

# **TERMS AND CONDITIONS OF SALE FOR SET SYSTEMS AND SERVICES**

The terms and conditions detailed herein (“Agreement”) apply to your (“Customer”) purchase from SET GmbH or any of its affiliated companies identified on a commercial offer or quote, order acknowledgment, or invoice, or in the absence of an identified affiliate, National Instruments Corporation (“Seller”) of SET hardware (“Hardware”), licenses to use any software provided by SET (“Software”), and Non-SET Branded Products (collectively the “Product(s)”), as well as training, services, and support related to Hardware and Software (“Services”). Customer and Seller may be referred to collectively as “Parties.” THIS AGREEMENT SHALL APPLY UNLESS CUSTOMER AND SELLER HAVE ENTERED INTO A SEPARATE SIGNED AGREEMENT APPLICABLE TO THE PURCHASE OF THE PRODUCTS OR SERVICES. By placing an order with Seller, Customer agrees to be bound by the terms of this Agreement. SELLER EXPRESSLY OBJECTS TO AND REJECTS ANY TERMS AND CONDITIONS IN CUSTOMER’S PURCHASE ORDER OR OTHER SIMILAR DOCUMENT. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, PROMPTLY NOTIFY SELLER AND RETURN THE PRODUCT UNUSED IN ITS ORIGINAL PACKAGING TO SELLER.

## **1. PRICES AND ORDERS**

Prices are set forth in the quotation issued by Seller to Customer (“Quote”). All Quotes expire thirty (30) days from date of issuance, unless otherwise stated in the Quote. All orders are subject to acceptance at the sole discretion of Seller. Orders will be considered accepted once Seller books an order and sends Customer a sales order acknowledgement. Seller shall not be bound by changes to an order unless agreed by Seller in writing. Seller reserves the right to cancel any order if any information provided by Customer to Seller is inaccurate.

Seller reserves the right to suspend or cancel any order if Customer has any outstanding payments due to Seller or is not in good standing. For Products customized or configured by Seller to meet specific Customer requirements as detailed in Seller's quote, Customer may cancel the order at any time after placing order and prior to shipment. Notification shall be provided to Seller in writing with receipt of the notification occurring upon written acknowledgement by Seller (the "Notification Date"). Within two (2) business days of the Notification Date, Seller will stop work on any cancelled Products. Within five (5) business days of the Notification Date, Seller will submit an itemized invoice for all previously un-invoiced hardware and labor costs incurred by Seller in the performance of the order prior to the Notification Date, including a 20% cancellation fee applied to the remaining un-invoiced value of the order ("Final Invoice"). Customer's cancellation of an order shall not relieve Customer of the obligation to pay any invoices submitted by Seller prior to the Notification Date. Customer shall pay (i) all outstanding invoices within ten (10) days from the Notification Date, and (ii) the Final Invoice within ten (10) days of receipt shall be NET10. Following payment of the Final Invoice, Seller will arrange for shipment of all hardware paid for by Customer to Customer's facility utilizing Customer's carrier, per the shipping terms defined in this Agreement. At its sole discretion, Seller may choose to retain specific hardware in Seller stock and will deduct those hardware costs from the Final Invoice.

## **2. PAYMENT AND INVOICING**

Payment is due at the time the order is placed. If Customer is approved for credit, payment shall be due within thirty (30) days from the date of invoice. If milestone payments are included on the face of the order, forty percent (40%) of the total payment shall be due upon acceptance of the order and the remaining sixty percent (60%) shall be due upon delivery. Payment shall be in the currency listed on the Seller invoice. A convenience fee of 3% will be applied to orders that are processed on a credit card. All sums not paid when due shall accrue interest daily at a monthly rate of the lesser of 1.5% or the highest rate permissible by applicable law. If there are multiple units in an order, each unit will be invoiced when shipped. Nonstandard invoice processes requested by Customer may be subject to a five percent (5%) processing fee and any amounts Seller is required to pay to government authorities on behalf of customers (if required). Customer shall not offset, defer, or deduct any amounts which may become payable to Seller under this Agreement or otherwise.

## **3. DELIVERY, TITLE and RISK OF LOSS**

Unless otherwise indicated in SET's quotation, all Products will be delivered FCA (SET premises in Wangen, Allgäu), INCOTERMS 2020. Title and risk of loss to Products (for Software, the media) shall pass to Customer upon delivery of the Products to the carrier;

provided however, Seller retains a security interest and right of possession in the Products until Customer makes payment to Seller in full. Acceptance of the Products shall occur upon delivery to the carrier. In no event shall Seller assume any liability in connection with the shipment, nor shall the carrier be considered an agent of Seller. Customer is responsible for all shipping and handling, including fees, customs, formalities, and clearance, unless otherwise indicated by Seller. Shipment dates provided by Seller and any delivery dates in Customer documentation, order, or sales order acknowledgment are estimates only, and Seller shall have no liability for losses or claims resulting from late delivery of Products. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units in accordance with Section 2 whether such shipment is in whole or partial fulfillment of Customer's order. Claims for shipment shortage shall be deemed waived unless presented to Seller in writing within forty-five (45) days of the invoice date.

#### **4. TAXES**

Prices exclude, and Customer is responsible for, all sales, use, service, value added, and like taxes ("Taxes") arising from the purchase of the Products and Services. If Customer is exempt from any Taxes, it must provide Seller with the appropriate tax exemption documentation at the time the order is placed.

#### **5. SOFTWARE**

Software is licensed pursuant to the third-party software license agreements provided with the software or, in the absence of such license agreements, the National Instruments Software License Agreement available at <https://www.ni.com/en/about-ni/legal/software-license-agreement.html> at the time of order. Notwithstanding anything to the contrary contained herein, if any conflict arises between this Agreement or a third-party software license agreement, the latter shall prevail with respect to the subject matter contained therein. By placing an order, Customer represents that it has become familiar with and agrees to any such third-party software license agreements, as applicable. All software is licensed, not sold, and title to the software remains with the applicable licensor(s).

#### **6. NON-SET BRANDED PRODUCTS**

Non-SET Branded Products that Seller resells may not be testable or repairable by Seller, and it may be necessary for Customer to contact the manufacturer or the publisher for service or any warranty claims. Seller does not warrant, has no obligation to support, and shall have no liability for Non-SET Branded Products. The Limited Warranty and Seller Intellectual Property Liability sections of this Agreement do not apply to the sale and purchase of Non- SET

Branded Products. “Non-SET Branded Products” means any third-party hardware, software, or service that Seller sells or delivers to Customer, but does not carry Seller’s marking.

## **7. SERVICES**

In addition to the terms and conditions of this Agreement, Services provided by Seller are also subject to any service agreements or statements of work agreed upon in writing by the Parties. Seller may, at its discretion, utilize an Affiliate Company and its employees to perform Services under this Agreement. “Affiliated Company” for purposes of this Agreement means an entity directly or indirectly Controlled by or Controlling or under common control with Seller where “Control” means the ownership of a majority of the voting stock of the entity or other legal control sufficient to direct the management of the entity.

## **8. LIMITED WARRANTY**

For a period of one (1) year from the shipping date, Seller warrants that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to and will substantially conform to the then applicable Seller published specifications and will provide virtual technical support to Customer via telephone during normal business hours. Seller warrants that for a period of ninety (90) days from the performance of Services that the Services will be performed in a good and workmanlike manner. If Seller receives notice of a defect or non-conformance during the applicable warranty period, Seller will, in its sole discretion: (i) repair or replace the affected Hardware, (ii) re-perform the affected Services, or (iii) refund the fees paid for the affected Hardware, Software or Services. Repaired or replaced Hardware or Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If Seller elects to repair or replace Hardware, Seller may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Hardware. Customer must obtain an RMA number from Seller before returning any Hardware under warranty to Seller. Customer will pay shipping expenses to send the affected Hardware to Seller, and Seller will pay shipping expenses to return the Hardware to the Customer. If, however, Seller concludes, after examining and testing returned Hardware, that it is not covered by the Limited Warranty, Seller will notify Customer and return the Hardware at Customer’s expense. Seller reserves the right to charge a fee for examining and testing Hardware not covered by the Limited Warranty.

This Limited Warranty does not apply if the defect of the Hardware or Software resulted from improper or inadequate maintenance, installation, repair, or calibration (performed by a party other than Seller); unauthorized modification; improper environment; use of an improper

hardware or software key; improper use or operation outside of the specifications for the Hardware or Software; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature. THE REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND THE CUSTOMER'S SOLE REMEDIES AND SHALL APPLY EVEN IF SUCH REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

### **Limited Warranty**

For a period of one (1) year from the date of delivery, Seller warrants that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to substantially conform to the then applicable Seller published specifications. Seller warrants that the Software will (i) perform substantially in accordance with the applicable documentation provided with the Software and the Software media will, in the form received from Seller, be free from defects in materials and workmanship. Seller warrants that the Services will be performed in a good and workmanlike manner. Any rights of Customer resulting from a breach of Seller's obligations regarding the Services shall become time-barred twelve (12) months after Seller provided the Service.

### **System Remedies**

If Seller receives notice of a defect or non-conformance during the applicable warranty period, Seller will, in its sole discretion: (i) repair or replace the affected Systems, or (ii) re-perform the affected Services. In case Seller is unable to carry out repair or replacement within a reasonable period after Customer's request of remedy but not shorter than twelve (12) weeks, Seller will refund the fees paid for the affected Systems or Services, in which case Customer shall return the Systems to Seller at Seller's request. Repaired or replaced Systems will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If NI elects to repair or replace Systems, NI may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Systems. Customer must obtain an RMA number from NI before returning any Systems under warranty to NI. Customer will pay shipping expenses to send the affected Systems to NI, and NI will pay shipping expenses to return the Systems to the Customer. If, however, NI concludes, after examining and testing returned Systems, that it is not covered by the Limited Warranty in Section 8(a), NI will notify Customer and return the Systems at Customer's expense. NI reserves the right to charge a fee for examining and testing Systems not covered by the limited Warranty.

### **Limitations**

This Limited Warranty does not apply if the defect of the Systems resulted from improper or

inadequate maintenance, installation, repair, or calibration (performed by a party other than Seller); unauthorized modification; improper environment; use of an improper hardware or software key; improper use or operation outside of the specifications for the Systems; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature. Further, NI shall not be liable for any expenses or costs resulting from (i) rectifying defects or carrying out root cause analysis at the level of Customer's (end) customers and (ii) disassembling and reassembling measures beyond the NI – Customer relations regulated in this Contract.

## **9. NO OTHER WARRANTIES**

THE REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND THE CUSTOMER'S SOLE REMEDIES, AND SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, SYSTEMS AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND NI DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ALL SYSTEMS AND SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. SELLER DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE SYSTEMS OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SELLER DOES NOT WARRANT THAT THE OPERATION OF THE SYSTEMS WILL BE UNINTERRUPTED OR ERROR FREE. NON-SET BRANDED PRODUCTS PROVIDED BY SELLER TO CUSTOMER ARE NOT TESTABLE OR REPAIRABLE BY SELLER, AND IT MAY BE NECESSARY FOR CUSTOMER TO CONTACT THE MANUFACTURER OR THE PUBLISHER FOR SERVICE OR ANY WARRANTY CLAIMS. SELLER DOES NOT WARRANT, HAS NO OBLIGATION TO SUPPORT, AND SHALL HAVE NO LIABILITY FOR NON-SET BRANDED PRODUCTS. THE LIMITED WARRANTY AND INTELLECTUAL PROPERTY LIABILITY SECTIONS OF THESE TERMS DO NOT APPLY TO THE SALE AND PURCHASE OF NON-SET BRANDED PRODUCTS. SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ALL NON-SET BRANDED PRODUCTS, INCLUDING WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER WAIVES, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, ALL CLAIMS OF NEGLIGENCE AND STRICT LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL HAVE NO LIABILITY TO CUSTOMER OR ANYONE CLAIMING BY OR THROUGH CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES RESULTING FROM NON-SET BRANDED PRODUCTS PROVIDED BY SELLER TO CUSTOMER. SELLER DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS DERIVED FROM THE USE OF THE PRODUCTS OR SERVICES IN

TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SELLER DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

#### **10. WARNING AND CUSTOMER INDEMNITY**

CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT PRODUCTS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. SELLER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCTS OR SERVICES FOR HIGH-RISK USES. CUSTOMER SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING, LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S USE OF THE PRODUCTS AND SERVICES FOR ANY HIGH-RISK USES, INCLUDING ARISING FROM CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF SELLER.

#### **11. SYSTEM AND APPLICATION RESPONSIBILITY AND ADDITIONAL INDEMNITY**

CUSTOMER ACKNOWLEDGES THAT IT IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE PRODUCTS OR SERVICES WHENEVER THE PRODUCTS OR SERVICES ARE INCORPORATED IN CUSTOMER'S SYSTEM OR APPLICATION, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION. FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES WHEN PRODUCTS AND SERVICES ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. CUSTOMER SHALL DEFEND, INDEMNIFY, RELEASE AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S INCORPORATION OF THE

PRODUCTS OR SERVICES INTO CUSTOMER'S SYSTEM OR APPLICATION, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF SELLER.

## **12. INTELLECTUAL PROPERTY LIABILITY**

Seller agrees to defend any third-party claim that alleges the Hardware, Software or Services infringe any U.S. patent, copyright, or trademark ("Claim"), provided that Customer notifies Seller immediately upon learning of any Claim or any allegation that the grounds for a Claim may exist, grants Seller sole control over the defense and settlement of the Claim and cooperates fully with Seller in preparing a defense for any Claim. Seller agrees to pay any final judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this Section. Seller shall not be liable for a settlement made without its prior written consent. Notwithstanding the foregoing, Seller shall have no obligation under this Section for any claim relating to or arising from (a) Customer's modifications of Hardware, Software or Services; (b) failure to use Hardware, Software or Services in accordance with the applicable documentation provided by Seller; (c) the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by Seller; (d) the compliance of Seller with Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Customer; or (e) Non-Seller Branded Products. The foregoing states the Customer's sole remedy for, and the entire liability and responsibility of Seller for, infringement of any patent, trademark, or copyright or other intellectual property rights. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT. In any event, if Seller believes in its reasonable opinion the Hardware, Software, or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, Seller may, at its sole discretion, (i) procure for the Customer the right to continue to use the Hardware, Software, or Services; (ii) replace them with comparable Hardware, Software or Services that are free of such infringement; or (iii) refund the fees paid by Customer. In the event of either (ii) or (iii), Customer shall promptly return the Hardware to Seller and/or terminate the use of the Software or Services.

## **13. PROPRIETARY RIGHTS**

Seller and/or its licensors reserves all right, title, and interest in any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by Seller under this Agreement. Nothing in this Agreement will be deemed to grant to Customer any ownership rights in or license rights to such intellectual property except as expressly granted to Customer.



Customer agrees to comply with the terms of any nondisclosure agreement(s) executed between the Parties and to comply with all proprietary information markings and restrictive legends on information provided hereunder by Seller.

#### **14. LIMITATION OF LIABILITY**

SELLER SHALL NOT BE LIABLE FOR (I) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SYSTEMS OR SERVICES; OR (II) ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH: (A) PRODUCTS OR SERVICES NOT BEING AVAILABLE FOR USE, INCLUDING ANY COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES; (B) LOSS OF, CORRUPTION OF, OR LOSS OF USE OF ANY PRODUCTS, HARDWARE, SOFTWARE OR DATA; (C) LOSS OF REVENUE, PROFIT, OR BUSINESS OPPORTUNITY; (D) BUSINESS INTERRUPTION OR DOWNTIME; OR (E) INABILITY TO ACHIEVE A PARTICULAR RESULT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF SELLER ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR THE SYSTEMS OR SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO SUCH CLAIM. THIS SECTION: (1) APPLIES TO SELLER AND ITS LICENSORS, DISTRIBUTORS, AND SUPPLIERS (INCLUDING ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS), (2) REFLECTS AN ALLOCATION OF RISK BETWEEN SELLER AND CUSTOMER IN VIEW OF THE PURCHASE PRICE OF THE PRODUCTS AND SERVICES, (3) APPLIES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF SELLER, AND (4) APPLIES REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS UNENFORCEABLE OR FAILS OF ITS ESSENTIAL PURPOSE, THE SOLE LIABILITY OF SELLER TO CUSTOMER SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (50,000 USD).

#### **15. FORCE MAJEURE**

Seller shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including acts of terrorism, nature or governments; pandemics and epidemics; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labor or materials ("Force Majeure Event"). In the event of a Force Majeure Event, Seller reserves the right to cancel the applicable order.

#### **16. EXPORT AND SANCTIONS LAWS AND COMPLIANCE**

Products (which, for purposes of this Section, shall include the software and technology incorporated in or supplied with a Product and Service) purchased from Seller are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.) administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") ([www.bis.doc.gov](http://www.bis.doc.gov)) and other applicable U.S. export control laws and sanctions regulations, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") ([www.treas.gov/ofac](http://www.treas.gov/ofac)). In addition, Products distributed from Seller's distribution center in Europe are subject to control under the Regulation (EU) 2021/821 of the European Parliament and of the Council and their export or intra-EU transfer may also be subject to additional licensing requirements under the Regulation (EU) 2021/821 of the European Parliament and of the Council and its implementing regulations. Products may not be exported or re-exported to any country where sanctions are imposed by the U.S. government (which currently includes Cuba, Iran, North Korea, Republic of Sudan and Syria but which may be modified by the U.S. government from time to time). Customer agrees it will comply with the export laws and trade sanctions of all applicable countries and will not export, re-export or transfer Products purchased from Seller without the required authorization, including an export or re-export license issued by the U.S. authorities, or to any prohibited destination or for a prohibited end-use. Products may also require export license(s) issued by the applicable authorities before being returned to Seller. The issuance of a quote, a sales order acknowledgment, or a Return Material Authorization ("RMA") by Seller does not constitute export authorization. Customer represents and warrants it is not ineligible or otherwise restricted by U.S. or applicable law to receive Products and it will not export, re-export, or provide Products to any person or entity on OFAC's List of Specially Designated Nationals or on BIS's Denied Persons List, Entity List or Unverified List or any other applicable restricted party list. Seller reserves the right to refuse and/or cancel any order if, at any time, Seller believes that any export controls or trade sanctions laws may be violated. See [ni.com/legal/export](http://ni.com/legal/export) for more information and to request relevant import classification codes (e.g., HTS), export classification codes (e.g., ECCN), and other import/export data.

Customer shall be responsible to ensure that Customer and all Customer affiliates, associates, employees, and other persons acting on Customer's behalf conduct operations at all times in strict compliance with all applicable laws, rules and regulations in relation to anti-corruption, anti-bribery, or similar type of laws.

Customer may not utilize engineering services for the performance of "defense services" as defined by International Traffic In Arms Regulations 22 CFR 120.9. Seller will only perform Services based on its understanding and condition that goods or services (i) are not for the

use in the production or development of any item produced, purchased, or ordered by a footnote 1 designation in the license requirements column of Supplement No. 4 to Part 744, U.S. Export Administration Regulations and (ii) such a company is not a party to the transaction.

## **17. GOVERNING LAW AND FORUM**

This Agreement shall be governed by the laws of the Germany, without regard to principles of conflicts of laws. The Parties submit to the personal jurisdiction of the state and federal courts in Munich, Germany. The Parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

## **18. LIMITATION PERIOD**

SELLER SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM AND/OR CONCERNING THIS AGREEMENT AND/OR ITS SUBJECT MATTER BROUGHT MORE THAN TWO YEARS AFTER THE OCCURRENCE CAUSING THE LOSS AND/OR DAMAGE GIVING RISE TO SUCH CLAIM (REGARDLESS OF WHETHER SUCH OCCURRENCE WAS DISCOVERABLE AT THE TIME).

## **19. UPDATES**

Seller reserves the right to update this Agreement at any time, effective upon posting an updated version at [www.smart-e-tech.de](http://www.smart-e-tech.de); however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

## **20. ASSIGNMENT**

Seller may assign any of its rights or obligations under this Agreement to any of its Affiliates without knowledge or consent from Customer, provided Seller guarantees performance of its obligations under this Agreement. Notwithstanding the foregoing, any Seller obligation hereunder may be performed (in whole or in part), and any Seller right or remedy may be exercised (in whole or in part), by an Affiliate of Seller. "Affiliate" means, with respect to either Party, any person, organization, or entity controlling, controlled by or under common control with, such Party. For purposes of this definition only, "control" of another person, organization or entity will mean the possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of such person, organization, or entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, "control" will be deemed to exist when a person, organization, or entity (i) owns more than fifty percent (50%) of the outstanding voting stock or other ownership

interest of the other organization or entity, or (ii) possesses, directly or indirectly, the power to elect or appoint more than fifty percent (50%) of the members of the governing body of the other organization or entity.

## **21. GENERAL TERMS**

This Agreement, and any terms incorporated herein by reference, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral, with respect to that subject matter. Customer acknowledges reading this Agreement, understands these terms, and agrees to be bound by them. This Agreement may not be altered, supplemented, or amended by the use of any other document unless otherwise agreed in writing by Seller. No delay or failure by Seller to exercise any right it has under this Agreement shall impair or be construed as a waiver of such right. A waiver of any provision of this Agreement by Seller must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision. The term “including” as used in the Agreement should be construed as “including without limitation”. For the avoidance of doubt, whenever the term “purchase” is used herein with respect to Software, it shall mean the purchase of a license for Customer to use the applicable Software. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected, and the illegal, unenforceable, or conflicting part, term, or provision shall be reformed by a court of law with binding authority to the maximum extent possible to reflect the intent of this Agreement. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the Parties with respect to this Agreement.

As of: February 2024

