



## GENERAL TERMS AND CONDITIONS – PRODUCT & SERVICES

The delivery periods and delivery dates specified by AVL in this offer are subject to the timely availability of purchases on the procurement market, as no corresponding binding commitments are possible due to the current tense market situation. Accordingly, if AVL is unable to meet a deadline due to a lack of availability or untimely availability of purchases despite the implementation of all necessary and reasonable measures, AVL shall immediately notify customer thereof in writing. Subject to AVL's fulfillment of the aforementioned requirements, AVL shall not be liable for any consequences of delay. In this case, the parties shall mutually agree on a corresponding extension of milestones and/or deadlines.

1. **SCOPE AND EFFECTIVENESS.** These General Terms and Conditions apply to all deliveries of goods, works and related services, ("Product") by AVL Test Systems, Inc., ("AVL"). AVL's offer to sell and Customer's order to purchase, ("Order") from AVL shall become effective and binding on AVL only when AVL delivers to Customer (at AVL's discretion, either by email, US mail or hand delivery) its written acknowledgment of Customer's Order ("AVL Acknowledgment of Customer Order Form") signed by its duly authorized representative and Customer countersigns and delivers to AVL a copy of the AVL Acknowledgment of Customer Order Form or AVL in its sole discretion, delivers the Product to Customer. By and upon delivery to AVL of the countersigned AVL Acknowledgment of Customer Order Form or Customer's failure to object in writing thereto within ten (10) days of receipt thereof, Customer agrees to AVL's terms and conditions of sale. Unless expressly agreed to in writing by AVL in the AVL Acknowledgment of Customer Order Form, AVL shall not be bound by any terms or conditions, whether written, oral or otherwise, that are different or vary from or are in addition to these General Terms and Conditions, and any such terms or conditions shall be null and void and of no effect whatsoever.
2. **PRICE AND PAYMENT.** Unless otherwise agreed to in writing by AVL, the purchase price is as stated in the AVL Acknowledgment of Customer Order Form ("Price"). The Price excludes taxes (see paragraph 4) and the cost of packaging (domestic and export) and shipment. Payment terms are 30 days net from date of invoice. Customer will be invoiced in writing (or electronically, at AVL's discretion) for all payments, which shall be made to, AVL Test Systems, Inc., 47519 Halyard Drive, Attention Accounts Receivable, Plymouth, MI 48170 or by direct deposit to AVL's account if so instructed in the invoice. Late payments shall incur a time-price differential charge equal to 1 ½% per month.
3. **SHIPPING AND DELIVERY.** The Product shall be shipped ex AVL's (or if applicable pursuant to the Order, ex AVL's supplier's) works or warehouse, at which point Customer shall bear all risk of loss or damage of any kind whatsoever to the Product. Shipment shall be made in the manner and by the carrier as requested by Customer in the AVL Acknowledgment of Customer Order Form. AVL will make commercially reasonable efforts to ship on or before the agreed upon scheduled shipping or delivery date. AVL is not liable for any loss or damage including, but not limited to, consequential and incidental damages due to delays in shipment or delivery for whatever reason including but not limited to, strike, lockout, embargo, lack of shipping facilities or any cause or circumstance of any kind whatsoever beyond AVL's control, in which event AVL's time for delivery shall be extended by the period of such delay. If delays are caused by Customer, AVL reserves its right to seek a contract modification for added costs that result from said delay.
4. **TAXES.** All federal, state or local excise, sales or use taxes, duties, tariffs, and the like, shall be paid by Customer.



5. APPROVAL OF DESIGN, INSPECTION OF PRODUCT AND ACCEPTANCE OF PRODUCT. For custom products, Customer shall approve AVL's design in writing before AVL produces the Product. Customer shall complete its inspection of and accept, reject or revoke acceptance of the Product within ten (10) days following delivery, or if applicable, ten (10) days following the completion of commissioning by AVL, (the "Inspection Period"). Customer shall indicate its acceptance or rejection of the Product in a signed and dated writing delivered to AVL, (the "Acceptance Certificate"). However, Customer will be deemed to have accepted the Product if it has not expressly rejected the Product in writing during the Inspection Period, (the "Deemed Acceptance Date"). Any Product that is rejected or for which Customer revokes its acceptance shall be held by Customer at its risk of loss and expense. Any attempted return will be at Customer's own expense and risk of loss.
6. CHANGES. AVL shall be obligated to provide only those Products specifically agreed upon in an accepted Order. At any time prior to delivery, Customer may request an increase or decrease in the quantity of the Product to be delivered, or request any other change to the Order, whether in whole or in part, by providing a written change request to AVL. Any requested changes shall be binding on AVL only upon its written acceptance of such written request. If any such change causes an increase or decrease in the Price or time required to perform this Order, a corresponding adjustment to the Price or any other term shall be made by AVL, and AVL shall modify this Order in writing accordingly. The amount of any change in Price as computed by AVL or any other term shall be binding on Customer. Customer shall remain liable to reimburse AVL for all charges, costs and expenses incurred prior to its receipt of Customer's written notice of the change. The amount of all such charges, costs and expenses as computed by AVL shall be binding on Customer. The Price is also subject to revision when interruptions, engineering changes, Customer driven delivery delays or changes in quantity are caused or requested by Customer or when events which are beyond the control of AVL occur including, but not limited to, increases resulting from government regulations, costs, duties, tariffs, insurance and shipping. The amount of any increases as computed by AVL shall be binding on Customer.
7. TERMINATION, BREACH AND TIME FOR PERFORMANCE. Customer may, at any time prior to the date of shipment and for any reason or no reason, terminate this Order in whole or in part by written notice to AVL, such termination to be effective upon AVL's receipt of Customer's written notice. Upon such termination, Customer shall immediately pay AVL its charges, costs and expenses incurred prior to the effective date of termination, which charges, costs and expenses shall be determined solely by AVL. Such charges, costs and expenses shall include, but are not necessarily limited to, AVL's profit, reasonable cost of capital, cost of returning raw materials, restocking charges, and expedited delivery costs and charges. Customer shall be liable for and pay any time-price differential, that may accrue prior to Customer payment. AVL may immediately terminate this Order at any time for any reason or no reason. If this Order is terminated for any reason or no reason other than for Customer's default, CUSTOMER, AS ITS SOLE AND EXCLUSIVE REMEDY AGAINST AVL, SHALL BE ENTITLED TO A REFUND OF THE UNUSED PORTION OF THE AMOUNT OF THE PRICE PAID, IF ANY, AS SUCH AMOUNT IS COMPUTED BY AVL. If terminated for Customer's default, and/or upon any such default or breach of any term or condition of this Order, AVL may thereafter pursue any and all remedies it may have against Customer under this Order or at law or in equity. Customer's default shall include, but is not limited to: a) Customer's failure to timely perform any duties it has under this Order, such as reviewing and/or approving designs and making payment of the Price, b) Customer becomes subject to an insolvency proceeding; c) Customer resolves to, or becomes subject to an order requiring it to, wind up or liquidate; d) a substantial portion of the assets of Customer are acquired by a third party not in the ordinary course of business or a controlling interest in the ownership of Customer is acquired by a third party; e) delivery or performance becomes impracticable or impossible for reasons not attributable to AVL; or f) Customer's financial situation has worsened notably



after commencement of the Order and/or Customer is unwilling or unable to provide adequate security for payment of its financial obligations of the Order.

8. EXPRESS LIMITED WARRANTY. AVL warrants to Customer that the Product shall conform to the specifications of AVL's written proposal or quotation to Customer, and shall be free from defects in workmanship and materials for a warranty period, (the "Warranty Period") of: (a) one (1) year after the date the Product is shipped to Customer or, (b) if the Product is sold with an agreed upon acceptance protocol, one (1) year after Customer's acceptance of the Product pursuant to such acceptance protocol, or eighteen (18) months after the date the Product is shipped to Customer, whichever occurs first. For these purposes, acceptance will mean the earlier of, the date on which Customer signs the Acceptance Certificate, the Deemed Acceptance Date or the date that the Customer begins use of the Product. For custom products only, AVL warrants that during the Warranty Period, the Product shall be fit for the purposes intended by Customer as such purposes are evidenced solely by Customer's written design specifications submitted to and approved by AVL and Customer in the AVL Acknowledgment of Customer Order Form and by AVL's design approved in writing by Customer. EXCEPT AS PROVIDED IN THIS PARAGRAPH 8, AVL EXPRESSLY DISCLAIMS ANY AND MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, CONCERNING THE PRODUCT INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IMPLIED BY LAW. Components and software manufactured or developed by others shall bear the warranty, if any, of the manufacturer or software developer.

UNDER THE LIMITED WARRANTY, AVL'S SOLE OBLIGATION, AND CUSTOMER'S SOLE REMEDY, IS, AT AVL'S OPTION AND SOLE DISCRETION, TO REPAIR OR REPLACE THE PRODUCT OR REFUND AN AMOUNT NO GREATER THAN TEN (10%) PERCENT OF THE PRICE PAID. AVL's limited warranty is limited to the original Customer and/or installation site and is non-transferable.

The following are not covered under AVL's limited warranty:

- a. Any failures caused by modification to the Product after AVL's completion of commissioning, unless Customer first obtains AVL's written authorization prior to any modification, or by parts not authorized by or supplied by AVL.
- b. Any repair or service if the AVL serial number is removed or missing from the Product, or if the Product has been serviced, repaired or modified in any manner by Customer or any other person without AVL's prior written consent.
- c. Any repair or service if the Product fails to be properly maintained or fails to function properly as a result of damage or unreasonable use including, but not limited to, misuse, abuse, improper installation by the Customer, negligence, improper shipping by carrier, damage caused by Customer's improper electrical current hook ups, and software problems caused by non-AVL systems.
- d. Repairs resulting from damage from the environment including, but not limited to, airborne fallout, acts of war, chemicals, disasters such as fire, flood, lightning, etc.
- e. Repairs resulting from lack of required maintenance as described in the AVL Operations Manual. Proof of maintenance will be provided if requested by AVL.
- f. Any repairs resulting from the failure of non-AVL provided components.
- g. Loss of time, inconvenience, commercial loss, consequential and incidental damages, or personal expenses.
- h. Any hardware or software failure of any Product used for a purpose outside its intended function as specified in the AVL Operations Manual for that Product, or if repaired/modified for any reason by persons other than AVL authorized service personnel, including Customer,



unless AVL first grants its written consent.

No modification of the limited warranty provided in this paragraph 8 shall be binding on AVL unless approved in writing signed by a duly authorized officer of AVL. AVL reserves the right to perform warranty services either on site or on a return basis to its factory, at its option. Customer shall bear any expense of returning a Product to AVL's factory. If AVL determines that a defect is covered by AVL's warranty, Customer shall be reimbursed for its reasonable expenses in returning the Product. Customer shall bear all risk of loss for goods returned to AVL for warranty service.

9. SERVICE, MAINTENANCE AND REPAIR. If a Product requires service, spare parts, maintenance or repair, Customer shall phone the AVL Hotline 800-352-4343 for instructions or return authorization. Spare parts are also available through AVL eSpares located on the AVL website: [www.avl.com](http://www.avl.com). AVL will endeavor to provide five (5) day service coverage to the extent such response time, is commercially reasonably possible. Expedited service may be available at an additional cost to Customer. AVL's general policy is to perform maintenance and repair related work on site at Customer's facility, if reasonably possible.
10. LIMITATION OF AVL'S LIABILITY AND OF CUSTOMER'S REMEDY. AVL shall not be liable for any loss, claim or damages whatsoever resulting from or concerning the Product including, but not limited to: any loss, injuries or damages to persons, property or economic interests. In no event shall AVL be liable for any loss, claim or damages regarding the installation, handling, operation or use of the Product if applicable instructions, installation guides, warnings or safety regulations have not been observed. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST AVL FOR ANY CLAIM OF BREACH OF THIS ORDER OR OF THE EXPRESS LIMITED WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT OR, SUBJECT TO THE RESTRICTIONS BELOW, A REFUND OF ALL OR PART OF THE PRICE, AT AVL'S OPTION AND SOLE DISCRETION. In no event, regardless of the form of the cause of action, the claims asserted, or the person asserting such claims, shall AVL's liability in the aggregate for all such matters, exceed ten (10%) percent of the Price paid. Customer agrees that AVL shall not be liable for incidental or consequential damages including, but not limited to, loss of anticipated profits, loss of use, loss of revenue, cost of capital, fines, penalties and the like, environmental liability and damage, injury or loss to other property or equipment or for personal injuries to Customer's employees or third parties. Claims must be made to AVL within a period of twelve (12) months from the date of the occurrence of the event giving rise to the damage or eighteen (18) months after shipment, whichever occurs first, or the claim is forfeited.
11. FORCE MAJEURE. AVL shall not be liable for any failure to perform if AVL or one of its suppliers is subject to a force majeure event beyond the control of AVL, such as war, acts of terrorism, natural disasters, epidemic or pandemic, government interventions and bans, energy or raw material shortages, strikes, civil unrest, transport damages or delay.
12. CONFIDENTIALITY. Any information concerning this Order including, but not limited to, the Price and AVL's design, whether written or oral, disclosed by AVL to Customer is proprietary and confidential, and Customer shall not disclose such information to third parties without AVL's prior written consent. Any disclosure in violation of this paragraph 12 shall be an event of default, in which case Customer agrees that AVL shall be entitled to injunctive and other equitable relief, and that Customer shall be liable for any and all resulting damages, whether actual, consequential or incidental, including lost profits.
13. BLANKET PURCHASE ORDER / SEPARATE RELEASES. When separate releases of a Product are made pursuant to a blanket purchase order, such releases must be authorized in writing and signed by Customer's duly authorized representative.



14. **TOOLS AND INTELLECTUAL PROPERTY.** AVL shall retain ownership of any tools, technology or other matter used in the production of the Product. AVL shall own and retain ownership of all patents, patent rights, copyrights, trade secrets and all other intellectual property and proprietary rights, of any nature, which arise through the design and/or completion of the Product or which are embodied in the Product or the documentation describing or accompanying the Product. Customer shall have a limited, nonexclusive right to use the patents, copyrights, trade secrets, intellectual and proprietary rights embodied in the Product solely as is necessary to put the Product to its intended use. Customer shall not remove any proprietary legends contained on the Product and shall not reverse engineer, de-compile or disassemble the intellectual property embodied within the Product.
15. **INFRINGEMENT.** Customer agrees that AVL should not be liable and that Customer shall fully defend, indemnify and hold harmless AVL if any claim or action is commenced against AVL for infringement of any patent based upon Customer's use of the Product in connection with products not manufactured by AVL or in a manner for which the Product was not designed by AVL or if the use of the Product was designed by a Customer or modified by or for Customer in a manner to cause it to become infringing. Customer agrees to indemnify, defend and hold harmless AVL from any claim, demand or action that the Product, when completed substantially to Customer's specifications, infringes a third party's patents, copyrights, trade secrets, intellectual property or other proprietary rights.
16. **SOFTWARE.** Unless otherwise stated in AVL's written proposal to Customer or otherwise agreed to in writing by AVL, any computer software licensed, delivered or installed by AVL in connection with the Product, or independently of the Product shall be subject to AVL's General Terms and Conditions for Software and if applicable, such software shall be subject to the terms and conditions of AVL's specific License Agreement for AVL Computer Software. The General Terms and Conditions for Software and, if applicable, the specific License Agreement for AVL Computer Software, shall supersede any term or condition contained herein, which conflicts or is inconsistent with these General Terms and Conditions when applied to such software.
17. **BAILED PROPERTY.** Customer shall retain ownership of and shall assume all risk of loss or damage of any kind to any property or materials provided to AVL by Customer for production of the Product.
18. **ASSIGNMENT.** AVL, in its sole discretion may assign or delegate any of its duties or rights under this Order at any time without prior notice to or the consent of Customer. This Order may not be assigned by Customer without AVL's prior written consent, and in any event, this Order shall be binding on Customer's successors and assigns.
19. **SANCTIONS AND EXPORT CONTROLS.** Customer acknowledges that the Product, including any software, documentation and any related technical data included with or contained in the Product, provided to Customer by AVL may be subject to the provisions of U.S. economic or trade sanctions including by the Office of Foreign Assets Control or the U.S. Department of State) and and/or export, reexport, transfer and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations, and the customs and import laws administered by the U.S. Customs and Border Protection ("Sanctions and Export Control Laws"). Customer shall comply with all applicable Sanctions and Export Control Laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Product. Customer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Product to any jurisdiction or country to which, or any party to whom, or for any



use which is prohibited by applicable Sanctions and Export Control Laws. Customer will provide prior written notice of the need to comply with Sanctions and Export Control Laws to any person, firm, or entity which obtains any Product from Customer. Customer agrees that AVL should not be liable and that Customer shall fully defend, indemnify and hold harmless AVL if any claim or action is commenced against AVL for any liability that arises under any Sanctions and Export Control Laws based upon Customer's export, reexport, transfer or release of the Product in violation of Sanctions and Export Control Laws by Customer or any of its successors, assigns, parents, affiliates, employees, officers, directors, customers, agents, distributors, resellers, or vendors.

20. **MODIFICATION AND NON-WAIVER.** No covenant, term or condition of this Order can be waived by AVL except by its written consent. This Order may be amended only by a written instrument signed by AVL and Customer.
21. **NOTICES.** Except as provided in these General Terms and Conditions, any notice to be given shall be in writing, postage prepaid, and shall be effective when deposited in the U.S. Mail. Any notices or consents given by AVL must be in writing and signed by its duly authorized officer, employee or representative.
22. **GOVERNING LAW.** The Customer's Order, AVL Acknowledgment of Customer Order Form and these General Terms and Conditions shall be interpreted, construed and governed by the law of the State of Michigan without resort to the internal conflict of law rules of Michigan. The rights and remedies reserved to AVL under these General Terms and Conditions shall be cumulative and in addition to all other remedies available to AVL at law or in equity.
23. **ENTIRE AGREEMENT.** Except as otherwise provided in these General Terms and Conditions, the Order, the AVL Acknowledgment of Customer Order Form these General Terms and Conditions and if applicable any addendum to these General Terms and Conditions, constitute the entire agreement between AVL and Customer with respect to the subject matter hereof and supersedes all prior agreements, communications and understandings of any nature whatsoever, whether oral, written or otherwise, all of which are null, void, and of no effect whatsoever.



## SOFTWARE GENERAL TERMS AND CONDITIONS

1. **SCOPE.** These General Terms and Conditions, (“Software Terms”) are special terms and conditions that shall apply to all deliveries of software by AVL Test Systems, Inc., (the “Supplier”). The term “delivery” also includes the downloading of software by Customer. Unless stipulated otherwise in these Software Terms, Supplier’s General Terms and Conditions for deliveries of goods, works or services, (“Supplier’s General Terms”) shall apply. In the event of a conflict between these Software Terms and Supplier’s General Terms relating to these transaction(s) these Software Terms will control with respect to the transaction(s).
2. **SUBJECT OF CONTRACT**
  - a) **DEFINITION OF SOFTWARE.** For purposes of these Software Terms, software includes software programs sold to Customer for utilization on and operation or control of electro-technical, electromechanical and/or electrical systems and devices, plus the accompanying operating instructions, herein defined as software connected to hardware. Software also includes software programs sold to Customer that may be installed independently to such hardware environments and therefore installed on Supplier or Customer servers, computers, workstations, laptops, etc., herein defined as independent software. Customer is authorized to use the software only after obtaining a special software license from Supplier. The software license may be in the form of a file for which the software checks when it is started, or a certificate from Supplier authorizing the use of the software. If, for technical reasons, the data media delivered to Customer contain software that is not covered by the software license granted to Customer, such software may only be utilized after Customer obtains a separate license; in such instances this will be documented in the Customer contract as separately required license. The delivered software may include technical measures or safeguards to prevent unauthorized access to such unlicensed software.
  - b) **SOFTWARE CONNECTED TO HARDWARE.** If the software is sold for the purpose of operating plants or devices (“hardware”) delivered by Supplier, then Customer is granted a non-transferable and non-exclusive right to utilize the software, only: (i) on the specified hardware; (ii) at the place of installation; and (iii) in accordance with the provisions of the subject contract. Supplier reserves all rights not expressly granted to Customer. In particular, Customer may not, without prior written consent by Supplier, copy, modify or distribute the software to third parties or use the software on hardware other than the hardware specified in the contract. Software connected to hardware will be either perpetual in nature or based on an annual software subscription. This will be defined in the Customer contract for the specified software.
  - c) **INDEPENDENT SOFTWARE.** Software which is sold to Customer but not in connection with specific hardware (“Independent Software”), shall be utilized by Customer only on those plants and devices specified in the applicable software license contract by type, number and place of installation. In all other respects, section 2a of these Software Terms shall apply to the Independent Software. Independent software will be either perpetual in nature or based on an annual software subscription. This will be defined in the Customer contract for the specified software.
  - d) **ADDITIONAL PERFORMANCES.** Additional services or performances by Supplier shall be charged to Customer on separate accounts. Additional performances include, without limitation, the following:
    - i. Copying, translating or generating of the software, as well as performances as described by section 5c;
    - ii. Data media supplied by Supplier, unless the data media are part of hardware delivered by Supplier;
    - iii. Analyzing and correcting deficiencies caused by improper handling, operating mistakes, or other circumstances not caused by Supplier;



- iv. Introduction and training, unless included in the contract; and
- v. Improvements, (i.e. updated versions of the software) offered to Customer, which facilitate operations, shorten hardware occupancy times or improve specifications and applications of the software. Improvements are sold via Software Maintenance and Software Maintenance and Support contracts separately from the Software license itself.

### 3. MODIFICATION, UPDATES, COPIES

- a) If necessary for operation on the licensed plant, Customer may modify the software in machine readable form or merge it into other programs. Even when adapted in such a manner, the software shall remain subject to these Software Terms and Supplier's General Terms.
- b) A software license granted by Supplier entitles Customer to utilize the licensed software version only. Acquisition and utilization of updated versions by Customer are subject to Customer obtaining a separate written software license agreement from Supplier, or to the specifications in a software maintenance contract, if any entered into by and between Supplier and Customer.
- c) If Customer is granted a written software license without data media, Customer shall be entitled to copy, for operational purposes only, the software version already sold and licensed to Customer for utilization in another plant that has not been licensed up to that date. For this purpose, Supplier will issue an additional software license contract in which the newly licensed hardware is specified.

### 4. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND TRADE SECRETS

- a) Customer, its agents, employees and assigns are responsible for protecting and ensuring the continued proprietary nature of the software delivered by Supplier, in particular with respect to intellectual property rights, industrial property rights, copyrights and the right of copyright notice. Customer shall provide all software copies, complete or partial, as well as all modified or transferred software versions with Supplier's copyright notice, as well as with all other notice of industrial property rights in the same way as they are affixed on the original, licensed software version.
- b) Customer, its agents, employees and assigns are obligated to ensure the continued confidential nature of the software and of the techniques and methods involved in the software's development and use. These obligations continue to apply if the software is modified or merged into other programs.
- c) Customer is not entitled to reproduce source code by any method, in whole or in part, from the binary software, or to gain knowledge of the structure and conception of the software or hardware or firmware implemented. Such prohibition shall extend to all of Customer's employees, agents and assigns and continues even if the software is modified or merged into other programs.
- d) Customer shall maintain detailed records regarding the licensed software including the respective software version, updates, licenses, serial number of the licensed plant, the location of the licensed software, as well as the number of copies made. Customer shall make such records immediately available to Supplier upon Supplier's request.
- e) Upon termination of the software license contract Customer shall return all software certificates and licenses to Supplier and destroy all copies of the software, including modified and merged copies, and shall certify its action in writing to Supplier.
- f) The obligation to observe secrecy and to protect and ensure proprietary and confidential information as proprietary as described in this section 4 continues after termination of the software license contract.

### 5. DELIVERY, ASSUMPTION OF RISK, ACCEPTANCE OF SOFTWARE

- a) Supplier will deliver to or make available for downloading by Customer the software version which is valid at the time of delivery.





- b) Unless stipulated otherwise, the software and the data media shall be dispatched and delivered or made available for downloading at Customer's cost and risk.
- c) If Customer destroys or damages or accidentally deletes the software, Supplier shall provide replacement for the damaged software if available subject to payment by Customer of reasonable prices for order processing, data media and delivery costs.
- d) The software is considered accepted by Customer upon the earlier to occur of the following:
  - i. Customer confirms that the software corresponds with the contractual specifications; or
  - ii. Customer fails to notify in writing of gross deficiencies within a trial period of two weeks; or
  - iii. Customer uses the software after the trial period has expired; or
  - iv. The software cannot be installed and made ready for operation within a reasonable period of time determined by Supplier for reasons beyond Supplier's control.
- e) In all other instances, the date of acceptance by Customer shall be deemed to be the date of delivery or downloading of the software by Customer.

## 6. WARRANTY, MAINTENANCE, MODIFICATIONS

- a) For software not excluded from warranty, Supplier warrants that such software will conform with the specifications of the software license contract, provided that the software is installed properly and used in accordance with the conditions specified in the software license contract. Unless stipulated otherwise, the warranty period is three (3) months from the date of acceptance as specified under sections 5c and 5d.
- b) The warranty includes error diagnosis and error correction during the duration of the warranty period. In the event of a warranty claim for the correction of errors, (i.e. deviations from the valid specifications which impair the functioning of the software), correction shall take place first by Supplier through telephone support and instructions for troubleshooting, and then via data connection with Customer (modem, postal services). If such error continues, Supplier will, to the extent reasonably possible, deliver new, improved software. If this is not possible or the error persists, Supplier shall attempt troubleshooting (modification of software) at Customer's place of business.
- c) To institute a claim for the correction of a software error Customer must demonstrate to Supplier's satisfaction that:
  - i. The error impairs the functioning of the program;
  - ii. That the error is reproducible;
  - iii. That Customer has installed the new software versions, if any;
  - iv. That Customer provides all information and material necessary for error correction; and
  - v. That Supplier has access to the hardware and software during normal working hours.

Customer agrees to support Supplier in error correction by providing an expert at Customer's expense, whose qualifications meet the requirements of the system and who actively assists in the removal of the error.

- d) Supplier makes no warranties with respect to software which has been modified, in whole or in part, by Customer or by third parties without Supplier's prior written consent, even if the error occurs in a part not modified. If during error analysis Supplier concludes that the error is not subject to warranty or that the error was not caused by the delivered software, Customer shall reimburse Supplier for all of Supplier's resulting costs and expenses.
- e) Supplier makes no warranties that the software functionality will meet all requirements of Customer, that the program will run with other software used by Customer; that the software will run without interruptions or errors; or that all software errors can be corrected.
- f) Should Supplier determine that during the warranty period, the software does not meet the software license contract's minimum specifications and that as a direct result Customer is not able to use the software, each party has the right to rescind the software license contract with immediate effect. In



the event of such rescission, Customer will return the original software and all copies including all written materials, updates and modifications to Supplier and Supplier will reimburse Customer for the original price paid by the Customer for the software less any depreciation and any other outstanding amounts owed from Customer to Supplier.

- g) The presence of deficiencies in an individual program does not entitle Customer to rescind the contract with respect to any other programs.
- h) Supplier expressly disclaims and makes no other warranties or representations, whether express or implied concerning the software. The warranty excludes any other claim and the liability for any damages arising out of the use of the software.

## 7. LIMITATION OF LIABILITY

- a) Customer has exclusive control over the use of the licensed software, and therefore shall assume sole responsibility for the usefulness and safety of the results of this utilization. Supplier excludes any liability for negligence in contract or contractual performance. Customer's sole and exclusive remedy against Supplier shall be limited to the warranty, maintenance and modification claims expressly detailed in section 6 of these Software Terms.
- b) Supplier does not assume liability for general faultlessness of the software or for a specific capacity or performance of the software, unless this has been explicitly contracted for a specified field of application.
- c) For all other respects, liability is limited as specified by section 8 of the Supplier's General Terms. Customer expressly agrees to indemnify and will hold Supplier harmless, from all claims enforced by third parties, which go beyond the liability limits specified by these Software Terms and Supplier's General Terms.

## 8. THIRD PARTIES' RIGHTS

- a) Supplier shall reasonably assist the Customer with appropriate information and expertise in defending all claims by third parties alleging that the use of the software as provided violates industrial or intellectual property rights or copyrights held by third parties. Customer shall immediately notify Supplier of an alleged violation of such rights and of any law suits to that effect.
- b) Should a court of competent jurisdiction find such claim by a third party to be valid and enforceable, Supplier may at its own discretion either modify, exchange or replace the software or acquire a software license from a third party.
- c) If Supplier chooses not to undertake a section 8b remedy, Customer shall immediately return the original software and all copies including all written materials, updates and modifications to Supplier. Upon receipt of the software and other materials and documents, Supplier will refund the purchase price paid by Customer less any depreciation charges, a reasonable fee for utilization prior to such date and any amounts then owing to Supplier from Customer. Supplier expressly excludes and will not reimburse or pay any and all other claims submitted by Customer with respect to the violation of industrial or intellectual property rights or copyrights held by third parties.