Software licence

for standard software provided by Carl Cloos Schweisstechnik GmbH

§ 1 Area of application of the software licence

(1) The following licence terms and conditions apply to the provision of standard software, which we supply to the Buyer either singularly or in conjunction the requisite hardware (hereinafter referred to as "Software"). They do not apply to the supply of hardware.

(2) Firmware is not "Software" in the sense of this software licence.

(3) This software licence applies in addition to any other agreement which may have been executed by the parties.

(4) Software services are not included in this software licence. A separate agreement is required for the provision of such services.

§ 2 Documentation

(1) Our delivery obligation does not include the supply of documentation, except where expressly agreed upon in text form. Where such an agreement has been executed, the term "Software" shall in the following also include documentation.

§ 3 Rights of use

(1) We grant the Buyer a simple perpetual (non-exclusive) right to use the Software internally.

If the Software is purchased for use in conjunction with specific hardware, the following applies: The Buyer may only use the Software in connection with the hardware referred to in the contract documents (e.g. a software product certificate). Where there is no reference to hardware, use of the Software is limited to the hardware supplied with it.

Use of the Software in connection with other hardware is only permitted where agreed separately and in consideration for a reasonable additional remuneration. Temporary use in connection with other hardware (a substitute device) is permitted, insofar as this is necessary due to the occurrence of an error in the approved hardware and only, until this error has been remedied.

(2) Where a right to use the Software on more than one device has been agreed, such authorised use applies in principle in the alternative, i.e. the Buyer may use the Software concurrently on only one of these devices (single licence). If there are several workstations to one device at which the Software can be used independently, the single licence extends to only one workstation. If a multi-user licence has been agreed, the provisions under clause 3 (l) apply.

(3) The Software is solely provided in machine-readable form (object code). There is no claim to a surrender of the source code.

(4) The Buyer may only use the Software for the purposes intended by the contract and for internal use. Commercial leasing is prohibited.

(5) Reproduction of the Software is only permitted to the extent necessary for contractual use. The Buyer may make backup copies in accordance with the generally accepted rules of technology to the extent necessary. Backup copies stored on removable media must be marked as such and must carry the copyright notice of the original media.

(6) The Buyer is only authorised to change, enhance or otherwise adapt the Software pursuant to para. 69 c) No. 1 of the German Copyright Act (UrhG) to the extent that this is mandatory by law or stated explicitly in the contract regarding the use of the Software.

(7) The Buyer is eligible to decompile the Software only within the limits of para. 69 e) of the German copyright law and only in order to establish interoperability with other hardware and software provided that we have failed to provide requisite data and/or information requested by the Buyer in writing within a reasonable deadline.

(8) Where we provide the Buyer within the scope of repair and maintenance works (the latter only on the basis of a separate agreement) with software enhancements (e.g. patches) or a new version of the Software (e.g. update, upgrade), which replace the former Software version ("Outdated Software"), they shall be governed by the terms and conditions agreed upon in this contract. Where we provide a new version of the Software, the Buyer's entitlement to use the Outdated Software under this contract shall cease as soon as he productively uses the new Software, even if we do not explicitly demand its return.

(9) Copying or adapting the user documentation is - subject to the foregoing – prohibited.

(10) We grant the Buyer a revocable right to assign the rights of use granted hereunder to third parties, provided good cause can be shown. However, the Buyer, who was not supplied with the Software for commercial resale, may only transfer the Software to third parties together with the device with which he purchased the Software from us. Where user rights are transferred to third parties, the Buyer must ensure that no further rights of use to the Software are granted to the third party other than those which have been granted to the Buyer. Furthermore the Buyer must impose on third parties no lesser obligations regarding the Software than those existing under this contract. In such circumstances the Buyer may not retain any copies of the Software. The Buyer is not eligible to grant sublicences. Where the Buyer provides the Software to a third party, the Buyer is responsible for complying with any export requirements and shall accordingly release us from all obligations.

(11) In relation to software from third party manufacturers supplied by us, the terms of use of the third party manufacturers take priority. Upon request we will make these terms available to the Buyer or provide access thereto.

(12) Use of the Software on several devices or at several workstations at the same time as well as using the Software in networks requires a separate agreement in writing. Where such an agreement exists (hereinafter referred to as Multi-user Licence) the following provisions shall apply in addition and override the aforesaid:

- The Buyer may only assign Multi-user Licences to a third party, if the licence is assigned in whole and in conjunction with all devices on which the Software may be used

- The Buyer shall observe the instructions on reproduction which were provided by us with the Multi-user Licence. The Buyer must keep a record of all copies and provide evidence to us of such copies at any time on request.

§ 4 Further duties of the Buyer, liability

(1) The Buyer shall make appropriate arrangements in case the Software we provide does not work properly in part or at all. He will thoroughly check his system environment as to its compatibility with the Software's system requirements, before putting it into operation. He will furthermore secure his data in accordance with the state of the art and sensitivity of the data, however, not less than once daily. He shall ensure that current data held in databases in machine-readable form are reproducible at reasonable expense. The Buyer shall take appropriate measures in order to protect the Software from unauthorised third party access. The Buyer is obliged to carry out performance tests immediately before and after installation and to inform us about the results.

(2) The Buyer is obliged to immediately inspect our deliveries and to give notice of any errors in writing by describing precisely what kind of errors occurred (para. 377 German Commercial Code [HGB]). Furthermore he must convey to us any automatically generated diagnostic data where applicable and reasonable.

(3) Error rectification is subject to the errors being reproducible and detectable. The complaint must contain information on what kind of error occurred, the Software module in which the error occurred as well as the kind of work that was performed when the error occurred.

§ 5 Material defects, defects in title

(1) We provide the Buyer with supplies and services which are free of material defects and defects in title. Errors which only result in an insignificant reduction of the availability of the supplies and services will not be considered. Regarding the supply of Software, functional impairments, which result from the hardware and software environment operated by the Buyer, operating errors, defective external data, disruption of computer networks or other reasons within the Buyer's area of responsibility, shall not be considered errors.

(2) We are not responsible for Software which has been changed by the Buyer, unless the Buyer evidences that the change was not the cause of the error reported.

(3) Where our supplies and services are defective and the Buyer has submitted a complaint in writing pursuant to para. 377 German Commercial Code (HGB) in a timely manner, we will either deliver a replacement or rectify the error (Supplementary Performance). To this end we shall be granted a reasonable period of time to do so of not less than eight days. Supplementary Performance may be effected either through the provision of a new programm version or through our instructions on how to avoid the impacts of the error (workaround). The Buyer must also accept a new programm version, where the modification expense for him is reasonable.

(4) Supplementary Performance in relation to defects in title is effected by us providing the Buyer with a right of use of the Software which is legally unobjectionable. We can replace the Software affected with an equivalent Software which complies with the terms and conditions in the contract, if this is reasonable for the Buyer:

(5) Where third parties assert industrial property rights against the Buyer, he must inform us immediately in text form. We will at out discretion and upon consultation with the Buyer defend or satisfy such claims. We will defend third parties' claims at our own expense and indemnify the Buyer against all costs and damages necessary and connected to the defence of the claims, provided they did not result from a breach of duty on the part of the Buyer. A breach of duty in this context is in particular where the Buyer acknowledges third parties' claims without our written consent.

(6) Where the Supplementary Performance is not successful, the Buyer may reduce the remuneration or withdraw from the contract. However, withdrawal is only permissible, if the Buyer expressly notifies us of his intention to do so in writing in conjunction with a reasonable grace period.

§ 6 Damages

(1) Except where otherwise stated below, claims made by the Buyer which are not covered by the provisions set out in this clause 6 - regardless of the legal basis - are excluded. We therefore are not liable for damages which were not incurred by the objects of the contract themselves, to include without limitation loss of profit or any other pecuniary loss incurred by the Buyer. Insofar as our contractual liability is excluded or limited, this also applies to the liability of our employees, representatives and agents.

(2) The aforementioned limitation of liability does not apply, if the cause of damage is based on wilful intent or gross negligence or, there is a claim for personal injury or a claim for damages pursuant to the German Product Liability Act (Produkthaftungsgesetz). The same applies where we have given a guarantee of quality in relation to our contractual performance.

(3) Where we negligently violate a material contractual obligation, the obligation to pay compensation for material damages is limited to damages, which typically occur as a result of such breach. Material contractual obligations are those which are essential to the contract and upon which the Buyer may rely.

(4) In all other circumstances liability for damages is excluded.

§ 7 Limitation

(1) The limitation period for claims under clauses 5 and 6 is one year. The aforesaid does not apply for the cases under clause 6 (2) (liability for wilful intent, gross negligence, personal injury and for claims pursuant to the German Product Liability Act [Produkthaftungsgesetz]) and for claims pursuant to para. 438 (1) no. 2 German Civil Code (BGB), para. 479 (1) German Civil Code (BGB) or para. 634a (1) no. 2 German Civil Code (BGB) (construction defects) or in any other cases where longer limitation periods are mandatory by statute.

(2) For other claims of the Buyer sub-paragraph 1 aforesaid shall apply accordingly.