by remedying the defect, by delivery of software, which does not have the defect or by the fact that ENGELMANN demonstrates possibilities in order to avoid the implications of the defect. At least three attempts at subsequent improvement are to be accepted owing to a defect. An equivalent new programme version or the equivalent previous programme version, which does not contain the fault is to be taken over by the purchaser if this is deemed reasonable for it.

(3) The purchaser shall support ENGELMANN with the analysis of faults and remedy of defects by in particular concretely describing occurring problems, informing ENGELMANN in detail and granting the time and opportunity which are necessary for remedying the defect.

(4) ENGELMANN can remedy the defects at its choice on site or in its own business premises. ENGELMANN can also provide services by remote maintenance. The purchaser has to ensure the necessary technical pre-requisites at its own costs and grant ENGELMANN access to its IT system after a corresponding prior announcement.

(5) ENGELMANN can request additional costs from the fact that the software was change, used outside of the stipulated environment or operated wrongly. ENGELMANN can request reimbursement of expenses if no defect is found. The burden of proof lies with the purchaser. § 254 BGB applies accordingly.

(6) If ENGELMANN finally refuses the subsequent performance or this finally fails or is not deemed reasonable for the purchaser, the purchaser can within the framework of § 7 either cancel the contract or reasonably reduce the remuneration and additionally request damages or reimbursement for expenses according to § 12. The claims shall become statute-barred according to § 13.

§ 11 Defects of title

(1) ENGELMANN guarantees that the use of the software by the purchaser as per contract is not opposed by any rights of third parties. In case of defects of title ENGELMANN

shall provide warranty by the fact that it procures for the purchaser at its choice a legally impeccable possibility to use the software or to equivalent software.

(2)   The purchaser shall inform ENGEL-MANN immediately in writing if third parties assert property rights (e.g. copyrights or patent rights) to the software against it. The purchaser authorizes ENGELMANN to conduct the dispute with the third party alone. As long as ENGELMANN exercises this authorization, the purchaser may not itself recognises the claims of the third party without the consent of ENGELMANN; ENGELMANN shall then defend the claims of the third party at its own costs and indemnify the purchaser from all costs associated with the defence of these claims, insofar as these are not due to a conduct of the purchaser (e.g. the use of the programmes in breach of the contract) in breach of its duty.

(3)   § 10 Par. 2, 5, 6 shall apply accordingly. § 7 shall apply to the interruption to the exchange in service. § 12 shall apply to the liability, § 13 shall apply to the statute-of-limitations.

§ 12 Liability

(1)   ENGELMANN shall only pay compensation or reimburse fruitless expenses, no matter for what legal grounds (e.g. from legal binding obligations and obligations similar to legally binding transactions, defects of quality and title, breach of duty and illicit act) to the following extent:
- a) The liability in case of wilful intent and from a guarantee is unlimited.
- b) In case of gross negligence ENGELMANN shall be liable in the amount of the typical damages and which are foreseeable upon conclusion of the contract.
- c) In case of a breach of a duty which is not grossly negligent, but is so essential that the achievement of the contractual purpose is in danger (cardinal duty; in particular default) ENGELMANN shall be liable in the amount of the typical damages, which are foreseeable upon conclusion of the contract.

(2)   ENGELMANN reserves the right to the objection of co-fault. The purchaser in particular has the obligation to secure data and to defend against damaging software according to the current status of technology.

(3)   In case of the injury to life, body and health and in case of claims from the Product Liability Act the statutory regulations shall apply without restrictions.

§ 13 Statute-of-limitations

(1)   The statute-of-limitations is
- a) for claims for purchase price repayment from cancellation or reduction one year from delivery of the software , however for properly reported defects no less than three months from the submission of the effective declaration of cancellation or reduction;
- b) with other claims from defects of quality one year ;
- c) with claims from defects of title two years if the defect of title is not due to an in rem right of a third party, owing to which it can request that the objects stated in § 3 Par. 5 are handed over or it can request that these are no longer used;
- d) with claims for damages or reimbursement of fruitless expenses, which are not due to defects of quality or title, two years, beginning from the time at which the purchaser gained knowledge of the circumstances which substantiate the claim or should have gained knowledge thereof without gross negligence.

The statute-of-limitations shall occur by no later than with the expiry of the maximum deadlines determined in § 199 BGB.

(2)   In case of damages and reimbursement of expenses due to wilful intent, gross negligence, a guarantee, fraudulent intent and in the cases stated in § 12 Par. 3 the legal statutes-of-limitations shall however always apply.

§ 14 Begin and end of the rights of the purchaser

(1)   The ownership to delivered objects and the rights according to § 4 shall only pass to the purchaser with the full payment of the remuneration as per contract. Prior to this it only has a provisional right of use, only under the law of obligation and which is revocable according to Par. 2.

(2)   ENGELMANN can revoke the rights according to § 4 for an important reason under the pre-requisites of § 7. An important reason exists in particular if it cannot be deemed reasonable for ENGELMANN to continue to adhere to the contract, in particular if the purchaser does not pay the agreed remuneration or substantially breaches § 4.

(3)   If the rights according to § 4 are not established or if they end, ENGELMANN can request from the purchaser the return of the objects which were handed over or the written assurance that they have been destroyed, in addition the deletion or destruction of all copies of the objects and the written assurance that this has taken place.

§ 15 Non-disclosure obligation

(1)   The contractual partners undertake to treat confidentially all objects received by them or of which they become aware before or during the execution of the contract from the respective other contractual partner (e.g. software, documents, information), which are protected by law or contain business or trade secrets or have been described as confidential, also beyond the end of the contract, unless they are publicly known without a breach of the non-disclosure obligation. The contractual partners shall keep these objects in safekeeping and secure these so that an access by third parties is excluded.

(2)   The purchaser shall only make the objects of contract accessible to those employees and other third parties who require the access in order to perform their official tasks. It shall instruct these persons about the need of the objects for secrecy.

(3)   ENGELMANN processes the data of the purchaser which are necessary for processing the business by complying with the regulations under data protection law.

§ 16 Miscellaneous

(1)   Amendments and addendums to the contract require a written form in order to be valid. The written form requirement can only be revoked in writing. A transmission in a text form is also sufficient in order to safeguard the written form, in particular by means of fax or e-mail.

(2)   The law of the Federal Republic of Germany shall apply under the exclusion of the UN Convention on the International Sale of Goods. The place of performance and place of jurisdiction for all disputes from and in connection with this contract is with contracts with merchants the registered seat of ENGELMANN.

Engelmann Sensor GmbH
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