

General Conditions for Software Products for Infrastructure & Industry Business (German law)

Status: January 31, 2019

1. Supply of Software and Granting of Rights to Use Software

1.1 Definitions

"CoL" means the Certificate of License, containing details of the nature of the rights of use acquired for the Software. The CoL is to accompany the Software or the delivery note.

"Cyberthreat" means any circumstance or event with the potential to adversely impact the Customer's plants, systems, machines and networks via unauthorized access, destruction, disclosure and/or modification of information, denial of service attacks or comparable scenarios.

"Earlier Version" is an earlier release of the Software; normally such is recognizable from the change in the version number.

"Engineering Software" is software for engineering, such as, for example, project planning, programming, parameter setting, testing or commissioning.

"Instance" means either an instance in a physical operating system environment or an instance in a virtual operating system environment.

"Open Source Software" includes Open Source Software or similar software of third parties.

"Order Data" is data identifying the Software including the item number of Siemens as well as the corresponding order information belonging to the item number from the current catalogue of Siemens at the time of the order confirmation. Insofar as the Customer receives no order confirmation from Siemens, the data associated with the item number of the CoL which Siemens provides to the Customer with the acceptance of its order shall apply.

"Property Right" is defined in section 8.1.

"Runtime Software" is software for plants and machine operation, e.g. operating systems, basic systems, system extensions or drivers.

"Service Pack" is a release of the Software in which defects and/or Vulnerabilities are eliminated, but which generally does not involve any change in functionality. The term "Service Pack" as used in these General Conditions shall include also single bug fixes and/or vulnerability patches which are not a release of the Software. The latter are usually referred to as "Update".

"Siemens" means Siemens Aktiengesellschaft (Germany).

"Software" is the software product which the Customer acquires from Siemens under this contract including the related documentation.

"Vulnerability" means a security vulnerability of a Software that could be exploited to permit unauthorized access, use, or modification to such Software or computing environment.

1.2 Scope of these General Conditions

These General Conditions shall apply exclusively to the provision of Software for Automation and Drives by Siemens to the Customer. General terms and conditions of the Customer shall apply only where such are expressly accepted in writing by Siemens.

1.3 Subject Matter

Siemens shall provide the Customer the Software specified in the Order Data and it shall grant the Customer rights to this Software based on the License Type (see section 2) and the applicable Software Type (see section 3). The License Type and Software Type are detailed in the Order Data or, additionally, in the CoL.

If, on the basis of the Order Data or the CoL, the Customer receives only the Software, but Siemens grants no license to use the Software, the Customer shall be entitled to use the Software only if it acquires license rights of use in accordance with section 2 and, insofar as a License Key is necessary, also obtains a License Key.

If the Software is supplied electronically or, if copying rights are granted for it, the rights and duties set out under these General Conditions shall apply to the copies created by the Customer with the approval of Siemens.

1.4 Scope of Delivery

Siemens shall deliver the Software as well as the respective CoL to the Customer, according to the Order Data, either on a data medium or via download.

Siemens shall enclose the documentation related to the Software, at its discretion, either in electronic form with the Software itself or, in electronic form available for download free of charge. Insofar as it is evident from the Order Data that the documentation is not included in the scope of delivery, the documentation shall be purchased separately; in such case the Customer shall not have any right to generate copies but shall purchase the required number of documentation copies.

Siemens shall deliver a License Key to the Customer if the Software requires a License Key for technical activation purposes.

If the Parties agree that the Customer is to acquire only the Software but not the rights of use for the Software for the time being, the License Key and the CoL shall not be included in the scope of delivery. If the Customer acquires the rights of use limited to validation purposes, a CoL may be included in the scope of delivery.

1.5 Included Third-party Software Components

Insofar as Open Source Software is included in the Software, such Open Source Software is listed in the Readme_OSS file of the Software. The Customer is entitled to use the Open Source Software in accordance with the respective applicable license conditions of the Open Source Software. These OSS license conditions are included with the Software and shall prevail over these General Conditions. The Open Source Software license conditions shall have priority also in relation to the proprietary Siemens components insofar as the Open Source Software license conditions grant the Customer certain rights of use on the basis of the connection of OSS components with proprietary Siemens components.

Siemens shall make available to the Customer, at the request of the Customer, the Open Source Software source code in return for payment of a fee to compensate for expenses insofar as the license conditions of the Open Source Software require such release of the source code. The Software may, in addition to Open Source Software, contain other licensed software, i.e. software which was not developed by Siemens itself, but which Siemens has obtained from third parties, e.g. Microsoft Ireland Operations Ltd, under a license. If the Customer shall receive in such case the conditions of the respective licensor of the licensed software in the Readme_OSS file, these shall apply to the liability of the licensor in relation to the Customer. In terms of the liability of Siemens to the Customer, the General Conditions shall apply in each case.

1.6 Nature of the Software, Systems Environment

The nature of the Software shall be based exclusively on the Order Data/the order confirmation along with the Software documentation available at the time of the concluding of the contract. The Customer shall make available the system environment in accordance with the requirements in the Order

Data/order confirmation or the CoL and the related documentation.

The Customer shall install and configure the Software itself.

1.7 Industrial Security

The Customer is solely responsible for the conception, implementation and maintenance of a holistic, state-of-the-art security concept to protect its plants, systems, machines and networks on which the Software is used, against Cyberthreats.

Such concept should inter alia include:

- (i) installation of Service Packs as soon as they are available;
- (ii) complying with security advisories and implementing other related measures, published by Siemens or otherwise made available for the Customer;
- (iii) regular Vulnerability scanning, and testing as well as minimizing the risk of a malware infection through malware scanners or other appropriate means according to the state of the art, considering the configuration of the plant and in the Customer's own responsibility.

Use of Software versions that are no longer supported, and failure to install the latest Service Packs may increase Customer's exposure to Cyberthreats.

2. **License Type**

Siemens shall grant the Customer the following rights to the Software for the License Types stated hereinafter.

2.1 Single License

The Customer shall be granted a non-exclusive right, valid for an indefinite period of time, to install the Software on one (1) Instance and to utilize the Software thus installed in the manner specified in the Order Data or CoL (see "Type of Use").

2.2 Floating License

The Customer shall be granted a non-exclusive right, valid for an indefinite period of time, to use the Software simultaneously on such number of the Customer's objects (e.g. users or devices) as specified in the Order Data and/or the CoL. The Customer is permitted to install the Software on up to ten (10) times as many Instances as it has acquired licenses for objects. Example: In case the Customer acquires the license to use the Software on three (3) objects at the same time, it is entitled to install the Software on thirty (30) of the Customer's Instances.

2.3 Rental License

The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or CoL (see "Type of Use"), to install the Software on one (1) Instance and to use the same. If the period of use is specified in hours, the respective time limits for usage shall be determined from the Software start-up and end with the closing the same. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.

2.4 Rental Floating License

The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or the CoL (see "Type of Use"), to use the Software simultaneously on such number of the Customer's objects (e.g., users or devices) as specified in the Order Data or the CoL. For this purpose, the Customer is permitted to install the Software on up to ten (10) times as many of the Customer's Instances. If the period of use is specified in hours, the calculation of the respective time limits for usage shall be determined from the Software start-up and end with the closing of the same. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.

2.5 Demo License

The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or the CoL (see "Type of Use"), to install the Software on one (1) Instance and use it for validation purposes. If the period of usage is specified in days, weeks or months, the specified period commencing with the first

start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.

2.6 Demo Floating License

The Customer shall be granted the non-exclusive right, limited in time as stipulated in the Order Data or CoL (see "Type of Use"), to install the Software on any number of the Customer's Instances. The number of objects (e.g. users or devices) permitted to utilize the Software at the same time for validation purposes can be derived from the Order Data or CoL. If the period of usage is specified in days, weeks or months, the specified period commencing with the first start-up of the Software shall apply regardless of actual usage. If the usage period is date-based, the license shall end on this date irrespective of actual usage.

2.7 Trial License

The Customer shall be granted the non-exclusive right to install the Software on one (1) Instance and use it for validation purposes as stipulated in the Order Data or the CoL (see "Type of Use"). The period of usage is limited to 14 days and shall commence with the start-up of the Software, unless a different period of usage is specified in the Order Data or the CoL. The Customer must delete or uninstall the Software after period of use.

3. **Software Type**

The Customer may acquire from Siemens both Engineering Software as well as Runtime Software. If the Software Type is not detailed in the Order Data or the CoL, the rights in relation to the Software shall be those set forth in section 3.2 (Runtime Software).

3.1 Engineering Software

In the event that the Customer uses the Engineering Software to generate its own programs or data containing parts of the Engineering Software, the Customer shall have the right, without having to pay any license fee, to copy and to use these parts of the Engineering Software as a part of its own programs or data, or to supply such to third parties for use. Insofar as, in relation to the rightful use of Engineering Software, parts thereof are included in programs developed by the Customer, such parts of the Engineering Software shall apply as components of its own programs or data. Otherwise, it shall not be permissible to separate parts of Engineering Software; section 5.3 shall not be affected hereby. If the Customer makes available to any third party the above-named developed programs or data, it shall protect the Engineering Software contained therein in accordance with the provisions under section 5.

3.2 Runtime Software

If the Customer incorporates Runtime Software or any parts thereof into its own programs or data, it shall purchase a license with respect to the Runtime Software each time it installs or otherwise copies its own programs or data containing (Siemens) Software or parts thereof, or the Customer links with (Siemens) Software. Such Software license shall be acquired in accordance with the relevant intended type of use and on the basis of the Siemens catalogue valid at that time. If the Customer makes available to any third party the specified programs or data, section 5.4 shall apply in relation to the corresponding Runtime Software. This section 3.2 does not grant any rights to separate Runtime Software parts; section 5.3 shall not be affected hereby.

If the Runtime Software contains tools for parameterization/configuration and extended rights have been granted in this regard, such shall be detailed in the README file of the Runtime Software.

4. **Earlier Versions, Upgrade and Power Pack**

- 4.1 If it is apparent from the Order Data or the CoL, e.g. through the additional identification of "Upgrade" or "Power Pack" in the product name of the Software, that the Software is to serve as an Upgrade for another Software, on such upgrading the rights of use granted to an Earlier Version shall cease. The rights of use in accordance with section 4.3 shall not be affected hereby.

- 4.2 The Customer has the right, insofar as it has in its due possession an Earlier Version of the Software, to exercise the rights of use granted to the Software either in relation to the Software itself or - insofar as such is technically foreseen - to the Earlier Version.
- 4.3 Insofar as Earlier Versions are listed in the Readme file of the Software under the section "Parallel Use", the Customer shall have the right to exercise the rights of use granted to the Software as an alternative on the Earlier Versions listed therein in one (1) Instance. If in the Order Data or in the CoL the named "Type of Use" is: "Installation" or "User", the Customer may use the Earlier Versions listed in the Readme file in addition to the licensed Software and parallel to the Software on the number of Instances for which it is allowed to install or use the acquired Software. Any transfer of Earlier Versions to a third party is permissible only together with the transfer of Software in accordance with section 5.4 et seq.
- 5. Further Rights and Duties of the Customer**
- 5.1 The Customer shall have no right to rent out or in any other way license Software, or to publicly make it available or accessible by way of cable or wireless, or to make it available to third parties for any charge or free of charge, for example, in the course of application service providing or as "Software as a Service".
- 5.2 The legal right of the Customer regarding the generation of a back-up copy shall remain unaffected.
- 5.3 The Customer shall not change the Software, nor decompile it, nor translate the Software, or extract program elements insofar as such is not permitted by the provisions of copyright law. Insofar as the Customer acts under any of these provisions of law as such is necessary in order to establish the interoperability to an independently obtained computer program, the Customer shall, before undertaking such measures, request the necessary interface information or other information from Siemens in writing and allow Siemens a reasonable time and opportunity to make such information available so that the legitimate interests of Siemens can be protected. In addition, the Customer is not entitled to remove any alphanumerical identification, brands or copyright labels from the Software or the data medium and shall, insofar as the Customer is entitled to generate copies of the Software, copy the same without alteration.
- 5.4 The Customer is entitled to transfer any Software acquired by the Customer in the course of a purchase from Siemens to a third party. In such case the Customer shall cease fully to use the Software and shall remove all installed copies of the Software from its equipment and its Instances and erase any copies located on other data medium or, at the request of Siemens, shall provide the same to Siemens insofar as the Customer is not required to retain the same for a longer period in accordance with applicable law. The use of any such retained copies is prohibited.
- 5.5 If the Customer has received a License Key for the Software, this key shall be supplied to the third party together with the Software. Furthermore, the Customer shall submit to the third party the order confirmation and the CoL together with these General Conditions. The Customer shall submit the CoL received for the Software to Siemens at any time, if requested.
- 5.6 If the Software is a Power Pack or an Upgrade, the Customer shall keep the CoL of the Earlier Version and submit it to Siemens at any time, if requested, together with the CoL for the Software. The Customer shall also transfer to the third party the CoL of the Earlier Version, when it transfers the Power Pack and the Upgrade according to section 5.4.
- 5.7 Upon Siemens' request, the Customer shall confirm in writing that the Customer completed the measures set out in sections 5.4, 5.5 and (insofar as such is applicable) 5.6 or shall describe to Siemens as necessary and as applicable any reasons for a longer retention. In addition, the Customer shall make any third party expressly subject to the duties to observe the rights granted in accordance with sections 2 and 3 and the duties in accordance with sections 5.1 to 5.3.
- 5.8 If the Customer receives a data medium which, in addition to the Software, contains further software products which are released for use, it shall have the right to use these released software products exclusively for validation purposes, for a limited period of time and free of charge. Such period of use shall be limited to 14 days, commencing with the first start-up of the relevant software program unless a different period is specified, e.g. in the Readme file of the relevant software product.
- Such software products supplied exclusively for validation purposes shall be governed by these General Conditions. The Customer shall not be authorized to pass on these software products separately, i.e. without the Software, to a third party
- 5.9 Details in case of use by U.S. government authorities: The Software is commercial computer software.
- 6. Defects Liability**
- A defect as to quality shall exist if the qualities of the Software vary to the disadvantage of the Customer from the product description in the documentation available at the time of the conclusion of the contract.
- In relation to any defects, Siemens shall be liable as follows:
- 6.1 Any Software which proves to be defective shall, at Siemens' discretion, either be corrected or provided again free of charge, provided that the cause of such defect existed already at the time of the transfer of risk.
- For any Software which is provided free of license fee and / or for validation purposes such as, for example Trial or Demo licenses or, as additional application software with application examples attached to the Software, Siemens shall be liable only if Siemens has fraudulently concealed any defect.
- In the event that the Customer does not exercise its rights with respect to the Software but decides to exercise such rights with respect to an Earlier Version as per section 4, Siemens shall only be liable for defects of the Earlier Version to the extent to which such also occur in the Software. Potential claims of the Customer from separately purchased Software in an Earlier Version shall not be affected.
- 6.2 Details as to quality or possible use of the Software shall not constitute a guarantee in terms of § 443, § 444 German Civil Code (BGB), even if such are described as guarantees, unless such details are stated with an express reference to the legal provisions for guarantees and such is done in writing.
- 6.3 Any rights to claim subsequent performance shall expire 12 months after the commencement of the statutory statute of limitations. The same applies to rescission and reduction of remuneration. This deadline shall not apply insofar as longer periods are prescribed by law according to § 438 section 1 no. 2 German Civil Code (BGB) (buildings and items used for a building), in cases of intent, in the case of fraudulent concealing of any defect or non-compliance with any guaranteed characteristics. Claims for the reimbursement of expenses on the part of the Customer in accordance with § 445a German Civil Code (BGB) (entrepreneur's right of recourse) shall likewise be subject to a statute of limitations of 12 months from the start of the statutory statute of limitations, provided the last contract in the supply chain is not a sale of consumer goods. The legal provisions regarding suspension of the statute of limitations recommencement of limitation periods shall be unaffected.
- 6.4 Notifications of defect by the Customer in relation to Siemens shall be provided without undue delay in writing.
- 6.5 In the case of a notification of defect, the Customer may withhold payments to a reasonable proportion in relation to the related defect. The Customer has no right to withhold payments to the extent that its claim of a defect is time-barred. Unjustified notifications of defect shall entitle Siemens to demand reimbursement of resulting expenses of Siemens from the Customer.
- 6.6 Siemens shall be given opportunity to remedy any defect within a reasonable period of time.
- Diagnosis and rectification of any defect shall take place, at the choice of Siemens, either at the premises of Siemens or the place of installation of the Software.
- With respect to Class A Software, Siemens is in the possession of the Software source codes and is authorized to modify the

same. In such cases Siemens shall correct such defect at its own discretion by either supplying a Service Pack or by supplying an Upgrade in which the defect has been remedied.

With respect to Class B Software, Siemens is not in the possession of the Software source code or not authorized to modify the same. In the event that Siemens is in the possession of a Service Pack or a relevant Upgrade of the Software, or if Siemens can procure a Service Pack or an Upgrade with reasonable efforts, Siemens shall correct the defect by supplying the Service Pack or the Upgrade.

The Software Class is derived from the Order Data or the CoL.

Siemens shall receive from the Customer any documentation and information which the Customer may have and which is necessary for the rectification of a defect. If Siemens rectifies any defect at the place of installation of the Software or by remote access, the Customer shall ensure that Siemens has available to it the necessary hardware and software as well as the necessary operation conditions with suitable personnel to allow the work to be carried out promptly.

Service packs can be made available via a web link.

Insofar as any Service Pack or new edition provided served to rectify defects in the Software and in relation to such the Customer has a right to reproduce such, the Customer is entitled generate the permissible number of copies of the Service Pack provided or the new edition as subsequent performance.

- 6.7 If the subsequent performance is not successful, the Customer may – notwithstanding any other rights to claim compensation in accordance with section 6.11 – rescind the contract or reduce the remuneration.
- 6.8 There shall be no claims for defects in case of insignificant deviations from the agreed quality, in case of only minor impairment of usability, in cases of natural wear or tear or damage arising after the passing of risk from faulty and negligent handling 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. Claims arising from defects shall only be recognized if these can be reproduced on the reference hardware/ target hardware specified in the Order Data or the CoL. If the Customer or any third party undertakes any incorrect changes or maintenance work or extends the Software via interfaces, in relation to such changes or extensions and any resulting consequences there shall also be no right to claim for defects.
- 6.9 The Customer shall have no claim with respect to expenses incurred in the course of subsequent performance, transportation expenses, travel allowances, work costs and material costs to the extent that such expenses have increased because the subject matter of the performance was subsequently brought to another location than the Customer's branch office, unless doing so complies with the normal use of the Software. This applies accordingly to claims for the reimbursement of expenses on the part of the Customer in accordance with § 445a German Civil Code (BGB) (entrepreneur's right of recourse), provided the last contract in the supply chain is not a sale of consumer goods.
- 6.10 The Customer's right of recourse against Siemens pursuant to § 445a German Civil Code (BGB) (entrepreneur's right of recourse) is limited to cases where the Customer has not concluded an agreement with its customers exceeding the scope to the statutory provisions governing claims based on defects.
- 6.11 Any rights of the Customer to claim for compensation as a result of defects are hereby excluded. This shall not apply to fraudulent concealment of any defect, in case of non-compliance with guaranteed characteristics, 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 Siemens. The above provisions do not imply a reversal of the burden of proof to the disadvantage of the Customer. Any further or additional claims of the Customer based on any defect exceeding those rights set out in this section 6 are hereby excluded.

7. Prices, Payment Terms, Offsetting

- 7.1 Prices will be subject to the addition of value added tax at the percentage prescribed by law at the time of performance.
- 7.2 Payment is to be made to Siemens without any charge for Siemens and without any deductions within 10 days after receipt of the invoice.
- 7.3 Siemens may refuse to provide any performance due under this contract if the Customer is delayed in relation to its performance obligations or any other obligations arising under this contract or if it does not fulfil such. The Customer may set-off or retain any money only if such relate to undisputed amounts or amounts which have been confirmed by a final legally-binding judgment. In addition, the Customer may exercise such rights of retention only in relation to those claims which arise directly under this contract.

8. Property Rights and Copyright; Defects of Title

- 8.1 Siemens shall provide the Software free from infringement of third parties' industrial property rights and copyrights (hereinafter referred to as "Property Rights") in the country of the relevant place of delivery. If any third party makes a claim based on infringement of Property Rights with regard to Software delivered by Siemens to the Customer, Siemens shall be liable to the Customer within the period of time set out in section 6.3 as follows:
 - (i) Siemens shall choose whether to acquire, at its own expense, the right to use the Property Rights in relation to the respective Software or change the Software so that the Property Rights are not infringed or, Siemens may replace the Software. If this is not possible for Siemens under reasonable conditions, the Customer may rescind the contract or reduce the remuneration pursuant to the statutory provisions.
 - (ii) Any obligation of Siemens to pay compensation shall be subject to section 10.
 - (iii) The above-named duties of Siemens shall exist only insofar as the Customer notifies Siemens without undue delay in writing as to any third-party claim, does not acknowledge any infringement and reserves for Siemens any defense or settlement negotiations. If the Customer ceases to use the Software for reasons of reduction of damage or other good reason, the Customer shall notify the third party that the cessation of use does not constitute recognition of any alleged infringement of Property Rights.
 - 8.2 Any rights of the Customer to claim shall be excluded insofar as the infringement of Property Rights is the Customer's responsibility.
 - 8.3 Any rights of the Customer are further excluded insofar as the Property Right infringements result from special instructions of the Customer or from any type of use not foreseeable by Siemens or if such infringements result from a modification of the Software by the Customer or use with other products not delivered by Siemens.
 - 8.4 In case of any infringement of Property Rights the claims of the Customer regulated in section 8.1a) shall also be subject to the provisions of sections 6.1, 6.5, 6.9 and 6.10 accordingly.
 - 8.5 In the case of any other defect of title the provisions of section 6 (Defects of Title) shall apply accordingly.
 - 8.6 Any other claims of the Customer against Siemens or its agents or any such claims exceeding the claims provided for in this section 8 based on a defect in title, are excluded.
- ## **9. Delay**
- 9.1 Times set for the delivery of the Software shall only be binding if all documents to be furnished by the Customer, necessary permits, and approvals are received in time and if the payment obligations according to the agreed terms of payment and other obligations of the Customer are fulfilled. If these conditions are not fulfilled in time, the times set shall be extended reasonably; this shall not apply if Siemens is responsible for the delay.
 - 9.2 Any deadlines are subject to reasonable extensions if non-compliance with such results from one of the following reasons:

- (i) force majeure, for example mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout);
- (ii) malware or attacks of third parties on the IT system of Siemens occurring despite protective measures were in place that complied with the principles of proper care;
- (iii) hindrances attributable to German, U.S. or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Siemens is not responsible; or
- (iv) the fact that Siemens does not receive its own supplies in due time or in due form.

9.3 If Siemens is responsible for the delay, the Customer – insofar as it can credibly establish that the Customer has suffered damage as result – may claim liquidated damages of 0.5% for every completed week of delay, but in no case more than a total of 5% of the price of the respective part of the Software in relation to which Siemens is in delay.

9.4 Any claims for damages by the Customer resulting from delay in delivery, as well as any claims for damages as substitute performance which go out beyond the limit set out in section 9.3, are hereby excluded in all cases of delayed delivery, even after the expiry of any subsequent deadline period set for Siemens to deliver. This shall not apply in cases of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health, which are subject to mandatory liability. Rescission of the contract by the Customer based on statute is limited to cases where Siemens is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.

9.5 The Customer shall, at the request of Siemens, declare within a reasonable period whether it, as a result of the delay in delivery, still requires delivery to be made.

10. Liability

10.1 Unless otherwise agreed in these General Conditions, any right of the Customer to claim damages, regardless of the legal basis, but in particular resulting from any duty under the contract or as a result of any tortious act, is hereby excluded.

10.2 This shall not apply insofar as liability is established on the basis of the following:

- (i) according to Product Liability Act;
- (ii) intent;
- (iii) gross negligence on the part of the owners, legal representatives or executives;
- (iv) fraud;
- (v) failure to comply with a guarantee granted;
- (vi) negligent injury to life, limb or health; or
- (vii) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichten").

10.3 However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.

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

11. License Usage Audit

11.1 The Customer shall allow Siemens to conduct annual audits of the contractual use of the Software if Siemens requests such. This shall include in particular access to all relevant systems and documentation. Siemens may carry out the audit itself or by way of any third-party auditor acceptable to the Customer and subject to a duty of confidentiality. Siemens shall give prior written notice of such an audit of at least ten (10) work days. Such an audit may take place at the premises of the Customer during the regular hours of business.

11.2 If, as a result of the audit under section 11.1, any use of the Software not in conformity with the contract by the Customer is detected, Siemens is entitled to charge the Customer for liquidated damages to the amount of the license fee set out in the current price list for further use. In addition, the Customer shall bear the reasonable costs of such an audit. Siemens reserves the right to claim further damages subject to the provision of evidence of such.

12. Jurisdiction and Applicable Law

12.1 The exclusive place of jurisdiction for all disputes arising out of or in connection with any contract concluded under these General Conditions shall be Munich, Germany.

12.2 German law shall apply exclusively to the exclusion of the conflict of law provisions and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.