

# TERMS AND CONDITIONS OF SALE

(Revised February 2018)

The following TERMS AND CONDITIONS OF SALE shall apply to all sales by PLEXPERT GmbH, Aalen, Baden-Württemberg, Deutschland (hereinafter referred to "PLEXPERT", "WE" and "OUR"). The BUYER (hereinafter referred to also "YOU", "YOUR" and "YOURS") shall mean any party who contracts to purchase GOODS from PLEXPERT. GOODS shall mean goods, products, services, solutions, software or consultancies ordered by BUYER from PLEXPERT. BUYER shall be deemed to have full knowledge of the terms and conditions herein.

## 1. GENERAL PROVISIONS

All quotations by PLEXPERT are made and purchase orders are accepted on the following terms and conditions. Notwithstanding any different or additional terms that may be embodied in YOUR purchase order. YOUR order is accepted only on the condition that YOU expressly assent to the terms and conditions contained herein. In the case of a verbal order being placed by BUYER, an order confirmation by PLEXPERT will be issued and unless challenged by the BUYER at the time of receipt, the GOODS and their supply detailed therein are deemed to be accepted by the BUYER.

## 2. QUOTATIONS

Unless otherwise stated, OUR quotations shall be null and void unless accepted by the BUYER via written purchase order within thirty (30) days from date of quotation.

## 3. PRICES

The prices of the GOODS shall be the price quoted by PLEXPERT in writing. All prices do not include sales, use, excise, or other federal and provincial taxes. Any such tax that PLEXPERT is required by law to collect, will be added to the invoice price. All prices are subject to change; this will be advised of with notification. PLEXPERT reserves the right to make adjustments to prices for reasons including, but not limited to change of specification by BUYER, changing market conditions, subcomponents and their availability.

## 4. MINIMUM ORDER VALUE

The minimum order value is \$500 before tax. This value is for GOODS only and does not include transportation costs or any other surcharges. For order values below \$500 a handling surcharge of \$75 per BUYER order will be applied.

## 5. TERMS OF PAYMENT

Subject to any special terms agreed in writing between the BUYER and PLEXPERT, the BUYER shall pay invoices within thirty (30) days from the date of the invoice. Requests for the reimbursement of any claims do not, under any circumstances, give the BUYER the right to delay, off-set or otherwise withhold any payment of invoices issued by PLEXPERT. If any payment is not made when due, a late payment charge will be paid to the BUYER from the due date until the date of the actual collection by PLEXPERT calculated to be the lesser of one and one-half percent (1,5%) per month and the highest rate permitted by governing law. Such a late payment charge shall be in addition to, and not in lieu of PLEXPERT rights and remedies for BUYERS default or non-performance. Failure to pay invoices may result in the cessation of supply of GOODS until payment is made or arrangements for account balance are agreed with PLEXPERT and processed by BUYER.

## 6. DELIVERY

All scheduled delivery dates are approximate and based on OUR best estimates and WE assure no liability for delays. All orders are subject to availability of GOODS. WE may shorten or extend delivery schedules or may, at our option, cancel YOUR purchase order in full or in part without liability other than to return any deposit or payment which is unearned by reason of cancellation.

All GOODS are shipped F.O.B. PLEXPERT – Incoterms 2010. Any Packaging requirements, than our standard packaging and commercial container will be invoiced at extra charge.

## 7. TRANSPORTATION

We will attempt to ship in accordance with YOUR instructions and carrier. However final selection of method of shipment and carriers is subject to and on discretion of PLEXPERT as deemed necessary in the process of shipping. With reasonable notice, special methods of transportation may be arranged at YOUR request. Any additional costs incurred by specifying other methods are to be paid by BUYER.

## 8. CHANGES BY BUYER

It is understood, that the prices herein are subject to adjustment by PLEXPERT in case of changes by BUYER in specification, content, quantities or delivery requirements against GOODS quoted. It is further understood, that all warranties, disclaimers, limitations of remedy and warranty, limitations of damages and indemnity agreements as contained in this document herein together with all other paragraphs hereof shall apply with respect to all goods covered by any such change and that no such warranty, disclaimers, limitation of liability for damages or indemnity agreement shall be binding on PLEXPERT in express writing and signed by PLEXPERT.

## 9. TITLE AND RISK OF LOSS AT DELIVERY

Title to GOODS and risk of loss or damage shall pass over to BUYER upon receipt by BUYER or BUYERs designated carrier.

## 10. RETURN OF GOODS

GOODS may be returned for credit or refund within thirty (30) days from the date of receipt from PLEXPERT only. GOODS to be returned need to be announced to PLEXPERT with reasonable notice, return of GOODS must be confirmed in writing by PLEXPERT. Any costs and expenses for return of GOODS to PLEXPERT are at sole expense of BUYER.

## 11. WARRANTIES AND LIEABILITIES

GOODS sold by PLEXPERT are warranted to be free from manufacturing and/ or processing defects and to correspond to relevant specification provided with quotation. The sole obligation of PLEXPERT under this warranty is to repair, or replace defectively manufactured and/or processed GOODS free of charge or, at sole discretion of PLEXPERT, to refund BUYER the price of GOODS or a proportionate part of the price, but PLEXPERT shall have no further liability to the BUYER or any third party in connection with BUYER for GOODS supplied.

In no event shall PLEXPERT be liable for incidental or consequential damages arising out of or in connection with the delivery of GOODS to BUYER, including without limitation, breach of any obligation or warranty imposed on PLEXPERT hereunder or in connection herewith. Consequential damages for purposes hereof shall include without limitation, loss of use, income or profit, or losses sustained as the result of injury to any person, or loss or sustained as the result of work stoppage. Buyer shall indemnify PLEXPERT against all liability, cost or expense. In no event, PLEXPERT will have engineering responsibility for the design of a product. All technical data has been fully checked and the accuracy of printed and digital material is not guaranteed.

## 12. INTELLECTUAL PROPERTY OWNERSHIP

WE exclusively own all intellectual property rights in any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for PLEXPERT, or jointly by BUYER and PLEXPERT, in relation to processes, methods, or related synthesis of a custom product, or otherwise in connection with simulation, design

recommendations, or manufacturing and/or improvements for manufacturing a custom product. BUYER agrees to transfer and assign to PLEXPERT all right, title, and interest in and to any joint intellectual property. And at PLEXPERTs request and expense, BUYER will help PLEXPERT to secure and records all rights in the intellectual property.

### **13. SOFTWARE**

With respect to any software products incorporated in or forming a part of our products BUYER understands and agree, that PLEXPERT is licensing such software products and not selling them, and that the words "purchase", "sell" or similar or derivate words are understood and agreed to mean "licensee". PLEXPERT or its licensor, as applicable, retain all rights and interest in software products we provide to BUYER. WE hereby grant to BUYER a royalty-free, non-exclusive, non-transferable license, without power to sublicense, to use software PLEXPERT provides to BUYER hereunder solely for BUYERs own business purposes. BUYER agrees to use the related documentation solely for BUYERs business purposes. Licenses provided by PLEXPERT to BUYER terminates when BUYERs lawful possession of the GOODS provided hereunder ceases, unless earlier terminated as agreed in original quotation. BUYER agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software, products and related documentation provided hereunder. You may not disassemble, decompile, or reverse engineer, copy, modify, enhance or otherwise change our supplement the GOODS provided hereunder without our prior written consent. PLEXPERT is entitled to terminate licenses if BUYER fails to comply with any term or conditions herein.

BUYER agrees upon termination of any license immediately to return to PLEXPERT all GOODS and related documentation provided hereunder and all copies and portions thereof.

The warranty and indemnification provisions set forth in PLEXPERT TERMS AND CONDITIONS OF SALE will not apply to third party owned software products we provide you.

### **14. EXPORT RESTRICTIONS**

BUYER acknowledge that each GOODS and any related software and technology including technical information PLEXPERT supplies to BUYER, including those contained in product documentation, hereinafter called "ITEMS", is subject to U.S. government export controls.

The export controls may include others, those of the Export Administrative Regulations of the U.S. Department of Commerce (hereinafter called "EAR") which may restrict the or require license to export of Items from the United States and their re-export from other countries.

BUYER accepts to comply unlimited with the EAR and all other applicable laws, regulations, treaties and agreements relating to the export, re-export and import of any ITEMS. BUYER must not, directly or indirectly, without first obtaining the required license to do so from appropriate U.S. government agency, export, re-export, distribute or supply any ITEMS to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government; any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/ biological weapons, or missiles, or in terrorist activities. On request of PLEXPERT, BUYER will provide information on the end user and end use of any ITEMS Buyer exports or plan to export.

BUYER will cooperate fully with PLEXPERT in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold PLEXPERT harmless from, or in connection with BUYER or BUYERs consultants, agents or employees violation of this clause 14.

### **15. LEGAL FEES AND COLLECTION COSTS**

BUYER will be responsible for any and all costs incurred by PLEXPERT in the collection of delinquent accounts and any other actions which require legal recourse.

### **16. FORCE MAJEURE**

PLEXPERT shall be free from any liability for delay or failure in shipment arising from strikes, lockouts, labor troubles or any kind, accidents, perils of the sea, fire, earthquake civil commotion, terrorist acts, war or consequences of war, government acts, restrictions, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers and suppliers, suspension of shipping facilities, act or default of carrier or any other contingency of whatsoever nature beyond PLEXPERTs control affecting the production, transportation to boarding point, loading, forwarding or unloading at destination of the GOODS, including disturbances existing on the date of the order acknowledgement. In such a situation, if shipment or delivery is not made during the period contracted for, BUYER shall accept delivery under the order acknowledgement when shipment is made; provided however, BUYER shall not be obligated to accept delivery if shipment is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

### **17. GOVERNING LAW AND JURISDICTION**

These TERMS AND CONDITIONS OF SALES shall be construed in accordance with the laws of the Province of Baden-Württemberg and the laws of Germany applicable therein without regard to principles of conflict of law. Any controversy or claim arising out of or relating to these TERMS AND CONDITIONS OF SALES or any transaction hereunder shall be adjudicated under the laws.

The place of performance is agreed to be PLEXPERT.

The application of the 1980 Vienna Convention on the International Sale of Goods is herewith excluded.

### **18. ARBITRATION**

All disputes arising out of or in connection with this TERMS AND CONDITIONS OF SALES and delivery of GOODS or a contract or agreement shall, if the BUYERs seat is outside the European Union and nothing in the contrary is agreed in written form, finally settled according the Rules of arbitration of the International Chamber of Commerce (Paris), by one or more arbitrator(s) appointed with the said Rules. The Place of arbitration shall be Vienna, Austria. The arbitration court shall decide subject to Austrian material law excluding the 1980 Vienna Convention on the International Sale of Goods.

### **19. SALVATORIUS CLAUSE**

Should one of these clauses above or part of one clause above, for whatsoever reason, be legally invalid or void, validity of the other clauses and sections of these terms still applies.

All clerical, stenographic and typing errors are subject to correction. BUYER and PLEXPERT undertake to replace the invalid regulation by a valid one, coming closest to the economic intend of the invalid regulation.