

General Conditions for Sale and Supply STAR ELECTRONICS GmbH & Co. KG in Göppingen (STAR-EE-GP)

I. Definitions

In these General Conditions for Sale and Supply the following expressions shall have the meaning as herein after set out:

- "The Conditions" mean these General Conditions for Sale and Supply.
- "The Customer" means any person, firm or corporation or legal assignee or successor of such person, firm or corporation.
- "The Goods" means those items which are specified in STAR-EE-GP's written confirmation of order.
- "The reserved Goods" means those items sold and delivered in which title has not yet passed to the Customer including any new products manufactured or constructed by using such items.
- "The Contract" means the agreement between the Customer and STAR-EE-GP for Sale and Supply of the Goods to the Customer.

II. General

- (1) The Customer accepts that these Conditions shall apply to all legal relations including transactions in future between itself and STAR-EE-GP to the exclusion of any other terms including any conditions, warranties or representations written or oral, expressed or implied, even if contained in any of the Customer's documents (i.e. the Customer's Standard Conditions for Purchase) which purport to provide that the Customer's own terms shall prevail. Such conditions, warranties or representations are hereby expressly rejected.
- (2) Any variation from these Conditions as well as verbal, telegraphic or telephonic statements made by representatives, employees or agents of STAR-EE-GP are always provisional and require in order to be binding STAR-EE-GP's confirmation in writing which has to be signed by a person authorized to act for and on behalf of STAR-EE-GP. Any confirmation by telex, telefax, e-mail shall be sufficient.

III. Frame of Use

The Goods are for training and evaluation purposes only. The Customer is aware of the status and the purpose of the Goods. The Customer must not use the Goods in connection with public road traffic or medicine related devices or applications.

IV. Scope of Delivery

- (1) The scope of delivery is determined by STAR-EE-GP's written confirmation of order.
- (2) Upon request of the Customer, STAR-EE-GP shall provide to the employees of the Customer telephone and e-mail consultation or training in the use of the Goods up to 2 man-hours. Additional support shall be offered at a reasonable standard rate per working/travelling-hour of STAR-EE-GP's employees and reimbursement of the travel and living expenses incurred by the delegation of STAR-EE-GP employees to the Customer. Invoices of STAR-EE-GP for such costs shall be settled by the Customer within Thirty (30) days after the date of invoice.

V. Licence Grant

STAR-EE-GP grants the Customer the non-transferable, non-exclusive worldwide right to use the Goods. The licence grant is limited to training and evaluation purposes only. The licence grant explicitly excludes the use of the Goods in connection with public road traffic and medicine related devices or applications.

VI. Prices and Terms of Payment

- (1) Subject to any specific agreement in writing prices are ex works plus the statutory value-added tax in the amount as from time to time in force.
- (2) The payment has to be transferred into the account No. 49002643 with the Bank Kreissparkasse Göppingen, swift code GOPS DE 6 G, IBAN-Code: DE 9261050000049002643.

- (3) STAR-EE-GP is entitled to interest from the due date as set out under VI. (2) of these Conditions. Upon default of the Customer STAR-EE-GP shall be entitled to interest in the amount of 8 % above the respective basic prime rate mentioned in § 247 Bürgerliches Gesetzbuch (German Civil Act) without prejudice to any other right to damages of STAR-EE-GP. Should the Customer fail to pay any sum due and payable after setting a reasonable written deadline, STAR-EE-GP is entitled to repudiate the Contract or to claim damages for breach of contract. In the latter case STAR-EE-GP is entitled to liquidate damages amounting to 25 % of the total price of the Contract. The amount of liquidated damages shall be higher if STAR-EE-GP proves a higher damage and lower should the Customer prove a lower damage.
- (4) Any rights of retention of payment based on alleged remedies of the Customer against STAR-EE-GP or any other rights of the Customer against STAR-EE-GP which do not arise under the specific Contract (i.e. claims under another contract between the customer and STAR-EE-GP) are expressly excluded. Any set-off with the Customer's claims against STAR-EE-GP's claims is not allowed except insofar as such claims of the Customer are undisputed or subject of a final and conclusive judgement of a competent court.
- (5) STAR-EE-GP is entitled to request the Customer at any time to provide adequate security for its claims against the Customer.

VII. Packing

The packing of the Goods is within STAR-EE-GP's choice and sole discretion. Any costs in that respect shall be borne by the Customer.

VIII. Retention of Title

- (1) Notwithstanding any of the provisions of the Conditions STAR-EE-GP shall retain the title in the Goods until full payment of the price has been effected including additional claims such as interest and claims arising under any other Contract between STAR-EE-GP and the Customer. The Customer shall do any act required by law or otherwise to make STAR-EE-GP's retention of title under this clause and the further clauses of VIII. of the Conditions valid and effective. In case of a current account between STAR-EE-GP and the Customer the reservation of title shall be deemed a collateral for the balance of account in STAR-EE-GP's favour and if a balance is struck and confirmed by the Customer, this shall not affect the retention of title.
- (2) The Customer shall store the reserved Goods separately and in such way that they can be readily identified as being STAR-EE-GP's property as long as title in the Goods has not yet passed to the Customer under the Conditions. Furthermore, the Customer is under the obligation to keep the reserved Goods in proper working condition until final transfer of ownership. If any maintenance work or repairs are necessary, then the Customer shall retain STAR-EE-GP's repair shop or any other repair shop acceptable to STAR-EE-GP. The last mentioned obligation shall not arise in cases of emergency.
- (3) Should the Customer be in breach of the Contract, in particular be in default of payment, STAR-EE-GP shall have upon prior notice to the Customer the immediate right to
 - (a) retake possession of and permanently retain the reserved Goods. In such case STAR-EE-GP or its duly authorized agents shall have the right to enter the premises of the Customer and to execute the right to retake possession;
 - (b) have the Customer erase the reserved Goods, in case the reserved Goods consist only of software files. STAR-EE-GP then may demand proof of the fact that the reserved Goods have been erased.
- (4) Should any execution or distress be levied upon the reserved Goods, the Customer shall, without delay notify STAR-EE-GP thereof and deliver to STAR-EE-GP any documentation required in order to object against such execution or distress.
- (5) Should the value of the reserved Goods be more than 20 % in excess of all sums due from the Customer to STAR-EE-GP, then STAR-EE-GP, upon the Customer's request, is prepared to transfer title in the reserved Goods to the Customer and release such Goods as aforesaid accordingly to the extent necessary to eliminate such excess.

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IX. Terms of Delivery

- (1) STAR-EE-GP delivers to Customer the Goods by mail or personal delivery. In case the Goods consist only of software files, Customer shall receive the Goods by mail or personal delivery on data carrier or as encrypted file via internet only.
- (2) STAR-EE-GP's quotation of delivery periods is without legal obligation.
- (3) In principal the delivery period commences upon despatch of the confirmation of order but always provided that at the time of despatch of the confirmation of order the necessary technical data which are required to perform the Contract and which have to be provided by the Customer to STAR-EE-GP have been completely submitted. In such case as aforesaid the delivery period commences if the foregoing condition is met. Should an advance payment has been agreed upon which is immediately due and payable upon placing of the order, the delivery period commences upon STAR-EE-GP's receipt of such payment as aforesaid if at that time the aforesaid condition is met.
- (4) The delivery period shall be met if the Goods have been produced or delivered to STAR-EE-GP by third parties within such period and the Customer has been notified on the readiness of the Goods for despatch.
- (5) Upon STAR-EE-GP's notification that the Goods are ready for despatch the Customer is under the immediate obligation to accept delivery of the Goods. Should delivery not be accepted STAR-EE-GP is allowed to store the Goods at the Customer's costs and risk of loss and to invoice the Goods as delivered.
- (6) Reservation is made that STAR-EE-GP is supplied in a punctual and correct way with the material required to fulfil its obligations to the Customer.
- (7) The delivery period shall be extended by an appropriate amount of time in the event of force majeure which shall include but not be limited to acts of God, war, riots, industrial disputes, strikes and lock-outs and unforeseen obstacles which are beyond STAR-EE-GP's control insofar as such obstacles can be shown to have exercised considerable influence on the completion or the delivery of the Goods. STAR-EE-GP shall not be liable as such events as aforesaid shall occur whilst delivery is already delayed. STAR-EE-GP shall notify the Customer as soon as possible upon commencement and termination of obstacles as aforesaid.
- (8) Partial deliveries are allowed. Each partial delivery shall be invoiced separately.
- (9) If despatch of the Goods is delayed upon request of the Customer or due to the Customer's non-acceptance of the delivery, STAR-EE-GP shall be allowed after the expiry of 30 days after notification of readiness of the Goods for despatch to invoice the Customer in respect of the storage cost of the Goods. Should the Goods be stored in STAR-EE-GP's works, the storage cost shall be at least 1/2 % of the invoice amount for every calendar month. This amount shall be higher or lower should STAR-EE-GP prove a higher amount of expenses or should the Customer prove lower expenses. STAR-EE-GP's rights to any further damage are reserved. Upon fruitless expiry of the reasonable period for acceptance of delivery of the Goods, STAR-EE-GP is allowed to dispose of the Goods. In such case STAR-EE-GP is entitled to deliver to the Customer within a reasonably extended delivery period.

X. Passing of risk and Acceptance of Delivery

- (1) The risk of loss and deterioration of the Goods shall pass to the Customer immediately upon despatch of the Goods to the Customer. The same applies if STAR-EE-GP has accepted additional obligations such as transportation costs, the transport, the installation or the assembly of the Goods.
- (2) Should despatch be delayed in consequence of circumstances for which the Customer is responsible the risk of loss and deterioration of the Goods shall pass to the Customer at the date of notification of readiness of the Goods for despatch by STAR-EE-GP to the Customer.

- (3) The Customer is under the obligation to accept delivery of the Goods irrespective of the Good's showing defect without prejudice of the Customer's rights arising from defects.

XI. Delay in Delivery

- (1) The Customer is entitled to compensation should STAR-EE-GP be in default of delivery and a damage be caused thereby. Such compensation as aforesaid shall be limited in amount to 1/2 % for each week in which STAR-EE-GP is in default of delivery but not be over and above of 5 % of the total value of such part of the total delivery which cannot be used in time according to the terms of the Contract by reason of STAR-EE-GP's default in delivery as aforesaid. The amount of compensation shall be lower if STAR-EE-GP proves a lower damage or higher if the Customer proves a higher damage. The limitation of liability as aforesaid shall not apply should the delay in delivery be caused by a grossly negligent or wilful act of a chief executive or a duly authorized agent of STAR-EE-GP.
- (2) Notwithstanding the right to repudiate the Contract in case of defects (see XIII. Warranty for defects and XIV. Warranty for title) the Customer may repudiate the Contract in case of default in delivery or impossibility to deliver due to a circumstance within STAR-EE-GP's control only if the delay in delivery or the impossibility to deliver as aforesaid are caused by a negligent or wilful act of the chief executive or a duly authorized agent of STAR-EE-GP.
- (3) Should STAR-EE-GP not deliver within the delivery period, the Customer shall have the right to set a written final deadline of 30 days indicating expressly that the Customer will repudiate the Contract and/or claim for damages. Upon fruitless expiry of this deadline the Customer shall upon request declare whether the Customer still claims for delivery or for damages or will repudiate the Contract. The Customer is not entitled to repudiate the Contract or to claim for any damages instead of the delivery in case the Customer does not notify STAR-EE-GP within a reasonable deadline set by STAR-EE-GP about his intention.
- (4) Should STAR-EE-GP unjustifiably refuse the delivery or in case of specific circumstances that - after considering both parties interest - justify an immediate repudiation of the Contract, the Customer is not obliged to set a final written deadline as mentioned above in XI. (3).
- (5) The Customer is not entitled to repudiate the Contract before the delivery is due or in case of an irrelevant breach of an obligation of STAR-EE-GP. Furthermore, the Customer is not allowed to repudiate the Contract in case circumstances that would allow such repudiation have wholly or partly been caused by the Customer or in case such circumstances occur during a delay in acceptance of the Customer.
- (6) For claims for damages see XV. of the Conditions.

XII. Notice of Defects

- (1) Written notice of defects or any other complaints, including but not limited to failure to comply with the fitness of the Goods for the training and evaluation purpose, failure as to the quantity of the Goods, must be given without delay at the latest 14 days from the receipt of the Goods. Written notice of hidden defects must be given without delay at the latest 14 days from the discovery of such defects but not later than 12 months from the receipt of the Goods.
- (2) Should STAR-EE-GP not be notified of defects or any other complaints within the delays as set out in XII. (1) of the Conditions, STAR-EE-GP shall be discharged from all liability arising from defects of the Goods or any other complaints and any rights of the Customer of whatsoever nature are excluded.

XIII. Warranty for Defects

- (1) STAR-EE-GP disclaims for all warranties as regard to Goods that are delivered for free, including but not limited to software-updates.
- (2) Should the Customer notify STAR-EE-GP in accordance with XII. of the Conditions of an existing defect of the Goods or of any other complaints as mentioned in XII. (1) of the Conditions, then for a period of 12 months from the actual delivery of the Goods STAR-EE-GP's liability shall according to STAR-EE-GP's choice be limited to either replace or repair such defective Goods, provided that the Customer shows, that the

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defect or any other complaints was already existent at the point in time of the passing of risk. STAR-EE-GP shall be liable for a period of 24 months in the event of the death or personal injury of the Customer.

- (3) Should the defect not have been remedied by STAR-EE-GP either by two attempts to repair the Goods or on replacement delivery, then the Customer shall be entitled
 - (a) to request a reduction of the price agreed upon instead of repair or replacement or
 - (b) to repudiate the Contract as well as
 - (c) to claim for damages according to XV. of the Conditions. The same shall apply mutatis mutandis if STAR-EE-GP unjustifiably refuses a necessary repair or delays such repair without good reasons, or if it would be unreasonable to require the Customer to accept such repair for any other reason whatsoever and howsoever arising.
- (4) STAR-EE-GP's liability for defects in respect of products, i.e. hardware as well as software, which have been supplied by a third party shall be limited to assigning its rights and claims against such third party to the Customer. Should the Customer not be able to enforce its rights against the supplier of such products as aforesaid, STAR-EE-GP shall be liable for defects as set out in the Conditions.
- (5) The Customer is under the obligation after consultation of STAR-EE-GP to grant STAR-EE-GP the time required to repair or to replace the Goods and to do all necessary steps to allow STAR-EE-GP a repair of the Goods or a replacement delivery.
- (6) STAR-EE-GP is under no obligation to repair or to any replacement delivery, in case the costs for such repair or replacement delivery are unreasonably high. The costs shall be deemed as unreasonably high if they exceed 25 % of the purchase price of the Goods.
- (7) Should Customer's notification of defects be unjustified, STAR-EE-GP will be entitled to claim for all costs that arise from such unjustified notice of defects.
- (8) Without limiting its liability for defects STAR-EE-GP expressly excludes any liability arising in particular on the following grounds:
 - irrelevant deviation from the agreed quality of the Goods and
 - irrelevant reduction according to the usability as well as
 - inappropriate or improper use of the Goods, defective installation by the Customer or third parties, as long as these are not caused by a grossly negligent or wilful act of STAR-EE-GP.

XIV. Warranty of Title

- (1) Unless otherwise agreed STAR-EE-GP shall deliver the goods free from third parties rights or justified claims founded on industrial or other intellectual property (hereinafter referred to: intellectual property) in the country being the destination of STAR-EE-GP's delivery. In case any third party shall assert a claim against the Customer founded on the violation of intellectual property by the Goods that have been delivered by STAR-EE-GP and that are used in correspondence with the Contract, STAR-EE-GP shall be liable within 12 months after delivery as follows:
- (2) STAR-EE-GP's liability shall according to STAR-EE-GP's choice be limited to either provide a licence concerning the intellectual property, change the Goods insofar that they will no longer violate intellectual property or replace them. In case STAR-EE-GP cannot take such measures on the usual and reasonable conditions, the Customer may repudiate the Contract or request for a reduction of the price or claim for damages according to XV. of the Conditions.
- (3) STAR-EE-GP shall only be under the obligation to take measures as mentioned in XIV. (2) if the Customer has notified STAR-EE-GP immediately in writing about such third parties claims and if the Customer has not acknowledged such violation and always provided that STAR-EE-GP may decide about all measures that shall be taken to defend STAR-EE-GP and about all amicable settlements at STAR-EE-GP's own discretion. Should the Customer stop the use of the delivered Goods in order to minimise the damage or for whatever

important reason, the Customer is under the obligation to notify the third party that this shall not be deemed as an acknowledgement of a violation of intellectual property.

- (4) Any claim of the Customer for defects of title are excluded if and to the extend the Customer is liable for the violation of the intellectual property, including but not limited to the following cases: the Customer has caused the violation because of specific indications given to STAR-EE-GP or by a use of the Goods that was not agreed upon by the parties or by changing the delivered Goods or using them together with products that have not been delivered by STAR-EE-GP.

XV. Damages

- (1) STAR-EE-GP disclaims for all liabilities as regard to Goods that are delivered for free, including but not limited to software-updates.
- (2) Notwithstanding any other provisions in the Conditions all claims for damages of Customer, i.e. liability for defects, the liability for impossibility of performance and delay in delivery, any liability for damages arising from a breach of any obligation before or at the time of contracting, breach of secondary contractual obligations, tort, or any other consequential loss or damage of whatsoever nature and howsoever arising shall be excluded.
- (3) STAR-EE-GP shall only be liable if and to the extent that it can be shown that STAR-EE-GP or its duly authorized agents were acting wilfully or with gross negligence, including such cases in which STAR-EE-GP was in breach of cardinal obligations whereby the overall purpose of the Contract was jeopardised.
- (4) In case of a negligent breach of cardinal obligations, STAR-EE-GP's liability shall be limited to the amount of the value of the order.
- (5) Should, as an exception, the value of the order mentioned in XV. (4) not correspond to the typically foreseeable damages that arise from such breaches of cardinal obligations, then STAR-EE-GP's liability shall be limited to such typically foreseeable damages.
- (6) The exclusion of liability shall not apply with regard to claims arising under the German Product Liability Act. Furthermore, this exclusion of liability shall not apply with regard to claims that arise from personal injury or death of the Customer.
- (7) As the application of the Goods is restricted to training and evaluation purposes only, the Customer shall indemnify and hold STAR-EE-GP harmless from and against any liability, claims, demands and expenses (including attorney fees) for damages or injuries (including death) resulting from any actual or alleged defect in or failure of the Goods. The Customer shall also indemnify and hold STAR-EE-GP harmless from any failure of the Customer to give appropriate instructions or warnings to employees or third parties.

XVI. Confidentiality

- (1) "Confidential Information" shall mean any technical, commercial or other information disclosed or made available by STAR-EE-GP to the Customer.
- (2) As far as not otherwise provided for in this Agreement, the Customer agrees to maintain all Confidential Information in confidence for a period of five (5) years after the despatch of the Goods. As a minimum protection the Customer shall limit disclosure of Confidential Information to its employees having a need to know the Confidential Information.
- (3) The Customer shall not disclose the Confidential Information of STAR-EE-GP to any third party without the prior written consent of STAR-EE-GP.
- (4) This obligation of nondisclosure shall not apply to any information which is
 - published or otherwise made available to the public by STAR-EE-GP; or rightfully received by the Customer from a third party without confidential limitation; or
 - known to the Customer prior to the first receipt of the same from STAR-EE-GP; or
 - hereinafter disclosed by STAR-EE-GP to a third party without restriction on disclosure.

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XVII. Miscellaneous

Upon prior notice to the Customer, STAR-EE-GP shall have the right to inspect the Goods in the Customer's premises, to take notice of the operating results and to demonstrate the equipment to its prospective buyers should the Customer not prove that STAR-EE-GP's right as aforesaid shall jeopardise the Customer's interest to business confidentiality or any other important interest.

XVIII. Place of Performance/Jurisdiction

- (1) Place of performance for STAR-EE-GP and the Customer is Göppingen.
- (2) Jurisdiction and venue for any actual or future claims under business relationship is the County Court of Stuttgart, without prejudice to the claimant's right to commence proceedings at the defendant's place of business.

XIX. Applicable law

These Conditions and any Contract hereunder between STAR-EE-GP and the Customer shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.

XX. Final provisions

- (1) The headings of the above provisions are for convenience only and have no importance for the interpretation of these conditions.
- (2) Should any of these provisions be invalid or become invalid for whatsoever reason the remaining provisions shall be unaffected. In such case the statutory regulations shall be applicable in addition.
- (3) Where appropriate in these Conditions the singular shall include the plural and vice versa and where there are two or more persons, firms or companies comprised in the definition of the Customer then the obligations imposed on them shall be joint and several obligations.

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