



General Conditions for the supply of FRAMOS systems for the supply of FRAMOS systems, August 2017

I. General Provisions

1. Legal relations between Supplier and Purchaser in connection with supplies and/or services which include proprietary IP of the Supplier (hereinafter referred to as "Supplies") shall be solely governed by the present General Conditions for the supply of FRAMOS systems for the supply of FRAMOS systems. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be determined by the congruent mutual written declarations.

2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). 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.

3. 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.

4. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.

5. The term „claim for damages“ used in the present General Conditions for the supply of FRAMOS systems also includes claims for indemnification for useless expenditure.

II. Prices and Terms of Payment

1. Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.

2. 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.

3. Payments shall be made free Supplier's paying office.

4. Any claims are payable within 14 days.

III. Retention of Title

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.

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 the 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.

IV. Time for Supplies, Delay

1. 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. 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 nonobservance 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 form

such times shall be extended accordingly.

V. Passing of Risk

The risk shall pass to the Purchaser at the time when it is shipped or picked up by the carrier.

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 ancillary work necessary for assembly and erection 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.
- f) pre-tests of communication, especially electronic connectors and the connection to the plant control system to enable a system test at the time of erection.

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. 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. 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. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. If the responsibility of erection lies with the Purchaser, the Supplier can demand acceptance of the Supplies 2 months after the delivery date. 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.

7. Any claims are payable within 14 days.

VII. Phone-Helpdesk

1. The Purchaser can receive support for software and hardware of the Supplier via telephone. The support can include technical explanations for the Supplier's software and hardware with regard to operating requirements and proprietary functional aspects, as well as configurations of software and hardware, questions of usage and operation. Service and maintenance of the software and hardware of the

Supplier is not part of these General Conditions for the supply of FRAMOS systems.

2. Support via telephone is only available in case of free capacities of the Supplier. Times of a possible support via telephone are Monday – Friday from 9 am until 5 pm. This excludes German and Bavarian holidays, as well as the 24th and 31st of December.

3. Support via telephone is charged on a time basis with increments of 30 minutes. Each increment is charged with 90 €.

4. Any claims are payable within 14 days.

VIII. Receiving Supplies

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

IX. Defects as to Quality

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

1. 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.

2. 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, in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics ("Beschaffungs-garantie"). The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung", "Hemmung") and recommencement of limitation periods shall be unaffected.

3. Notifications of Defect by the Purchaser shall be given in written form without undue delay.

4. In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.

5. The Supplier shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") within a reasonable period of time.

6. There shall be no claims based on Defect 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. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.

7. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, 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 of office, unless doing so complies with the normal use of the Supplies.

8. The Purchaser shall have no claim for damages based on Defects. 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. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

X. Industrial Property Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. 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 IX No. 2 as follows:

- a) 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 IX.
- c) 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. 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 IX Nos. 4 and 5 shall apply *mutatis mutandis* in the event of an infringement of an IPR.

5. Where other defects in title occur, Article IX 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 X, based on a defect in title, are excluded.

XI. 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.

XII. Impossibility of Performance; Adaptation of Contract

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. 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. 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. The Purchaser's right to rescind the contract shall be unaffected.

2. 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. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. 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.

XIII. Other Claims for Damages

1. Unless otherwise provided for in the present General Conditions for the supply of FRAMOS systems, 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. 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").

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

XIV. Venue and Applicable law

1. 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. 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).

XV. Severability Clause

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