



Power. Passion. Partnership.

# Standard Terms and Conditions of Sale for Use with International Customers

## I. General

1. These Terms and Conditions of Sale shall apply to all contracts for goods and/or services entered into by companies of the Rolls-Royce Power Systems Group (hereinafter referred to as the "Supplier"). They also apply to all (other) ancillary services (e.g. assembly, installation and commissioning) provided in addition to the goods supplied or agreed separately as primary services (hereinafter collectively referred to as "services"). These Terms and Conditions of Sale apply exclusively; they apply even where the Supplier provides goods or services without reservation, despite knowing that the Customer has conflicting or derogating terms and conditions. They also apply to all future business transactions.
2. Contracts, amendments and additions thereto, acceptance of the Customer's terms and conditions and any agreement as to quality require the Supplier's written confirmation in order to be valid. No oral collateral agreements exist. Any amendment or revocation of this written form requirement must also be in writing.
3. The Customer bears the risk of errors in the transmission of telegraphic, telexed, faxed, electronic or telephone orders/instructions. In all cases, the Customer also bears the risk of order/instruction receipt by the Supplier and also bears the onus of proving that the Supplier received the Customer's orders/instructions.

## II. Formation of contract

1. Quotes by the Supplier are non-binding and subject to change. The Supplier reserves all rights (in particular copyright and intellectual property rights) in respect of quotes, samples, cost estimates, drawings, technical information and other documentation; third parties may only be allowed access to such documentation with the prior written consent of the Supplier.
2. Orders placed are binding on the Customer for a period of six weeks from the date of receipt by the Supplier. Contracts are formed upon written confirmation of an order by the Supplier; where regulatory approval is necessary (particularly due to foreign trade regulations, see clause XV. below) and order confirmation is made conditional upon such approval, the contract will not be binding on the Supplier until the Supplier notifies the Customer in writing that such approval has been obtained (however the Customer shall be bound by its order as soon as it receives the Supplier's order confirmation). The order confirmation is also definitive with regard to the quantity and specifications of the goods/services to be supplied, unless the Customer objects to any discrepancies between the order and the order confirmation without undue delay.

## III. Condition/quality of the goods and services

1. The condition of the goods and services will be exhaustively described by expressly agreed features (e.g. specifications, labels, approval, other information). A warranty of fitness for a particular purpose or use is assumed only to the extent expressly agreed in writing. Otherwise, the Customer alone bears the risk that the goods or services are fit for their particular purpose and use. The goods or services are not required to demonstrate any features or other qualities beyond those expressly agreed.
2. The goods and services shall comply with the general German and EU technical regulations and standards applicable thereto. Where the Customer requires compliance with different technical regulations and standards or technical regulations and standards

applicable to its particular specialized application, this must be agreed in writing beforehand. The same applies where the Customer requires the Supplier to procure specific local permits or licenses such as for the import or operation of the goods supplied.

3. Stated technical data, operating costs, consumption figures, power outputs, weights, dimensions, service lives, etc. are only approximate figures unless they are expressly agreed as required features in writing. Power outputs, speeds, consumption figures, etc. are deemed to be proven by the bench-test results from the manufacturing plant.
4. The Supplier reserves the right to alter the design, shape and materials of the delivered goods, provided the delivered goods are not fundamentally changed by doing so and the changes are not unreasonable for the Customer.
5. The Supplier reserves the right to vary physical dimensions and chemical values to the extent customary in the industry or technically unavoidable, including variations in color, formula, processes and the use of raw materials and order quantities, provided this is not unreasonable for the Customer.
6. Information about the delivered goods or services (e.g. in brochures, catalogs, production information sheets, electronic media or on labels) is based on the Supplier's general knowledge and experience and merely constitutes a guide or indication; it is non-binding and subject to change in the absence of a written agreement to the contrary. Neither the product information nor expressly agreed features/intended uses release the Customer from its responsibility for testing the product's fitness for the Customer's intended purpose.
7. If the Customer is dependent upon the delivered goods or services being compliant with certain regulations and/or standards, the Customer must, at the latest when placing the order, give written notice to the Supplier of such regulations and standards relating to the execution and/or operation of good or services and/or of other safety regulations (particularly as relate to illness and accident prevention).
8. Any and all complaints of the Customer relating to defects in the quality of the delivered goods or services shall be governed by the provisions of clause XI below (specifically clause XI.3).

## IV. Emissions compliance

To the extent the delivered goods comprise engines and systems, these shall comply (only) with those national and regional emissions requirements and hold a corresponding certification of conformity (pursuant to the relevant applicable methods for measuring emissions, particularly to the extent these differ from the emissions during normal operation), which are expressly set out in the technical specifications defined by the Supplier and thus constitute an agreed quality. If the Customer exports/imports/operates engines and systems in countries or regions with differing legal emissions requirements, it alone shall be responsible for clarifying those requirements and ensuring that they are met.

## V. Prices

1. Prices are stated net ex Supplier's works without discount or other reductions and exclusive of value added tax at the relevant statutory rate where applicable. Charges imposed by public authorities (taxes, fees, customs duties) incurred as a result of shipping the contract goods internationally, as well as packing, loading, transportation, installation, insurance or any other costs (e.g. for consular

MTU Reman Technologies GmbH  
Friedrich-List-Straße 8  
39122 Magdeburg/Germany

Geschäftsführer:  
Wilfried Probian

Telefon: +49 (0) 3 91 5046 – 0  
Fax: +49 (0) 3 91 5046 – 599  
E-Mail: reman.europe@mtu-online.com  
www.mturemantechologies.mtu-online.com

Sitz der Gesellschaft: Magdeburg  
Handelsregister Stendal HRB 112902

Deutsche Bank  
Kto: 128 862 000, BLZ: 810 700 00  
SWIFT: DEUTDE8MXXX, IBAN: DE10810700000128862000

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certificates, export, transit, import and other permits or certificates of origin) are payable by the Customer.

2. The Supplier is entitled to appropriate additional payment (even in cases where a fixed price is agreed) in those cases where the Customer requests changes in technical specifications or timeframes for delivery/performance after the contract has been formed and/or new technical specifications, regulations and/or standards must be complied with, which had not been applicable at the time the contract had originally been entered into. In the event of changes in the price of materials, labor costs, freight charges or other cost factors, the Supplier reserves the right to adjust prices accordingly provided there is a period of at least four months between the date the contract is concluded and the delivery date and a fixed price has not been agreed. The same applies to continuing obligations.

### VI. Payment terms

1. Unless agreed otherwise, payment shall be remitted to the Supplier's account in full within 14 days of invoicing.
2. Payments will not operate to discharge the Customer's obligations unless they are made to the Supplier or an agent in possession of a written authority to collect on behalf of the Supplier. Bank charges and credit transfer costs are payable by the Customer; the Customer may not deduct any amounts (e.g., for discounts, expenses, taxes, charges, fees, customs duties and the like) without a prior written agreement to the contrary. No interest is payable on advance payments on account. Payment instructions, checks and bills of exchange will only be accepted by special written arrangement and only as conditional performance – taking into account all collection and discount charges. The Customer will be deemed to have discharged its payment obligation only if the Supplier has received payment in euros or in the agreed foreign currency at its domicile within the payment periods set out above or any periods for payment arranged in writing.
3. Should the Customer be in default with its payments, the Supplier may – without prejudice to any other statutory or contractual rights such as provided for in clause VII.8 and IX.4 – claim interest at a rate of 10% or 8 percentage points above the base interest rate of Deutsche Bundesbank. If it becomes evident due to the Customer's inability and/or unwillingness to pay that there is a risk it may not meet its obligations, then the Supplier may refuse to supply the goods/services (including under other contracts) until such time as the Customer has fully met its obligations or furnished appropriate security.
4. The Customer may set off its claims against claims of the Supplier or exercise a right to reduce or withhold payment only if the Customer's counterclaim has been acknowledged in writing by the Supplier or been declared final and binding by a court of law.
5. The Supplier is entitled to set off its receivables against the Customer's receivables from Rolls-Royce Power Systems AG and its Group companies or to have the relevant Group company effect set-off. The same applies to setting off these companies' receivables from the Customer against the Customer's receivables from the Supplier. To the extent provisions of bankruptcy and estate law applicable to the Customer so permit, set-off will also be effected.
2. Any processing or modification of the ROT in the event of bankruptcy (insolvency) or a composition agreement relating to the Customer.

### VII. Retention of title (ROT)

1. All goods supplied shall remain the property of the Supplier (ROT goods) until such time as all obligations arising from the business relationship have been performed in full. To the extent the laws of the country of destination of the goods require that they be recorded in a register (e.g. ROT Register) in order for the retention of title to be valid, the Supplier shall have the right to enter such retention of title into the register, whereby the Customer shall (to the extent necessary) provide its assistance free of charge and assume the costs of registering any such retention of title.  
goods by the Customer shall be performed on behalf of the Supplier. If the ROT goods are combined with other objects not owned by the Supplier, the Supplier shall acquire a co-ownership interest in the resulting item in proportion to the value of the goods, except where processing results in the creation of a new item, whereby in such case article 727 of the Swiss Civil Code (*Zivilgesetzbuch - ZGB*) shall apply to the extent this is mandatory.
3. The Supplier agrees to the resale of ROT goods by the Customer in the ordinary course of business subject to the right of revocation and the provisions of clause VII.8. The Customer may not pledge or assign the goods as security. To secure all the Supplier's claims arising from the business relationship, the Customer hereby assigns to the Supplier its receivables from the resale of the ROT goods – regardless of whether they have been further processed – in an amount equivalent to the purchase price claim (including any VAT). Unless or until revoked, the Customer has the right and the duty to collect the receivables assigned to the Supplier. The Supplier may revoke the authorization to collect if the Customer is in default of payment, suspends its payments, files for the institution of insolvency/bankruptcy, administration or comparable proceedings. After cancellation of the authorization to collect, the Supplier shall be entitled to collect the amounts receivable. To that end, the Supplier may require that the Customer disclose the assigned receivables and their obligors, supply all information necessary for collection, turn over the associated documentation and notify the third party of the assignment.
4. At the Customer's request, the Supplier shall release the security to which it is entitled under the above provisions to the extent that the liquidated value of the security exceeds the receivables to be secured by more than 20% or their estimated value by 50%, the choice being at the Supplier's option.
5. The Customer shall store the ROT goods with due care for the Supplier, maintain them in technically perfect condition and have any corrosion-proofing, servicing and repair work that may become necessary carried out immediately. Except in emergencies, the ROT goods are to be repaired at the Supplier's own workshops or workshops authorized by the Supplier. If the Customer ships the ROT goods to another country or territory having different rules concerning the admissibility or validity of retentions of title, the Customer shall obtain the prior written consent of the Supplier and (where necessary) provide its assistance free of charge in taking whatever action necessary to ensure that the retention of title remains in force and shall reimburse the Supplier for any and all costs arising in connection with re-registering any such retention of title.
6. Upon request, the Customer shall insure the ROT goods in the amount of the outstanding balance due against all risks to the extent specified by the Supplier with the stipulation that the rights arising

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from the insurance shall accrue to the Supplier; the Supplier shall have a claim to the customary insurance certificate.

7. The Customer shall inform the Supplier without undue delay in the event of seizure of property or other impairment of owners' interests.
8. Should the Customer be in default with its payments or culpably fail to meet its insurance obligations or the obligations arising from the retention of title including the assignment of receivables, the entire outstanding balance shall become due and payable immediately even where bills of exchange have a later due date. Any power of disposal on the part of the Customer under clause VII.3 shall become void. The same applies to the extent insolvency/bankruptcy, administration or comparable proceedings are instituted against the Customer's assets or the Supplier receives an insurer's notification as provided for in the insurance certificate as a result of the Customer's conduct. If the entire outstanding balance due is not immediately paid, the Customer's rights of use in respect of the ROT goods shall become void. The Supplier is then entitled, after allowing a period of 14 days' grace or in the event that insolvency/bankruptcy, administration or comparable proceedings are instituted against the Customer's assets, after rescinding the contract to demand release of the ROT goods to the exclusion of any rights of retention and to collect them from the Customer's premises. Where possession is taken of ROT goods which are co-owned by third parties, such possession is taken on behalf of the co-owners at the same time. All costs arising from taking possession and liquidating the ROT goods shall be borne by the Customer. If the goods supplied have been used, the Supplier is entitled to claim as a minimum figure for depreciation an amount of 25% for the first six months of use and of 7.5% for each succeeding six months of use without having to provide proof of damage. The Customer may show that substantially less or no damage/depreciation has occurred. The Supplier is entitled to demonstrate that greater depreciation has occurred as a result of use.
9. If the country in which the goods supplied are located does not allow retention of title but does allow the Supplier to retain other rights to the goods supplied, then the Supplier may exercise all such rights. The Customer shall at its own expense take all measures necessary to ensure that the retention of title or any other right in its stead to the goods supplied are valid and are upheld.
10. The Customer shall be liable in full to the Supplier for any failure to comply with its duty to provide information and/or any omissions concerning the registration, maintenance and/or enforcement of the Supplier's retention of title under this clause VII.

### VIII. Supply of goods/services

1. To the extent not otherwise agreed, goods shall be delivered ex works (as per Incoterms 2010). Partial deliveries, partial services and reconsignment are permissible. Dates/deadlines shall be extended/postponed accordingly if and to the extent that the documents required for processing orders on time are not received by the Supplier in due time, contractual obligations (e.g. payments on account, provision of letters of credit, etc.) are not met, contract-related work on the part of the Supplier suffers from interruptions or delays caused by the Customer or delays occur due to other events over which the Supplier has no control (e.g. strikes, lockouts, business disruptions, delays by subcontractors, events of *force majeure*, action by government authorities) regardless of whether they occur at the Supplier, the Customer and/or at a third party. The Supplier shall notify the Customer of the occurrence of events such as those listed above. Those events shall not be the responsibility of the Supplier even if they occur during an instance of default. If the delivery of goods/services is delayed by such events by more than six months, both parties shall be entitled to rescind the contract.
2. If a delivery period has been agreed (and barring any written agreement of the parties to the contrary), that delivery period shall commence as soon as the contract enters into force and the Customer has paid the requisite advance payments on account. An agreed delivery period shall be deemed complied with if a ready for shipment notice has been sent to the Customer before that period expires.
3. The Supplier's compliance with the contractually agreed delivery period shall be contingent on the Customer's performance of all contractual and non-contractual obligations owed to the Supplier. A delivery period may be reasonably extended in those cases where:
  - a) the Supplier does not receive the information it requires to perform the contract in due time and/or in full and/or the Customer subsequently changes that information; or
  - b) the Customer or a third party is behind schedule with the work to be performed by it or the Customer is in arrears in the performance of its obligations; or
  - c) obstacles arise, which the Supplier is unable to avoid despite having exercised due care and made reasonable efforts, regardless of whether those obstacles are encountered at the Supplier, the Customer or a third party (including, in particular, the events outside the Supplier's sphere of control set out in clause VIII.1); or
  - d) any other circumstances arise for which the Supplier is not responsible.
4. If the Customer can show that the delivery of goods/services is more than six weeks overdue and the Supplier is responsible for such default, the Customer may after having set a reasonable grace period that expired without result, rescind the contract by written notification and claim reimbursement of any payments made on account plus 5% p.a. interest. Where the Supplier is in default with respect to parts of the good/services to be delivered, the Customer's right of rescission shall be limited to those parts provided that is something that can reasonably be expected of the Customer.
5. Should the Supplier be in default due to grossly negligent acts of its vicarious agents, the Supplier shall reimburse any losses suffered by the Customer in an amount equivalent to up to 0.5% of the price of the overdue goods/services for each complete week by which delivery is overdue but in any case not more than 5% in total; the same shall also apply in the case of ordinary negligence except that no compensation for loss of profit/use shall be payable.
6. The Supplier reserves the right to supply the Customer with different goods of a similar type or design within the bounds of what is reasonable if the type or design ordered is no longer in production as of the planned delivery date. The Supplier is under no obligation to deliver the goods originally ordered or to pay compensatory damages for non-performance.
7. Should shipment of the goods be delayed for reasons for which the Supplier is not responsible, the Customer shall reimburse the costs incurred for storage as of the second month of the delay. If the goods are stored at the Supplier's works, the reimbursement shall be 0.5% of the value of that part of the entire goods to be supplied that is delayed, per month. The Customer may demonstrate that no such costs were incurred or were substantially lower.

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8. If instead of a delivery period a specific delivery date has been agreed, this shall be synonymous with the last day of a given delivery period; clauses VIII.1 to VIII-7 shall apply *mutatis mutandis* in this case as well.
9. The Customer's claims arising out of and/or in connection with delays in the performance of the contract are expressly and exhaustively governed by the provisions of this clause VIII. Any other or further claims of the Customer are hereby waived. The limitation of liability shall not apply in the event of willful or grossly negligent conduct on the part of the Supplier.

### IX. Transfer of risk, acceptance, Customer's default

1. The risk shall pass to the Customer upon delivery in accordance with clause VIII. or when it is in default of acceptance. The foregoing shall also apply if partial deliveries or reconsignments are made or the Supplier provides ancillary services in addition to delivery (e.g. site delivery, unloading, assembly, commissioning). If shipping is delayed at the request of the Customer or for other reasons for which the Supplier is not responsible, risk shall pass to the Customer as of the date originally planned for delivery ex works. From this point on, the goods shall be stored and insured for the account and at the risk of the Customer.
2. Where, in addition to delivery, the Supplier is responsible for producing a work not simply as an ancillary service, an acceptance inspection is to be carried out without undue delay by the appointed acceptance date, alternatively after notification by the Supplier that the goods are ready for acceptance. The Customer may not refuse acceptance on the grounds of non-material defects. If the Customer fails to comply with its obligation to accept the work within a reasonable period specified by the Supplier, acceptance shall be deemed effected. Contrary to clause IX.1, risk shall transfer upon acceptance or at such time as the Customer is in default of acceptance. However, the Customer shall bear the risk of war, civil war, acts of terrorism and damage caused by nuclear radiation as of delivery ex works.
3. The goods to be delivered shall be subjected to standard testing by the Supplier; according to clause II.4 of these Terms and Conditions, power outputs, speeds, consumption figures, etc. are demonstrated by the bench-test results from the manufacturing plant. The Customer may arrange to have specific trials in addition to the above tests carried out by the Supplier at extra charge. Should the Customer or its agent wish to be present at the tests or any additional trials to be conducted, this must be agreed in writing at least four weeks before the expected delivery date. If the Customer does not attend the tests conducted by the Supplier or any additional trials agreed, it may not require them to be repeated. To the extent the goods are inspected for warranted qualities during the acceptance inspection, proof of warranted qualities shall also be effected in the context of the acceptance inspection.
4. Should the Customer be in default with agreed payments, furnishing the agreed security or taking delivery of/accepting the goods or issuing shipping instructions after notification that they are ready for collection or – where applicable – for acceptance, the Supplier may, after a four-week grace period expires, rescind the contract (in whole or in part) and claim damages for non-performance or inadequate performance. If the Supplier seeks damages, it shall have the right to claim either 15% of the contract price as compensation (and be precluded from claiming higher damages) or reimbursement of the actual losses incurred. If the Supplier elects not to exercise that right,

the Supplier may – without prejudice to its other rights – dispose over the goods as it sees fit and deliver equivalent goods within a reasonable period according to the terms of the contract in their stead. Clause VI.3 shall remain applicable. Any and all resulting additional costs shall be borne by the Customer.

### X. Shipping

1. Where shipping has been agreed it will be effected from the Supplier's works at the Supplier's due discretion, albeit without any liability to use the cheapest mode of transport.
2. The Customer shall bear the risk of accidental deterioration or loss from commencement of loading at the Supplier's works. If the goods are ready for shipping but shipping is delayed for reasons for which the Supplier is not responsible, the risk shall pass to the Customer upon receipt of the ready for shipment notice. The same applies to partial deliveries.
3. The Supplier will charge for the costs of shipping and packaging. Company-owned packing apparatus such as containers and pallets shall remain the property of the Supplier. The Customer shall handle such items with care and return them at its own expense.
4. On request, the Supplier shall provide the Customer with an advance shipment notice (ASN) where required for freight insurance purposes. Where the Customer issues such an instruction, the Supplier will take out insurance for land, sea and air freight at the Customer's expense. Goods damaged in transit or short deliveries must be notified to the carrier or freight forwarder within three business days.
5. Packaging will be charged additionally by the Supplier and will generally not be taken back. However, if packaging has been designated as property of the Supplier, the Customer must return it to the point of origin at its expense.

### XI. Warranty (liability for defects)

1. The Supplier warrants to the Customer that, at the time risk passes to the Customer, the goods supplied will be free of defects in material and workmanship in accordance with state of the art technology for a period of twelve months from commissioning but in any case no longer than eighteen months from notification that the goods are ready for shipment. Components that have been repaired or replaced shall be under warranty until the limitations period applicable to the delivered goods expires (they, shall, however, be subject to a limitations period of no less than six months from the time of repair or replacement) and otherwise in accordance with the provisions of this clause XI. The limitations period for defect claims is 12 (twelve) months. It shall start from the date of installation by an authorized workshop or the date of direct purchase from an authorized dealer by the end user – whichever occurs first.
2. Liability for defects in quality shall not attach where errors or damage were caused by the following:
  - a) natural wear and tear or external action, improper handling, improper storage, improper assembly, inadequate corrosion-proofing, the use of force, improper installation, chemical, electrical or other harmful effects;
  - b) fitting or attachment of components stemming from third-parties or performance of commissioning, servicing, repairs or other work on the delivered goods by persons not authorized by the Supplier;

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- c) failure to follow the Supplier's handling, inspection, servicing or operating instructions by the Customer or its employees;
  - d) use of the delivered goods for purposes other than those for which they were intended;
  - e) use of the delivered goods under extraordinary operating conditions not made known to the Supplier in writing at the time of the order;
  - f) Customer's failure to take immediate measures to mitigate or avoid damage;
  - g) Customer's refusal to allow the Supplier to remedy a defect;
  - h) natural disasters and/or accidents.
3. The Supplier's performance under this clause XI is conditional upon the Customer meeting its material contractual obligations. In particular, the Customer must notify the Supplier in writing of apparent defects that can readily be seen on inspection within three days after tender of delivery and in all other cases promptly on discovery, giving details of the defect and the factory number.
4. In the event of defects, the Supplier shall at its option and expense cure performance by delivering new goods (replacement) or remedying the defect (repair) at the Supplier's works, a workshop appointed by the Supplier or on site as follows:
- a) If the defect is remedied at the Supplier's works or a workshop appointed by the Supplier, the Supplier shall reimburse the shipping costs provisionally paid by the Customer for the least expensive option possible for shipping the defective parts which is to be arranged by the Customer. The foregoing shall also apply if parts are replaced and the Supplier requests the return of the parts to be replaced.
  - b) Costs of shipping repaired or replaced parts by the least expensive means shall be borne by the Supplier. Furthermore, the Supplier shall bear the reasonable costs for the removal and refitting of components of the delivered goods up to an amount equivalent to the cost of removal and refitting at the Supplier's works. The Supplier shall not bear the costs of removal and reinstallation of the entire goods or any incidental costs. Where a specific installation site has been agreed for the delivered goods, additional costs arising from moving the goods to a different location shall be borne by the Customer.
  - c) Where defects are remedied at the deployment site, the Supplier's staff shall be provided free of charge with the personnel and equipment required by the special conditions at the site.
  - d) Parts replaced shall become the property of the Supplier.
5. Only in urgent cases of which the Supplier must be immediately informed where operational safety is at risk or in order to prevent disproportionately extensive damage and subject to the Supplier's written consent or where the Supplier unlawfully refuses to cure performance shall the Customer be entitled to remedy the defect itself or to have it remedied by third parties. In such cases, the Supplier shall reimburse the costs incurred by the Customer up to an amount equivalent to the costs the Supplier would have incurred had it remedied the defect itself.
6. Should a complaint by the Customer prove not to be a case involving liability for defects in quality, the Customer must take back any returned parts or the returned goods without undue delay and pay the cost of shipping to and from the Supplier as well as all incidental costs including those incurred investigating the complaint.
7. If curing performance is possible but associated with disproportionately high costs, a reasonable price reduction shall be

granted instead, provided the delivered goods can reasonably be used by the Customer for the intended purpose without remedying the defect.

8. The Customer shall have a right to rescind the contract or to a reduction in the purchase price only if the Supplier's efforts to cure performance ultimately fail. Insofar as the Supplier is ready and able to cure performance within a reasonable period, the Customer must give the Supplier sufficient time and at least three opportunities to effect cure in order to protect its defect liability claims. Rescission shall be excluded in the case of non-material defects.
9. Agreed qualities or guarantees shall exist only if agreed expressly in writing. In the absence of any agreed qualities or non-compliance with guarantees, the above provisions shall apply *mutatis mutandis*. To the extent not otherwise agreed in writing, the representations of the Supplier shall apply until the warranty period expires.
10. In order to protect its claims in cases where third parties assert rights in the contract goods on the basis of defects in title, the Customer must promptly inform the Supplier thereof, provide all necessary information, follow the Supplier's instructions with regard to defending against such claims and otherwise assist the Supplier to the best of its ability. To the extent third parties take legal action against the Customer and alleging rights in the contract goods, the Customer shall take all reasonable precautions to ensure that the Supplier is able to participate in the proceedings against the Customer or (at the Supplier's option) become a party to such proceedings.
11. To the extent the Customer requires that the Supplier deploy goods and/or services of subcontractors, the Customer assumes a warranty only within the scope of the warranty obligations of the relevant subcontractor.
12. This clause XI. expressly and exhaustively governs the warranty claims of the Customer. Any other or further claims of the Customer are hereby waived. This limitation of liability shall not apply in the event of willful or grossly negligent conduct or unlawful intent.

### XII. Liability

1. The Supplier's liability and the personal liability of its employees and other agents (in particular its vicarious agents in contract and in tort) shall be determined – regardless of the legal grounds for liability (contractual or non-contractual, e.g. due to defects, positive breach of contract (*positive Vertragsverletzung*), *culpa in contrahendo*, consultancy liability, infringement of intellectual property rights, tortious act) – exclusively according to this clause XII.
2. For loss or damage involving someone or something other than the delivered goods, the Supplier shall be liable only for personal injury or property damage to objects which by their nature are normally intended for private use or consumption and which have been used by the injured party primarily for private purposes to the extent that the Supplier is subject to strict liability for property damage and/or personal injury pursuant to product liability laws applicable in the jurisdiction where the loss or damage occurred.
3. In the case of negligence, the Supplier's liability shall be limited to EUR 500,000.00 per claim. No liability shall attach for financial losses, in particular for loss of use or lost profits. No further claims shall exist. Excepted from these limitations are mandatory provisions of applicable Swiss law prescribing further liability on the part of the Supplier.

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SWIFT: DEUTDE8MXXX, IBAN: DE1081070000128862000

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## Standard Terms and Conditions of Sale for Use with International Customers

- Should the Supplier be subject to third-party claims exceeding the aforementioned limitation of liability, the Supplier shall have a claim to recourse against the Customer to the extent this is mandated by the provisions of Swiss law applicable to this contract.
- Any claims of the Customer to damages, reduction of the contract price, mutual or unilateral rescission of the contract, in particular those arising out of or in connection with clause VI. 2./3. which are not expressly stated in these Terms and Conditions are hereby waived to the extent permitted by law. The foregoing shall apply in particular to claims for compensation of damage not involving the goods themselves (e.g. such as loss of production, loss of use, loss of orders, loss of profit, other direct and/or indirect loss or damage).
- Express reservations of the Supplier's staff (and other agents of the supplier) against orders, instructions or measures of the Customer or relating to actual conditions may be made in writing or orally and shall constitute notice to cease and desist, which shall operate to release the Supplier from any and all liability.
- In the case of improper advice and the like or breach of any ancillary obligations, the Supplier shall be liable to the Customer solely for gross negligence and unlawful intent.

### XIII. Intellectual property

- The Customer's license in the goods and any documentation delivered with them as well as other plans, drawings, technical documents, catalogs, brochures and other documents shall be limited to the operation, maintenance and repair of the goods. All copyrights shall remain with the Supplier. Where software is included in the scope of delivery, the Customer shall be granted a non-exclusive right to use the delivered software, including its documentation. Such software shall be transferred for use with the goods for which it is intended. To the extent not expressly agreed otherwise in writing, the software may not be used on more than one system. The Customer may copy, revise, translate or convert the software from object code into source code only to the extent permitted by law. The Customer shall not remove or alter the manufacturer's information – in particular copyright notices – without the prior written consent of the Supplier.
- All other rights in the software and the documentation and further documents (incl. copies thereof) shall remain with the Supplier or, as the case may be, the software supplier. Sublicenses may only be granted subject to written permission. Furthermore, the Customer may not, without the prior written authorization of the Supplier, allow third parties access to the software and other, not publicly available documents (specifically plans, drawings, technical documents) either in whole or in part and/or to use these for any purpose other than that which has been agreed.
- If the Customer breaches one or more of the aforementioned provisions in 1. and 2. relating to the use of the software, the Supplier may revoke the right to use the software without notice.
- To the extent the goods or services are protected by intellectual property rights such as patents, utility models, design patents and/or trademarks, the Customer's acquisition shall operate to exhaust the Customer's intellectual property rights only with respect to the use of the intellectual property, to the extent this is stipulated by contract and permitted by law. To the extent exhaustion of intellectual property rights in the country of destination only applies nationally or regionally, the Customer shall comply with the restrictions arising

therefrom, in particular if the goods are shipped into another territory. The Customer shall not acquire any more extensive intellectual property rights by virtue of the exhaustion of intellectual property rights in the goods purchased.

- If the Customer resells the delivered goods, it shall contractually impose the above restrictions on the buyer.

### XIV. Transferability of contractual rights

- The transfer of the Customer's contractual rights and obligations to third parties requires the prior written consent of the Supplier.
- The Supplier may transfer, assign or otherwise convey to third parties receivables and claims against the Customer, in particular with respect to set-off by third parties against the Customer, without the Customer's consent.

### XV. Foreign trade and payments law

- The supply of goods and services by the Supplier is subject to its permissibility under national and international export control provisions and the procurement of any export permit that may be required. In this regard the Customer shall when placing an order specify the country of final destination and provide all necessary information and documentation, in particular any end user certificate that may be required, at least three months before delivery. Delayed cooperation on the part of the Customer or delays in the permitting procedure shall entitle the Supplier to postpone the delivery dates accordingly. Should an export permit not be granted, the Supplier shall be entitled to rescind the contract. Neither a delay nor rescission under this clause shall entitle the Customer to claim damages.
- Should the Customer resell the goods to third parties, it shall be responsible for compliance with national and international foreign trade and payments law provisions. Senders, recipients or third-party beneficiaries may not appear on any sanction or boycott lists of any organization or any country.

### XVI. Data protection

The Supplier is authorized to process the personal data of the Customer and its agents and employees in the context of settlement of the contract. The Customer specifically gives the Supplier permission to disclose such data to third parties located abroad for purposes of settling and cultivating the business relationship.

### XVII. Supplier's right of recourse

If any acts or omissions by the Customer or its agents cause any person to suffer harm (specifically injury or death) or loss or damage to the property of third parties and if claims are asserted against the Supplier for this reason, the Supplier shall have a right of recourse against the Customer and/or any person causing such harm.

### XVIII. Place of performance

To the extent not otherwise expressly agreed, the place of performance for both parties shall be the registered office of the Supplier.

### XIX. Severability

Should any of the above provisions be or become invalid, void or unenforceable, either in whole or in part, this shall not affect the validity of the remaining provisions hereof. The foregoing shall also apply to any omission contained herein. The invalid, void or unenforceable provision or the omission shall to the extent permitted by law be replaced by a valid provision that most closely reflects the

MTU Reman Technologies GmbH  
Friedrich-List-Straße 8  
39122 Magdeburg/Germany

Geschäftsführer:  
Wilfried Probian

Telefon: +49 (0) 3 91 5046 – 0  
Fax: +49 (0) 3 91 5046 – 599  
E-Mail: reman.europe@mtu-online.com  
www.mturemantechologies.mtu-online.com

Sitz der Gesellschaft: Magdeburg  
Handelsregister Stendal HRB 112902

Deutsche Bank  
Kto: 128 862 000, BLZ: 810 700 00  
SWIFT: DEUTDE33XXX, IBAN: DE10810700000128862000

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economic intent of the parties or that which they would have intended based on the spirit and purpose of the contract, had they considered the matter at the outset or when subsequently inserting the provision. The foregoing shall also apply where the invalidity of a provision is based on the scope of performance or timeframe (period or deadline) stipulated herein. In such cases, that which had been agreed shall to the extent permitted by law be replaced by a provision that most closely reflects the economic intent of the parties as to the scope of performance or timeframe (period or deadline).

### XX. Arbitration and applicable law

1. Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution. The version of the Swiss Rules in force at the time the notice of arbitration is served shall apply. The place of arbitration shall be Zurich, Switzerland. The language of arbitration shall be German or English, depending on the contract language selected by the parties in the individual case. Arbitration proceedings shall be conducted without the Anglo-American practice of pre-trial discovery or discovery during the arbitration proceedings. Even where the amount in controversy is under CHF 1,000,000.00, the arbitration proceedings shall be conducted with three arbitrators, unless the parties agree on a single arbitrator prior to instituting the arbitration proceedings.
2. However, the Supplier is also entitled to bring suit against the Customer at its registered office or before any other court of competent jurisdiction.
3. The legal relationships between the Customer and the Supplier shall be governed by Swiss substantive law to the exclusion of the UN Convention of April 11, 1980 on Contracts for the International Sale of Goods (CISG).

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Friedrich-List-Straße 8  
39122 Magdeburg/Germany

Geschäftsführer:  
Wilfried Probian

Telefon: +49 (0) 3 91 5046 – 0  
Fax: +49 (0) 3 91 5046 – 599  
E-Mail: [reman.europe@mtu-online.com](mailto:reman.europe@mtu-online.com)  
[www.mturemantechologies.mtu-online.com](http://www.mturemantechologies.mtu-online.com)

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