General Software Terms and Conditions
issued by the Austrian Association for the Electrical and Electronics Industries (FEEI)

1. Object of the contract
1.1 These Software Terms and Conditions apply to legal transactions between companies for the delivery and licensing of software. Software, within the meaning of these terms and conditions, concerns computer programs as defined by Article 40a of the Austrian Copyright Act [Urheberrechtsgesetz] which have been distributed as standard by the licensor or custom developed/adapted by the licensor for the licensee to use on, operate or control electrical and/or electronic equipment and systems, including documentation supplied for this purpose pursuant to item 5.
1.2 The scope and associated software services as well as any additional services are to be defined in an individual contract. These terms and conditions shall also apply to those software services and additional services.

2. Granting of rights
2.1 Unless agreed otherwise in an individual contract, the licensee shall receive the non-transferable and non-exclusive right to use the software at the agreed installation site in compliance with the contractual specifications. If hardware is supplied with the software, this right is exclusively limited to use on this hardware.
If the software is independent, use shall be permitted exclusively on hardware defined in terms of type, quantity and installation site in the contract. Use on hardware other than that defined in the contract and on multiple workstations shall require a separate written agreement.
2.2 All other rights to the software shall be reserved for the licensor. Therefore, without the licensor's prior written consent, the licensee shall not be entitled, in particular, to reproduce or modify the software, to make it available to third parties or to use it on hardware other than that defined in the contract, without prejudice to the provisions of Article 40d of the Austrian Copyright Act.

3. Contract conclusion
3.1 Offers by the licensor shall be considered non-binding in case of doubt. The contract for the delivery and licensing of software, plus the associated software services to be agreed in an individual contract, shall be deemed to have been concluded when the licensor, after receiving the licensee's purchase order, confirms the order in writing or has made the first partial delivery.
3.2 Any documentation regarding offers and projects must be neither reproduced nor made available to third parties without the licensor's consent. It may be demanded back at any time and must be returned to the licensor immediately if a contract is not realised between the licensor and the licensee concerning the present order.
3.3 Any subsequent changes or additions to the software delivery and licensing contract including these terms and conditions must be made in writing. Any provisions that deviate from these terms and conditions shall be deemed to have been agreed in an individual contract if the licensor consents to them explicitly.

4. Licensee's duty to cooperate
Without prejudice to a provision in an individual contract, the licensee shall be responsible for:
- selection of the software offered by the licensor;
- provision of all the information required to draw up technical specifications in the case of customised software;
- use of the software as well as the results achieved with it;
- loading of new versions and updates made available to the licensee.

5. Software specifications
5.1 For standard software, the licensor shall provide the specifications.
5.2 For customised software ordered by the licensee, technical specifications must be agreed in writing between the licensor and the licensee. 5.3 Software specifications may, for example, include performance features, documentation concerning specific functions, hardware and software requirements, installation requirements, conditions of use, and operation (user manual).
5.4 The licensee shall be responsible for complying with the software specifications, especially the conditions of use, as well as for acquiring and complying with any official authorisation requirements.

6. Delivery, assumption of risk, and acceptance inspection
6.1 Unless agreed otherwise in an individual contract, the licensor shall supply the software to the licensee in a machine-readable form. This shall be done either in the form of a physical delivery or handover of a physical data carrier or through provision in an electronic form (e.g. download). The licensor shall be entitled to deliver the version that is current at the time of delivery.
6.2 If no delivery date is agreed, the delivery date shall be communicated by the licensor to the licensee.
6.3 Software and data carriers shall be dispatched at the licensee's risk.
6.4 If an acceptance inspection is envisaged, the software shall be available to the licensee for use free of charge during a test period. The test period shall begin once the software has been delivered or made available in an electronic form pursuant to item 6.1 and shall last for one week unless agreed otherwise in an individual contract.
6.5 The software shall be deemed to have been accepted after the test period expires if:
　6.5.1 the licensee confirms its adherence to the contractual specifications;
　6.5.2 the licensee does not raise a complaint in writing about any significant defects within the test period; or
　6.5.3 the licensee uses the software for its business purposes after the test period expires.
6.6 If an acceptance inspection is not envisaged, the time of delivery shall replace the acceptance inspection with regard to the legal consequences

pursuant to item 7.1. In any case, risk shall pass to the licensee upon delivery.

7. Warranty and assumption of responsibility for defects
7.1 For software, the licensor shall guarantee its adherence to the specifications valid at the time of conclusion of the contract if and to the extent that the software is installed in accordance with the applicable installation requirements and used under the applicable conditions of use. No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising materials and written or oral statements not included in the contract. Unless agreed otherwise in an individual contract, the statutory warranty period shall apply from the time of the acceptance inspection or delivery.
7.2 Unless agreed otherwise in an individual contract, the burden of proving that the defect already existed at the point of handover shall be based on the statutory warranty provisions.
7.3 Unless agreed otherwise in an individual contract, the prerequisites for the assertion of warranty claims are an immediate examination and/or test of the software upon delivery as well as an immediate written notice of defects in which the licensee must do its very best to provide details of the deviation from the specifications, the operating steps that led to the defect and the software error message.
7.4 The prerequisites for the elimination of any defect are that
- this involves a deviation that impairs function;
- this is reproducible;
- the licensee has installed new versions and updates offered to it free of charge within the warranty period, if applicable;
- the licensor receives all documentation and information required to eliminate the defect from the licensee; and
- the licensor can access hardware and software during its normal working hours.
7.5 The elimination of defects, which are function-impairing deviations from the valid specifications, shall, at the licensor's discretion, involve the delivery of new software or a corresponding modification to the program.
7.6 Unless agreed otherwise in an individual contract, no warranty shall be assumed for software modified by the licensee or third parties without the licensor's prior written consent, even if the defect occurs in an unmodified part of the program.
7.7 Unless agreed otherwise in an individual contract beforehand, any modification by the licensee or third parties to the hardware or hardware configuration originally provided for installation of the software shall result in the cancellation of the warranty.
7.8 Unless agreed otherwise in an individual contract, the licensor shall provide no warranty
- for third-party software that is not part of the contract,
- for interaction between the contractual software and other software programs used or planned at the licensee or
- for merely short-term, typical software interruptions and/or malfunctions.
7.9 Improper handling or errors in operation and/or use of the software by the licensee or third parties shall result in an exclusion of the warranty.
7.10 If the warranty is intact and the software, in a function-impairing manner, does not adhere to the specifications, and the licensor, despite sustained efforts, is unable to achieve adherence to the specifications within a reasonable period of time, either contracting party shall have the right to dissolve the contract for the software concerned with immediate effect in exchange for restitution of the services and payments received.
7.11 Defects to individual programs shall not give the licensee the right to dissolve the contract with regard to the remaining programs.
7.12 Unless agreed otherwise in an individual contract, further claims based on deficiency of the software shall be excluded, with the exception of any under item 7.
7.13 Maintenance (e.g. troubleshooting, error rectification and updating, etc.) which does not come under the elimination of defects, as well as responsibility for the respective costs, must be agreed separately.

8. Industrial property rights and copyright
8.1 The licensor shall assist the licensee with fighting any claims based on a violation of an industrial property right or copyright valid according to the Austrian legal system that has been caused by software used in accordance with the contract. The licensee shall inform the licensor in writing without delay if such claims are asserted against it, and shall also serve a third-party notice in the event of a legal dispute to give it the opportunity to join the proceedings.
8.2 If claims arising from the violation of property rights are asserted for which the licensor is responsible, the licensor may modify or replace the software or obtain a right of use, at its own expense. If this is not possible with reasonable cost and effort, the licensee must return the original plus all copies of the software, including supplied documentation, immediately at the licensor's request in exchange for reimbursement of the remuneration. This shall conclusively settle any claims the licensee may have concerning the violation of industrial property rights and copyright, to the exclusion of any further obligation on the part of the licensor.
8.3 The licensor shall reserve the right to examine ("Audit") the agreed use of the software itself or through a commissioned third party ("Subcontractor") provided that it provides written notice of this examination 14 days in advance. The licensee shall be obliged to assist with the Audit and to grant the licensor, or its Subcontractors, sufficient access to information associated with the use of the software (e.g. server, business records, etc.). Any underpayment of the fee must be settled within 14 days of receiving a written request. The licensor shall also be entitled to terminate the contract

extraordinarily. Responsibility for the costs of the Audit must be agreed separately.

8.4 The licensee shall implement technical or other measures to ensure that, due to open source software used by the licensee, the present software is not subject to the same open source software (OSS) licensing conditions.

8.5 For software for which the licensor only has a derived right of use (third-party software), the terms and conditions of use agreed between the licensor and its licensor shall apply in addition and shall take priority over the present terms and conditions of use if and to the extent that those terms and conditions of use relate to the licensee (e.g. end-user license agreement). The licensor hereby draws attention to those terms and conditions and shall make them available to the licensee on request.

8.6 The licensee shall be responsible for protecting all the licensor's rights (such as industrial property rights and copyright, including the right to a copyright notice) in respect of the software and for protecting the licensor's entitlement to confidentiality in respect of business and trade secrets, thereby also ensuring that employees and agents of the licensee and/or third parties protect such rights and entitlement; this shall apply even if the software has been modified or combined with other programs. This obligation shall remain valid even after termination of the contract.

9. Liability

9.1 Unless agreed otherwise in an individual contract, the licensor shall only be liable for damage, in line with statutory regulations, if and to the extent that its intent or gross negligence is proven. Total liability of the licensor in cases of gross negligence shall be limited to the lower of the net contract value or EUR 500,000. The licensor's liability shall be limited to the lower of 25% of the net contract value or EUR 125,000 per claim.

9.2 Unless agreed otherwise, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, production downtime, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the licensee shall be excluded.

9.3 Unless agreed otherwise in an individual contract, all forms of compensation shall be excluded in case of non-compliance with any requirements for installation, implementation and use (such as those included in operating instructions) or official authorisation requirements.

9.4 If contractual penalties have been agreed, any claims of the licensee in excess thereof on the same legal grounds shall be excluded.

9.5 Unless agreed otherwise in an individual contract, the licensor shall also not assume any liability whatsoever for the situations referred to in item 7.8.

9.6 The licensee shall be liable to the licensor for violation of the obligations assumed in item 5.4 and shall indemnify and hold the licensor harmless in this regard.

9.7 The provisions of item 9 shall apply conclusively to all claims on the part of the licensee against the licensor, under any legal ground and title whatsoever, and shall also apply to all staff members, subcontractors and sub-suppliers of the licensor.

10. Payment

10.1 The amount and due date of the one-time and/or ongoing usage fee is to be agreed in an individual contract, as should any value guarantee.

10.2 The licensor shall be entitled to submit the invoice electronically.

11. Duration and termination of the contract

11.1 The duration of the right of use shall be based on the contract. In any case, the right of use shall end upon the expiry of the agreed usage period or shall be limited to the period of use of the hardware defined in the contract, if applicable.

11.2 Upon termination of the right of use, the licensee shall be obliged, at the licensor's discretion, to return the entire software including supplied documentation to the licensor or to demonstrably destroy it. The same shall apply to software that has been modified or combined with other programs.

11.3 In the case of customised software, if a consensus cannot be reached within a reasonable period concerning acceptance of the technical specifications, the licensor shall be entitled to terminate the contract with immediate effect. Restitution shall be required for any performance already rendered up to that point in accordance with statutory provisions.

11.4 If the licensee fails to meet its obligations, the licensor shall be entitled to refuse the provision of services and to rescind the contract after setting a reasonable deadline. At any rate, the licensee shall be liable for any damage (for instance, downtimes, etc.) incurred by the licensor due to non-compliance with these obligations.

11.5 If insolvency proceedings are opened with respect to the licensee's assets or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the licensor shall be entitled to rescind the contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, the rescission shall only become effective 6 months after initiation of the insolvency proceedings or after rejection of the request for initiation due to a lack of assets. In any case, the contract shall be terminated with immediate effect provided that the insolvency law governing the licensee does not provide otherwise or if termination of the contract is essential to avoid serious financial disadvantages for the licensor.

12. Assertion of claims

Any claims on the part of the licensee must be asserted in court within 3 years after performance of the services, otherwise they shall be forfeited unless other deadlines are provided for by mandatory statutory provisions.

13. Compliance with export regulations

13.1 When passing on the goods supplied by the licensor to third parties, together with the pertinent documents, regardless of the manner in which they are provided or regardless of the services performed by the licensor, including technical support of any kind, the licensee must comply with the applicable provisions of the national and international (re-)export regulations. In any case, the licensee must comply with the (re-)export regulations of the licensor's country of domicile, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when passing on goods or services to third parties.

13.2 If required for export control checks, the licensee must immediately provide the licensor upon request with all necessary information, including information about the final recipient, final destination and intended use of the software or services.

14. General

14.1 The licensor must inform the licensee if it shall commission subcontractors. Companies affiliated with the licensor shall be deemed to have been approved in advance.

14.2 If individual provisions of the contract or of these terms and conditions should be invalid, this shall not affect the validity of the remaining provisions. The invalid provision must be replaced with a valid provision that approximates the intended objective as closely as possible.

14.3 The German-language version shall be deemed the authentic version of the terms and conditions and shall also be used to interpret the contract.

15. Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – shall be the court with subject-matter jurisdiction at the licensor's head office; in Vienna, this shall be the court located in the district of the Local Court of Innere Stadt. The contract shall be governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.

16. Reservation clause

Performance of the contract on the part of the licensor shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.

As of: April 2018