

## General Terms & Conditions for the Supply of Movable Goods within GERMANY

These General Terms & Conditions for the Supply of Movable Goods (“GTC of Supply”) are agreed between the EKATO entity named on the Offer (“EKATO”) and the Buyer that accepted the Offer (“Buyer”). These GTC of Supply, the accepted Offer together with the applicable Supplemental Terms, if any, form the “Agreement” or “Contract.”

Capitalized terms are defined at the end of this document.

### Commercial terms

#### 1. EKATO’s Offerings

##### 1.1 Delivery mode

EKATO will deliver the Goods and ancillary Offerings as specified in the Contract. EKATO may deliver the Goods/Offerings in stages or installments and may invoice accordingly.

##### 1.2 Updates for Offerings

EKATO may issue Updates to its Offerings and Buyer shall be responsible for installing the Updates. EKATO will use commercially reasonable efforts to notify Buyer when Updates are generally available. Information provided on EKATO’s website is sufficient notice.

EKATO may choose not to support non-current versions of the Offerings or to update them to future versions.

##### 1.3 Cybersecurity

The cybersecurity features of the Offerings are in accordance with the specifications outlined in EKATO’s product catalogue. EKATO takes reasonably possible measures to avoid cybersecurity threats to the Offerings and to minimize vulnerabilities. There is no guarantee/warranty from EKATO that the Offerings are completely secure or free from vulnerabilities.

#### 2. Delivery

##### 2.1 Delivery terms

Unless agreed otherwise in the Contract, the Goods will be delivered FCA according to INCOTERMS®2020. If a different delivery term is agreed or required for shipment to a specific site, Buyer will pay all additional costs. Buyer may only reject the non-compliant portion of the Contract.

##### 2.2 Milestones, Delivery dates

The timelines for any delivery dates agreed upon in the Contract are estimates and non-binding, unless Buyer and EKATO agree to specific interim milestones or delivery dates expressly being subject to liquidated damages (“Binding Dates”), in which case Section 2.3 will apply.

##### 2.3 Delay

###### 2.3.1 Liquidated damages.

If and to the extent that EKATO is solely responsible for failing to meet Binding Dates and Buyer suffers a loss, EKATO shall pay liquidated damages equal to 0.5% of the Price for the delayed portion of the Goods for every full week of delay. Aggregate liquidated damages shall not exceed 5% of the Price.

###### 2.3.2 Termination for delay.

Buyer may only terminate the Order due to delay if:

- a. the maximum liquidated damages are payable;
- b. a reasonable additional delivery period has expired.

### **2.3.3 Exclusive remedy.**

Section 2.3 sets out EKATO's entire and exclusive liability for delay and excludes all of Buyer's other rights and remedies for delay to the extent permissible by mandatory law. The provisions of this clause 2.3 do not apply in the event EKATO is liable for delay due to Willful Misconduct or Gross Negligence.

## **3. Risk and title**

### **3.1 Transfer of risk**

Risk of loss or damage for all Goods passes to Buyer upon:

- a. Delivery;
- b. attempted Delivery if Buyer fails or refuses to take delivery of the Goods without justified cause;
- c. moving the Goods into storage in accordance with Section 4.1.

### **3.2 Transfer of title**

Title to the Goods passes to Buyer after EKATO has received payment in full.

If applicable law does not allow EKATO to retain title after Delivery:

- a. title to the Goods will pass to Buyer upon Delivery;
- b. EKATO will retain a security interest in the Goods to secure payment of the Goods purchase price and Buyer agrees to sign any documents EKATO deems necessary or convenient to file or perfect such security interest.

## **4. Storage**

### **4.1 Moving Goods to storage**

Upon Buyer's request, or if Buyer does not take Delivery at the agreed Delivery date, the Goods may be moved to storage. On receipt of an invoice Buyer will pay for:

- a. shipping;
- b. storage expenses, including preparation for and placement into storage, handling, freight, inspection, preservation, maintenance, taxes, and insurance.

### **4.2 Removing Goods from storage**

Buyer will arrange, at its expense, to remove the Goods from storage:

- a. when conditions allow;
- b. after paying to EKATO all amounts due under this Section 4.

## **5. Payment, interest, and taxes**

### **5.1 Payment terms**

Buyer shall pay the Price (plus reasonable and verifiable travel and incidental expenses and Tax, if applicable) within 30 days of the invoice date, without deduction, retention or set off. If Buyer disputes an invoice, Buyer shall pay any undisputed portion of the invoice.

### **5.2 Interest**

EKATO is entitled to charge interest on overdue payments at the European Central Bank's base interest rate plus 9% (nine percent) per year.

## 5.3 Taxes

All prices and expenses stated in the Contract are exclusive of any Tax. Buyers shall pay or refund EKATO for any applicable Tax imposed by any government authority for Buyer's use or receipt of the Offerings.

If Buyer is exempt from value-added or sales tax, it shall provide a valid, timely, and executed exemption certificate, direct pay permit, or other such government-approved documentation.

If Buyer is required by law to deduct or withhold Tax, Buyer shall increase the amount it pays to EKATO so that EKATO still receives the net amount originally invoiced. Buyer will promptly provide all Tax receipts confirming it has paid or has withheld Tax.

## 6. Changes

### 6.1 Change requests

When Buyer sends EKATO a change request, or when EKATO proposes a change, EKATO may send Buyer an offer including:

- a. a price estimate;
- b. a schedule impact;
- c. any other necessary changes to the Contract.

### 6.2 Effectiveness of Changes

Change becomes effective when Buyer and EKATO accept it in writing.

### 6.3 Changes in law and standards

#### 6.3.1 Right to adjustments.

EKATO is entitled to reasonable adjustments to the Contract for any additional requirements/activities it has to fulfil or implement or costs it incurs due to any:

- a. laws, regulations, court judgments or decisions, or guidance by public authorities issued or promulgated after the submission of EKATO's offer;
- b. engineering standards or codes of practice published after the submission of EKATO's offer;
- c. Buyer's site rules, in each case issued or changed after the effective date of the Contract.

#### 6.3.2 Type of adjustments.

Such adjustments may, for example, include changes to:

- a. the time schedules and scope of Offerings as needed;
- b. the Price, to reflect any reasonable additional costs.

#### 6.3.3 Failure to agree on Price adjustments.

In the event that the parties fail to agree on adjustments to the Price within thirty (30) days of EKATO's request to amend the Contract accordingly, EKATO shall be entitled to a Price adjustment reflecting the actual costs incurred to implement the required changes plus reasonable mark-ups for overhead, profit and contingencies.

#### 6.3.4 Failure to agree on adjustment of the time schedules.

In the event that the parties fail to agree on adjustments to the time schedule(s) within thirty (30) days of EKATO's request to amend the Contract accordingly, the time schedules shall be deemed reasonably extended taking into account the additional activities, changes in scope or changes to the working methods triggered by the changes in laws and standards.

### 6.4 Equivalent performance

Unless otherwise agreed, EKATO may supply the Goods/Offerings using a technically equivalent method to that set out in the Contract, if this does not detrimentally alter the agreed functionalities and/or specified characteristics.

## **7. Buyer's obligations**

### **7.1 Providing Contributions**

Buyer shall, at its own expense and in a timely manner:

- a. provide Contributions in accordance with the Contract;
- b. be responsible for the performance and interoperability of Contributions;
- c. obtain all required consents and licenses at Buyer's cost;
- d. make sure that EKATO, its Affiliates, and their subcontractors have the right and access to use any Contributions.

### **7.2 Reasonable adjustments**

If Buyer does not:

- a. provide its Contributions in accordance with the respective Contract;
- b. fulfil its obligations specified in this Section 7, or in the respective Supplemental Terms, EKATO shall be entitled to adjustments to the Price as well as the time schedule(s) and fees, to make up for any delay or reasonable additional costs EKATO may incur.

### **7.3 Use of the Offerings**

Buyer is solely responsible for any results and conclusions obtained from using the Offerings.

### **7.4 Security and safety**

Buyer is responsible for:

- a. the conception, implementation, and maintenance of a holistic, state-of-the-art security concept to protect its enterprise, plants, systems, machines, and networks (including the Goods) against Cyberthreats. "Cyberthreat" means any circumstance or event with the potential to adversely impact the Buyer's plants, systems, machines, and networks (including the Good/s) via unauthorized access, destruction, disclosure and/or modification of information, denial of service attacks or comparable scenarios;
- b. the protection of its Information Technology (IT) including all information and data contained therein from IT security incidents by means of appropriate and suitable technical and organizational measures;
- c. the use of the latest product versions and an immediate installation of software patches and updates that EKATO makes available, following EKATO's installation and further security instructions;
- d. taking appropriate steps to protect and retrieve its data and configurations including by maintaining backup copies;
- e. the safety of persons on site.

If a party becomes aware of a possible security incident that may compromise the operational infrastructure of the other party, it will timely and confidentially notify the other party of the acknowledged security incident, provide all necessary information, and keep it updated. It will take appropriate and proportionate measures to avert or at least limit the effects on the impacted infrastructure of the other party.

### **7.5 No reverse engineering**

Buyers may not reverse-engineer, decompile, or copy Offerings or their parts unless authorized allowed under mandatory law or the Contract.

## **8. EKATO's rights of use**

EKATO, its Affiliates and their subcontractors may:

- a. use for any purpose, in perpetuity, and at their own risk any comment or feedback Buyer gives to EKATO on EKATO's Offerings, including suggestions for changes or enhancements, support requests, and error corrections;
- b. use data EKATO collects in connection with the Offerings to provide and improve its Goods and services;

- c. identify Buyer by name or logo as part of a general Buyers list on websites and marketing materials unless Buyer objects in writing.

## Warranties

### 9. Warranty, No Guarantees

EKATO warrants that the Goods will be free from Defects at the time of transfer of risk.

EKATO does not assume any guarantees in accordance with Sections 443, 444 and/or 639 of the German Civil Code (*BGB*). If the word "guarantee" is used in a Contract to define or specify certain performance parameters and/or qualities to be met by the Goods/Offerings, as a matter of law the term "guarantee" shall instead qualify and be construed as a specified characteristic of the Goods/Offerings.

### 10. Warranty period

#### 10.1 Original warranty period for Defects

The warranty period in B-2-B transactions shall be one (1) year from the date of Delivery. If the Buyer requests that the Goods be placed into storage following EKATO's notification that the Goods are ready for dispatch, the warranty period shall expire no later than eighteen (18) months from the commencement of such storage. In relation to Defects affecting Goods/items that are customarily used for a building, the limitation period for claims in accordance with Sections 438 (1) no. 2 b, 634a (1) Nr.2 *BGB*, as applicable, is 5 years.

#### 10.2 Warranty period for replacements and repairs

Insofar as EKATO cures a Defect by the supply of a defect-free item/Good or by the rectification of the defective item/Good, as applicable, the warranty period shall commence anew for the respective item/Good (restart of the limitation period). However, the warranty period for Defects ends in any event at the latest six (6) months after expiry of the original warranty period for Defects of the affected item/Good. The foregoing shall be without prejudice to Sections 438 (1) no. 2 b, 634a (1) Nr.2 *BGB*, as applicable.

### 11. Defects and claims

#### 11.1 Inspection and notification

The Buyer shall notify EKATO of Defects in writing, setting a deadline for their cure.

If the Contract is a B-2-B transaction for both parties, the Buyer's Defect claims require that the Buyer has given due notice of the Defect in accordance with Section 377 of the German Commercial Code (*HGB*). If a Defect is detected during the inspection or later, EKATO must be notified of such Defect in writing and without undue delay. Within ten (10) working days from Delivery of the Goods the Buyer must notify EKATO of obvious defects in writing. Defects that could not be detected in the course of the proper inspection of incoming Goods shall be notified in writing by the Buyer without undue delay, at the latest within five (5) working days of their detection. The timely dispatch of the notification shall be sufficient to meet the deadline. If the Buyer fails to timely and duly inspect the Goods and/or timely and duly notify Defects, EKATO's liability for Defects is not engaged.

#### 11.2 Remedies

EKATO will remedy all Defects at EKATO's option by:

- a. repairing (onsite or remote) or replacing the defective Goods or its non-conforming portion within a reasonable time;
- b. if repair or replacement delivery has failed, which will be deemed to be the case after three unsuccessful attempts to repair or replace the defective Good(s), the Buyer may reduce the Price or withdraw from the Contract;

In the event that due to EKATO's fault the blending times of the Goods fail to achieve agreed parameters, and, if three attempts at rectification have failed, the Buyer's exclusive rights and remedies against EKATO shall be the entitlement to claim liquidated damages as stipulated in the Contract. Unless otherwise agreed, in the aggregate, these liquidated damages shall not exceed five percent (5%) of the Price and shall be Buyer's full and final compensation for shortfalls in committed blending times.

#### 11.3 Duty of cooperation and reimbursement

In the event of a warranty claim, Buyer shall:

- a. at its own expense provide access to operation and maintenance data;
- b. at its own expense and at EKATO's option:
  - remove and ship the Good(s) or its non-conforming portion to EKATO, with reasonable shipping costs to be borne by EKATO;
  - grant EKATO reasonable access to the Good(s) and perform any disassembly and re-assembly necessary to allow EKATO to perform its warranty obligations;
- c. at EKATO's request, transfer title to the replaced defective parts to EKATO;
- d. pay EKATO for any diagnostic and remedial work, unless it is established that a Defect existed;

## 12. Warranty exclusions

### 12.1 Time limit

Any warranty claim is excluded after expiry of the applicable warranty period.

### 12.2 Excluded Defects

EKATO excludes any warranty for Defects that do not significantly impair the functionality or use of the Good(s) and for Defects resulting from:

- a. normal wear and tear;
- b. faulty or negligent handling, or unusually excessive use;
- c. non-compliance with instructions in the Contract, operation and maintenance manuals, storage instructions and similar documents made available to Buyer;
- d. non-reproducible software errors;
- e. any cause outside of EKATO's control;
- f. modifications, repair, installation, or commissioning made by anyone other than EKATO or their authorized representatives;
- g. not using an Update provided by EKATO.

### 12.3 No warranties

EKATO does not guarantee that the Offering(s) is/are compatible or interoperable, or function(s) in accordance with Buyer's operating environment or IT requirements (unless expressly agreed in the Contract).

## 13. Exclusive remedy

Sections 9-13 state EKATO's entire liability and Buyer's exclusive rights and remedies for warranty claims.

## Intellectual property rights

### 14. Ownership of Intellectual Property

Each party remains the owner of its Intellectual Property. Any new Intellectual Property created by EKATO in performance of a Contract shall be exclusively vested in EKATO.

### 15. License to use Firmware or documents

EKATO grants Buyer a non-exclusive and non-transferable license to use the Firmware only for its operation. The license may be transferred only with the Good(s) in which the Firmware is incorporated.

The software license and software maintenance services terms set out in the Agreement (if any) will not apply to Firmware.

Buyer may use the documents being part of the Offering unmodified and to the extent necessary for operation and routine maintenance of the Good(s) by Buyer's own personnel, unless explicitly agreed otherwise in writing by EKATO.

## Additional software terms

### 16. Code format

Offerings containing software will be delivered in object code.

### 17. EKATO software terms

Supplemental Terms as specified in the Contract may additionally apply to EKATO's software.

### 18. Third Party Terms

In the event of a conflict with the terms of the Agreement, the Third-Party Terms prevail with respect to Third-Party Technology. Third-Party Terms for open-source software shall also prevail in relation to the software or parts thereof insofar as the Third-Party Terms for open-source software grant the Buyer certain rights of use on the basis of the connection of open-source software components with the software.

## Confidentiality and Compliance

### 19. Confidentiality

#### 19.1 Protection and use

The receiving party shall:

- a. protect Confidential Information by the same means and standards of diligence and care it uses to protect its own (and always by at least reasonable means);
- b. use Confidential Information only as required for the purposes of the Contract.

#### 19.2 Limited disclosure

The receiving party shall:

- a. only disclose Confidential Information:
  - to its employees and to the employees of its Affiliates, agents, advisors, and contractors who need to know it;
  - with the disclosing party's consent;
- b. make sure that all recipients are bound by confidentiality obligations as strict as those in the Agreement.

#### 19.3 Return and handling

If the disclosing party so requests, the receiving party shall return or destroy all Confidential Information. Copies required under applicable laws or created as part of a routine information technology backup may be kept but must remain confidential.

While performing under the Contract, EKATO's employees, vicarious agents and/or subcontractors may gain general expertise, knowhow, ideas, concepts, and techniques that are then retained in their unaided memories. EKATO may use this residual knowledge without conditions or restrictions.

#### 19.4 Required disclosure

If a governmental agency, laws and regulations, including stocks exchange regulations require, the receiving party may disclose Confidential Information, provided it:

- a. promptly gives written notice to the disclosing party (if the law allows);

works with the disclosing party to limit the scope of disclosure.

#### 19.5 Exceptions

The above confidentiality obligations will not apply to any information that:

- a. is or becomes generally available to the public (without the receiving party having breached the Contract/the Agreement);

- b. becomes available to the receiving party from a source other than the disclosing party (if the receiving party has no reason to believe that the information is confidential);
- c. was already in the receiving party's possession without an obligation of confidentiality;
- d. is independently developed by the receiving party without the use of Confidential Information.

## **20. Data protection**

Buyer and EKATO will both comply with applicable laws regarding data protection.

## **21. Export control compliance**

### **21.1 Export Regulations / No Re-Export**

- a. Buyer will comply with all applicable Export Regulations.
- b. Buyer shall:
  - not sell, export or re-export, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), any Offerings to Russia or Belarus any Offerings supplied by EKATO in connection with the Contract;
  - undertake its best efforts to ensure that the purpose of this Section 21.1.b is not frustrated by third parties, including authorized solution partners;
  - establish and maintain an adequate monitoring mechanism to detect conduct by any third parties that would frustrate the purpose of this Section 21.1.b.

### **21.2 Required information**

Buyer shall promptly

### **21.3** provide upon request information about users, the intended use, the location of use, and the final destination of the Offerings.

If Buyer intends to disclose to EKATO any information that is defense-related or requires controlled or special data handling, Buyer shall:

- a. notify EKATO;
- b. use the disclosure tools and methods EKATO requires.

### **21.4 Export checks for Offerings**

Before Buyer makes any transaction with a third-party concerning the Offerings delivered by EKATO, Buyer will check and certify by appropriate measures (e.g. monitoring) that:

- a. Buyer does not violate any Export Regulations with its use, transfer, or distribution of such Offerings, the brokering of contracts, or the provision of other economic resources in connection with Offerings, also considering any prohibitions to get around these (e.g., by undue diversion);
- b. the Offerings are not intended for prohibited or unauthorized non-civilian purposes (for example: armaments, nuclear technology or any other defence and military use);
- c. Buyer has screened all direct and indirect parties involved in the receipt, use, or distribution of the Offerings against all applicable restricted party lists of the Export Regulations concerning trading with the entities, persons, and organizations listed there.

### **21.5 Semiconductor development**

Buyer will not, without EKATO's prior written consent, use Offerings to develop or produce integrated circuits at any advanced semiconductor fabrication facility located in the Peoples Republic of China and further restricted locations meeting the criteria specified in the U.S. Export Administration Regulations, 15 C.F.R. 744.23.

### **21.6 Reservation and suspension**

#### **21.6.1 Reservation.**

EKATO will not have to fulfil any Contract, if prevented by:

- a. impediments arising out of national or international foreign trade issues;
- b. impediments arising out of customs requirements;
- c. any Export Regulations.

## **21.6.2 Suspension.**

EKATO may limit or suspend fulfillment of the Contract/Agreement, access to the Offerings by Buyer or Buyer's users if obliged to do so under Export Regulations.

## **21.7 Breach of Export Regulations**

Any violation of this Section 21 is a material breach of the Contract entitling EKATO to, e.g.:

- a. suspend or terminate the Contract in accordance with Section 22 and 23;
- b. in the event of a breach of Section 21.1.b. to penalties in the amount of 5% of the Price of the respectively affected Contract.

## **Suspension and termination**

## **22. Suspension**

### **22.1 Suspension right**

EKATO may suspend the performance of its obligations under a Contract by giving Buyer written notice if:

- a. Buyer's payment is more than 15 days late or is in delay in providing any payment security;
- b. Buyer does not provide the required Contributions in accordance with the Contract after a reasonable grace period;

Buyer materially breaches the Contract.

### **22.2 Payment during suspension**

If EKATO suspends performance, Buyer shall become immediately liable to pay:

- a. the Price (plus reasonable and verifiable travel and incidental expenses) related to any portion of the Offerings delivered or ordered before the effective date of suspension;
- b. any reasonable costs and expenses directly or indirectly incurred as a result of the suspension.

### **22.3 Schedule adjustment**

If EKATO resumes performance, EKATO will adjust all affected schedules to reasonably accommodate the suspension. After 15 days' suspension, EKATO may reassign personnel and already order (off the shelf) products.

### **22.4 Termination for suspension**

EKATO may terminate any Contract if the Contract has been suspended for more than 60 days.

## **23. Termination**

### **23.1 Termination right**

Either Buyer or EKATO may terminate any Contract upon written notice if the other:

- a. becomes bankrupt or insolvent;
- b. goes into liquidation;
- c. has a receiving order against it;
- d. compounds with its creditors;
- e. continues business under a receiver, trustee, or manager for the benefit of its creditors;

f. does not cure a material breach within 30 days of notice.

Furthermore, EKATO may terminate if the Buyer comes under the direct or indirect control of any competitor of EKATO, or, if an export permit is not granted or revoked by the competent authorities. The right to rescind a Contract is excluded.

## **23.2 Payment if Buyer terminates**

If a Contract is terminated by Buyer under Section 23.1, Buyer shall pay the Price (plus reasonable and verifiable travel and incidental expenses) related to any portion of the Offerings delivered or ordered before the effective date of termination.

## **23.3 Payment if EKATO terminates**

If a Contract is terminated by EKATO, Buyer shall pay:

- a. the Price (plus reasonable and verifiable travel and incidental expenses) for the Offering, minus any expenditures avoided by termination;
- b. all reasonable costs and expenses EKATO incurred due to such termination.

## **23.4 Survival**

Sections 1.2, 5, 7.4, 7.5, 8, 13, 19, 21, 23.2, 23.3, 24, 25 and 27 of these GTC of Supply shall survive termination of the Contract.

## **Claims, liability, and dispute resolution**

## **24. Intellectual Property Infringement**

### **24.1 Claim of IPR infringement by EKATO's Offerings**

In the event of an Infringement Claim, EKATO will:

- a. subject to applicable procedural laws, assume at EKATO's cost the control of the legal defence against the Infringement Claim;
- b. pay all damages finally awarded against Buyer by a court of competent jurisdiction, an arbitral tribunal, as applicable, or, if agreed in settlement with EKATO's consent.

### **24.2 Remedies**

In the event of an Infringement Claim, EKATO may, at its option and expense, provide the following remedies:

- a. obtain the right for Buyer to continue the use of the Offerings;
- b. modify the Offerings to become non-infringing;
- c. replace the infringing part of the Offerings, in case of b. and c. without materially affecting the functionality of the Offering.

### **24.3 Refund**

#### **24.3.1 Conditions for refunds.**

If remedies under Section 24.2 are in EKATO's reasonable opinion not available at commercially reasonable expense, EKATO may terminate any Contracts including licenses for such Offerings and Buyer will receive the refunds for the allegedly infringing portions of the Offerings specified in Section 24.3.2 ("Refunds"), provided that, after receiving EKATO's notification, Buyer:

- a. stops using the allegedly infringing portion of the Offerings;
- returns all related portions of the Offerings in Buyer's possession.

#### **24.3.2 Refunds.**

Refunds will equal:

- a. for Goods or perpetual software: the remainder of a 60-months' amortization period from their initial delivery;

- b. for subscription services or time-based licenses: the remainder of their term;
- c. for any other Offering: refund of prepaid fees for the infringing portion of the Offerings.

## **No admission**

If Buyer stops using the allegedly infringing Offerings (or a part of them) or complies in any other way with a third-party demand, Buyer will notify the third-party claimant in writing that this is not an admission of infringement.

## **24.4 Preconditions**

Any defense or remedies under this Section 24 are subject to Buyer giving EKATO:

- a. prompt written notice of the Infringement Claim;
- b. all requested information (including information about Buyer's use of the Offerings) and reasonable assistance related to the Infringement Claim;
- c. sole authority to defend or settle the Infringement Claim to the extent possible under the applicable procedural laws.

## **24.5 Buyer's prior consent**

EKATO will not admit liability or incur obligations on Buyer's behalf without Buyer's prior written consent, which Buyer may not unreasonably withhold.

## **24.6 Exclusions**

EKATO shall not have any liability or obligations as specified in this Section 24 to the extent that an Infringement Claim arises out of:

- a. not using a replacement, correction, patch, or new version of the Offering provided by EKATO that performs substantially the same functions as the allegedly infringing Offering;
- b. using the Offering in combination with software, equipment, products, or other items not provided by EKATO;
- c. using Offerings provided free of charge;
- d. any adjustment, modification, or configuration of the Offering not made, authorized, or endorsed by EKATO;
- e. Buyer's instructions, requests, specifications, and Contributions;
- f. using the Offerings for a purpose or in a manner not authorized by EKATO;
- g. information or data not provided by or on behalf of EKATO.

## **24.7 Claim of Buyer's infringement**

If any allegation is made against EKATO or its Affiliates based on a claim that the

Contributions infringe a third-party Intellectual Property Right, then the obligations of EKATO under Sections 24.1, 24.2, 24.5 and 24.6 shall reciprocally apply to Buyer in favor of EKATO and its Affiliates.

## **24.8 Exclusive remedies**

This Section 24 sets out EKATO's entire liability and Buyer's sole and exclusive rights and remedies for infringement of third-party intellectual property rights.

## **25. Liability**

### **25.1 Exclusive liability**

This Section 25 shall exclusively govern EKATO's liability for all claims, costs, damages, and indemnities, regardless of the form of action, whether based in contract, statute, tort (including negligence) or whatsoever legal concept and applies in addition to any other limitation or exclusion of EKATO's liability contained elsewhere in the Agreement and the Contract.

### **25.2 Scope of limitations**

The limitations and exclusions below and in the Contract:

apply to:

- EKATO;
- EKATO's Affiliates;
- EKATO's and its Affiliates' respective officers, directors, employees, licensors, subcontractors, and legal representatives.

## 25.3 Liability Cap

EKATO's aggregate liability for all claims arising out of or in connection with the Contract is limited to 100% of the net Price paid under the Contract for the Offering.

## 25.4 Limitations of liability

### 25.4.1 Time bar.

Without prejudice to Sections 438 (1) no. 2 b, 634a (1) Nr. 2 BGB, any and all liability of EKATO arising out of the Contract shall cease with the expiry of the warranty period of the Offering and any claims by Buyer shall be time-barred after 2 years from the date of the event giving rise to the claim.

### 25.4.2 Disclaimer.

Even if foreseeable, EKATO will not be liable for:

- a. any indirect, incidental, consequential, special, exemplary, or punitive damages;
- b. loss of production;
- c. interruption of operations;
- d. loss of use;
- e. loss or corruption of data;
- f. contractual claims of third parties other than IPR infringement claims;
- g. loss of revenue, profits, capital and interest, or anticipated savings;
- h. any damages caused by Offerings provided free of charge.

### 25.4.3 The limitations set forth in this section 25 shall not apply to/in the event of

- a. liability due to Willful Misconduct or Gross Negligence,
- b. for any quality features guaranteed, if any, in the Contract,
- c. for fraudulently concealed Defects,
- d. in connection with liabilities due to injury to life, limb or health and to liabilities which, as a matter of mandatory law, cannot be limited or excluded, in particular, under applicable product liability laws, namely liability under the Product Liability Act.

## 26. Force majeure

### 26.1 No liability

Neither party shall be liable for a performance failure or delay in performance of its obligations (except related to any payment obligations) if and to the extent caused by a Force Majeure event and/or its direct consequences.

### 26.2. Schedule Adjustment

Impacted schedules in the Contract shall be reasonably adjusted for a Force Majeure event.

### 26.3 Termination in the event of Force Majeure

If a Force Majeure event or its direct consequences continue(s) for more than 180 days, either Buyer or EKATO may terminate the Contract. Buyer will pay EKATO the Price for the Offerings provided or ordered up to the date of termination.

## **27. Applicable law and dispute resolution**

### **27.1 Applicable law**

These General Terms and Conditions for the Supply of Movable Goods (GTC of Supply), any Agreement and any Contract between EKATO and Buyer shall be governed by the substantive laws of Germany, excluding its rules on conflict of laws. §§ 305 through 310 of the German Civil Code not apply.

The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to these GTC of Supply, any Contract or Agreement concluded between the parties.

### **27.2 Arbitration**

All disputes arising out of or in connection with this Agreement or any Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC").

### **27.3 Arbitral tribunal**

If the total matter in dispute, including the value of any counterclaims, is or converts to EUR 2 million or above, the expedited procedure provisions of these Rules shall not apply, and the arbitral tribunal shall consist of 3 arbitrators.

If the tribunal consists of 3 arbitrators, each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators will agree on the third arbitrator, the Chairman of the tribunal, within 30 days of their appointment. If the party-appointed arbitrators fail to appoint the third arbitrator (Chairman) within said period, the ICC shall appoint the third arbitrator.

### **27.4 Seat of arbitration and document production**

The seat of arbitration shall be Frankfurt, Germany, and all hearings shall be held there, unless otherwise agreed. Any order for the production or disclosure of documents shall be limited to the documents on which each party relies on its submissions.

### **27.5 Language**

The language of the proceeding shall be English.

## **General clauses**

## **28. Written form and notices**

"In writing" or "written form" includes e-mail, unless otherwise stated. Termination notices must be sent by registered letter or courier service to the address specified in the applicable Contract.

## **29. No restrictions**

Subject to confidentiality, nothing in the Contract restricts EKATO from providing Goods/Offerings and services to third parties similar or identical to the Goods/Offerings and services provided to Buyer.

## **30. Affiliates and subcontractors**

EKATO may use Affiliates and subcontractors to fulfill its obligations under the Contract.

EKATO remains responsible for its obligations and those of its Affiliates and subcontractors.

## **31. Independent relationship**

Nothing in the Order creates a partnership or an employment relationship between EKATO and Buyer or any of their respective personnel.

## **32. Order of precedence**

In the event of a conflict between the Contract/Agreement, the GTC of Supply and any Supplemental Terms, the following order of precedence applies:

- a. Contract (excluding any Buyer general terms and conditions, even if the document states differently);

b. applicable Supplemental Terms;

c. these GTC of Supply.

### 33. Entire Agreement

The Contract is the entire agreement with respect to its subject matter and supersedes and extinguishes any previous or contemporaneous agreements, assurances, warranties, or representations.

Each party agrees that it has no remedies in respect of any statement or representation (whether made innocently or negligently but excluding any made fraudulently) that is not set out in the Contract.

If a translation of the Contract or the Agreement conflicts with the original, the English language version shall prevail.

Unless explicitly or otherwise agreed in writing, the terms of any contract, agreement, general terms or conditions of purchasing, offer acceptance with deviations, or other documents from Buyer are excluded and such terms will not apply to any Contract and shall not supplement or amend the Contract irrespective of any language to the contrary in such document.

### 34. No assignment

Neither party may assign or otherwise transfer (by operation of law or otherwise) its respective rights or obligations under the Contract without the written consent of the other party. However, EKATO may assign or otherwise transfer to an Affiliate or an acquirer of all or substantially all the business covered by the Contract.

### 35. No waiver

Failure to enforce a provision of the Contract and/or Agreement will not be considered a waiver.

### 36. Amendments

The Contract/Agreement and any amendments to it/them shall only be effective if made in writing and signed by duly authorized representatives of both parties (either manually or by an electronic system agreed upon by the parties).

### 37. Validity

If any provision(s) of the Contract/Agreement or these GTC of Supply is or become(s) invalid, illegal, or unenforceable, the remaining provisions shall not be affected. Such provision will be deemed to be restated in accordance with applicable law to reflect, to the extent legally enforceable, the parties' original commercial intent.

## Definitions

#### Affiliate

Any legal entity that, directly or indirectly:

- is controlled by a party;
- controls a party;
- is controlled by a legal entity that directly or indirectly controls a party.

#### Confidential Information

Information that:

- is disclosed by one party, its Affiliates, or their subcontractors to the other party or their Affiliates;
- is marked or declared as confidential (or that any reasonable person can recognize as confidential in its nature);
- includes the terms of the Agreement and any Contract, Offerings, EKATO-owned Intellectual Property, and any information Buyer derives from benchmarking any Offering.

#### Contract/Agreement

A contract consisting of a statement of the scope of supplies, or any other document setting forth, *inter alia* the Offerings and the Price (offer), an acceptance form incorporating the Agreement, and is agreed upon by both parties by manual or electronic signatures or by an electronic system specified by EKATO.

<b>Contributions</b>	Everything Buyer (or someone on behalf of Buyer) must provide or perform in connection with a Contract so that EKATO can perform the Offerings, including all preparatory work, assistance, documents, information, data, and approvals.
<b>Defect</b>	Non-conformance of the Goods to the EKATO specification set out or referred to in the Contract.
<b>Delivery</b>	Making the Goods available to Buyer in accordance with the INCOTERMS®2020 stated herein or in the Contract.
<b>Documentation</b>	Instructions for use, learning materials, technical and functional documentation, and API (Application Programming Interface) information made available with the applicable Offering which may be updated by EKATO from time to time.
<b>Export Regulations</b>	All applicable sanctions, embargoes, and (re-)export control regulations and in any event those of the European Union, the United States of America and any locally applicable jurisdiction.
<b>Firmware</b>	System software incorporated into Goods.
<b>Force Majeure</b>	Any event which is beyond the reasonable control of a party, its affiliates or its subcontractors, which could not have been prevented by good industry practice including, but not limited to, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic or pandemic, strikes, lock-outs, attacks on EKATO's systems (such as virus attacks, hacker attacks), non-issuance of licenses, permits or approvals, or any other act or failure to act by any public authority, or embargos or any other trade sanctions.
<b>Good Industry Practice</b>	means the exercise of that degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled and experienced professional engineer/manufacturing company applying the standards generally adopted by skilled and professional engineers/manufacturers within the appropriate disciplines involved in the safe performance of obligations of a type and complexity equivalent to those under the Agreement in relation to Offerings of a scale and complexity equivalent to the Offerings.
<b>Goods</b>	Offerings that are tangible goods, equipment, components, parts, and materials, which may include Firmware.
<b>Gross Negligence</b>	means any act of failure to act which seriously and substantially deviates from Good Industry Practice and which is in reckless disregard of, or indifference to, the harmful consequences thereof.
<b>Information Technology (IT)</b>	All aspects of technology used to develop, transfer and store information and data including but not limited to Goods, software, IT systems, networks, Internet-enabled applications, cloud applications used by them and common IT interfaces.
<b>Intellectual Property</b>	Rights in data, patents, utility models, trademarks, copyrights, software, ideas, know-how, or any other proprietary material or information, whether registered or non-registered.
<b>Infringement Claim</b>	Where a third party makes a specific claim, allegation or complaint against Buyer that the Offerings directly infringe any: <ul style="list-style-type: none"><li>▪ patent or trademark issued or registered by the United States, China, Japan, or the European Patent Office or the European Union Intellectual Property Office;</li><li>▪ copyright;</li><li>▪ trade secret.</li></ul>
<b>Offering(s)</b>	The Goods, services, solutions, software or documents provided to Buyer as exclusively set out in a Contract.
<b>Price</b>	The purchase price payable by Buyer for the Offerings.
<b>Supplemental Terms</b>	Additional terms and conditions that apply to a particular Offering or Contract as attached or referenced in a Contract such as but not limited to specifications, annexes, exhibits, schedules, attachments.
<b>Tax</b>	Any taxes, duties, and any other charges.
<b>Third Party Technology</b>	Any third-party software, technology, and other materials, including open-source software components, licensed by third parties under separate terms.
<b>Third Party Terms</b>	License conditions that may apply for Third-Party Technology and are specified in the Documentation, Supplemental Terms, Third-Party Technology source code (if any), and/or in "read me," header-, notices-, or similar files.

**Update(s)**

Software updates, security patches, or bug fixes.

**Willful Misconduct**

means any conscious, voluntary and deliberate act or failure to act which seriously and substantially deviates from Good Industry Practice and is done with the intention of causing, or in disregard of, the harmful consequences thereof, but shall not otherwise include any error of judgement, mistake, act or omission, whether negligent or not, made in good faith.