



## TERMS AND CONDITIONS

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## 2. SALES TERMS AND CONDITIONS

Etwaige Einkaufsbedingungen unserer Kunden bedürfen nicht unseres Widerspruches, sie müssen jedoch für ihre Gültigkeit ausdrücklich durch uns bestätigt werden.

### 2.1 Controlling Provisions.

All the provisions of these Sales Conditions shall apply between the Buyer and COESFELD, except where explicitly agreed otherwise in writing by both parties. THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON COESFELD UNLESS EXPRESSLY ACCEPTED BY COESFELD IN WRITING. These Sales Conditions apply to the items set forth in a firm offer or a Confirmation (the "Goods"). With regard to any of COESFELD's software products, additionally, our "Terms und Conditions for Delivery of Software " shall apply. In the case of sales outside of the Federal Republic of Germany, the Buyer and COESFELD expressly agree that the provisions of the U. N. Convention on the Sale of Goods (C.I.S.G.) are herewith excluded.

### 2.2 Quotation.

A quotation furnished by COESFELD does not constitute a firm offer and may be changed or revoked at any time. Such quotation, including calculations, descriptions, patterns, etc., made or supplied by COESFELD ("Quotation") shall remain COESFELD's property and Buyer agrees that such information contained in the Quotation is confidential and shall not be disclosed or otherwise used without COESFELD's express prior written consent.

### 2.3 Contract.

Any agreement to which these Sales Conditions apply shall become effective on the date a written confirmation of order ("Confirmation") is mailed or otherwise delivered by COESFELD, or by delivery of Goods ordered by Buyer. COESFELD shall be entitled to charge separately for any additional services and for any item or packaging provided by COESFELD at the request of Buyer in excess of the services and items explicitly set forth in the Confirmation.

### 2.4 Integral part of the contract

#### 2.4.1 Mounting and Initial Operation of Machines

In case that mounting and initial operation is part of the contractual delivery obligations of COESFELD, the Buyer has the obligation to assure that the work can be performed without interrupts and in a save working environment while the time personal of COESFELD is on-site.

The costs for mounting, initial operations and training of users has to covered by the Buyer, if not explicitly agreed differently by writing. These costs include:

- unloading and setting up of the delivery item on-site
- journey cost, travel time, labour time und waiting times of personal
- transport of luggage and tools that are required for mounting and initial operation
- co-worker, which COESDFELD requires for assistance
- building material, additives and operating materials and fluids as well as heavy machinery
- official acceptance and certification of the delivery item

#### 2.4.2 Delivery of Software

In case that software is part of the contractual delivery obligations of COESFELD, the terms and conditions for delivery of software (Section 4) are further substantial provisions to our „Sales Terms and Conditions“.

#### 2.4.3 Delivery of Digital Documents

In case that digital documents (as plans, calculations and data of and for constructions or the like) are part of the contractual delivery obligations of COESFELD, these documents will be provided, if not explicitly agreed differently in writing or the file-format can be considered as PC-standard, for the following programs only:

- Eplan Electric P8 Vers. 2 / Eplan Cabinet 2.0 / Eplan 5.70.3 (german/english)
- SPS Spem 7 Vers. 5.5 / Step 7 MicroWin Vers. 4 / SIMATIC WinCC flexible 2008 (german/english)
- Catia V5 Release 19 (german/english)



### 2.5 Buyer's Covenants.

Buyer warrants to COESFELD that any components submitted to COESFELD by Buyer are free from any defects in design or material and are free from any rights of third parties, including but not limited to, any property rights, patents, copyright, trademark, trade secret or other intellectual property right.

### 2.6 Price/Taxes.

The price of the Goods is set forth in a firm offer or a Confirmation and shall be payable net cash according to the agreed payment schedule. Any tax or other governmental charge imposed upon the sale of goods shall be paid by the Buyer, and Buyer's failure to do so shall be a breach of this agreement. COESFELD reserves the right to restrict the terms of payment or to require payment prior to time of shipment if, in COESFELD's opinion, Buyer's financial conditions or other circumstances do not warrant shipment on the terms originally specified in the Agreement. For payments made later than specified in the agreed payment schedule, Coesfeld has the right to invoice additional service charges especially if used units are returned to final disposal or reuse. COESFELD's acceptance of this service charge shall not be deemed a waiver of any rights COESFELD may have by reason of Buyer's non-payment.

### 2.7 Time of Delivery/Packaging.

COESFELD as well as its agents will use reasonable efforts to deliver the ordered Goods as promptly as possible. A delay in delivery time, regardless of cause, shall not entitle the Buyer to an offset against the purchase price or excuse any other payment or performance required by these Sales Conditions and COESFELD's Confirmation. COESFELD will not be liable under any circumstances for special, incidental or consequential damages resulting from delay in the time of delivery. COESFELD shall use its standard packaging and shall set forth on each package Buyer's order number and contents. If, at the request of Buyer, the Goods are being shipped with special packaging, Buyer will be responsible for the additional costs thereof, as provided by Section 2.3. Partial shipments are generally possible if technically possible and not explicitly agreed differently. In case of partial shipment COESFELD can invoice the portion of partially delivered goods.

### 2.8 Costs/Identification and Risk of Loss/Passage of Title.

The costs for shipment of the Goods shall be borne by Buyer. The Goods shall be identified to the agreement and risk of loss shall pass to the Buyer when the Goods are placed in the hands of a carrier. Title to the Goods shall not pass to Buyer until all the amounts due to COESFELD in respect of the delivery, including any interest and costs, have been paid.

### 2.9 Warranties.

COESFELD warrants that the Goods, except for any wear and tear parts, will conform to the description and specifications and be free from defects in material and workmanship for a period of twelve (12) months from delivery. Should any failure to conform with this warranty appear within twelve (12) months of delivery, COESFELD shall, on written notification, correct such non-conformity, including non-conformance with the specifications, at COESFELD's option, either by repairing any defective goods, or by making available a repaired or replacement item. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT. CORRECTION OF NON-CONFORMITIES, IN THE MATTER AND FOR THE PERIOD OF TIME PROVIDED ABOVE, SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF COESFELD TO BUYER, WHETHER BASED ON CONTRACT, NEGLIGENCE OR OTHERWISE WITH RESPECT TO OR ARISING OUT OF SUCH SALE OF GOODS. Neither party shall be liable for special, indirect or consequential damages. The remedies set forth in these Sales Conditions are exclusive, and the liability of COESFELD with respect to any agreement or sale or anything done in connection therewith, whether in contract, in tort, under any warranty or otherwise, shall not, except as expressly provided herein, exceed the price of the Goods on which such liabilities are based.



### 2.10 Limitation of Liability.

Basis for the warranty set forth in Section 8 above, is the Buyer's operation of the delivered Goods in accordance with the manufacturer's or COESFELD's operation manuals, up to a maximum of eight (8) hours of operation per business day and the performing of maintenance work acc. to our maintenance check list by us or any authorized company. The warranty provided for in Section 8 shall not be applicable if Buyer is in arrears with any payments due with regard to the respective Goods. Buyer's exclusive remedy in the event of non-conforming Goods shall be a replacement of the non-conforming Goods. Any notices of warranty claims or other communication relating to Goods as well as all Goods claimed to be non-conforming must be shipped/sent to: A. Coesfeld GmbH & Co. KG, Tronjestr 8, 44319 Dortmund, Germany. Such Goods will be returned, repaired or replaced in a reasonable time period. COESFELD's acceptance of any Goods so shipped shall not be an admission that the Goods are non-conforming, and, if COESFELD finds that any Goods returned are not defective, such Goods will be re-shipped to Buyer at its expense and Buyer will be charged for the shipping costs incurred by COESFELD. It is acknowledged that the items sold are not so unique or the circumstances such that either party shall be entitled to the remedy of specific performance.

### 2.11 COESFELD's Agents.

Buyer acknowledges that it has been advised that no agent, employee, or representative of COESFELD has any authority to bind COESFELD to any affirmation, promise, representation or warranty concerning any of the Goods, and, unless such affirmation, promise, representation or warranty is specifically set forth in these Sales Conditions, it does not form the basis of the bargain between Buyer and COESFELD and shall not be enforceable against COESFELD.

### 2.12 Integration.

These Sales Conditions constitute the entire agreement and understanding by and between the parties with regard to the subject matter except for the matters set forth in the Confirmation and no other agreement, statement, promise or practice relating to the subject matter shall be binding for the parties. This agreement may be changed only by a written amendment signed by both parties.

### 2.13 Indemnification.

The Buyer shall indemnify COESFELD for all costs, damages and interests that may be incurred by the latter as a direct or indirect consequence of any action brought against it by third parties in respect to performance of this Agreement; the Buyer shall be bound by virtue of this agreement to comply with a third party notice issued by COESFELD.

### 2.14 Force Majeure.

For purposes of these Sales Conditions, the term "Force Majeure" is defined as any and all circumstances beyond COESFELD's reasonable control, that permanently or temporarily prevents delivery of the Goods, including fire, flood, war, civil unrest, riots, strikes, lockouts, transportation delays, failure or curtailment in COESFELD's usual sources of supply, government decree or order, act of God and other material interruptions in the business of COESFELD or of COESFELD's suppliers.



### 2.15 Suspension and Cancellation.

In the event of the inability of either party to deliver Goods as a result of Force Majeure, COESFELD shall be entitled to suspend the delivery of the Goods for no more than six (6) months, or to cancel any pending order in full or in part, without being liable in damages and without judicial intervention being required. During the period of suspension, COESFELD shall be entitled, and at the end of such period shall be obliged, to decide on performance or on full or partial cancellation of any order then pending. In the event of cancellation COESFELD shall refund to the Buyer all amounts paid to COESFELD in connection with the order being cancelled.

If the Buyer, prior to delivery of the Goods, cancels an order after acceptance by COESFELD, or refuses or is unable to accept delivery of the Goods, or causes COESFELD to stop performance on delivery of the Goods, the Buyer agrees that COESFELD shall be entitled to retain the entire amount paid by the Buyer upon placement of the order as liquidated damages and not as a penalty. The retention of such amount shall not preclude COESFELD from recovering the amount of its actual damages in excess of the amount retained.

If the Buyer fails to perform any obligation arising pursuant to these Sales Conditions, or an agreement connected therewith, or fails to perform properly or in a timely fashion, or serious doubt arises whether the Buyer is capable of filling its obligations under these Sales Conditions, or in the event of bankruptcy, suspension of payment, closing down, winding up or full or partial transfer, whether or not as security, of the business of the Buyer, including the transfer of a major part of the latter's receivables, COESFELD shall be entitled, without notice of default and without judicial intervention being required, either to suspend delivery of the Goods for not more than six (6) months, or to cancel acceptance of any pending order, in whole or in part, without being liable in damages and without prejudice to its further rights. During the period of suspension, COESFELD shall be entitled, and at the end of such period shall be obliged, to decide on performance or on full or partial cancellation of the suspended order.

### 2.16 Governing Law/Jurisdiction/ Successors and Assigns.

All agreements to which these Sales Conditions apply shall be construed in accordance with the substantive laws of the Federal Republic of Germany. The benefits and burdens of the parties shall bind and inure to their respective successors and assigns. The Buyer and COESFELD stipulate and agree that the court of competent subject matter jurisdiction for the city of Dortmund, Germany, shall have jurisdiction and both parties agree that such venue is proper in such courts for all actions or proceedings with respect to these Sales Conditions. If COESFELD prevails in an action or suit to enforce these Sales Conditions, COESFELD shall be entitled to recover from the Buyer its costs, including attorneys' fees, incurred in such connection.

### 2.17 Waiver.

Failure by either party at any time to require performance by the other party or to claim a breach of any provision of these Sales Conditions will not be construed as a waiver of any subsequent breach nor affect the effectiveness hereof, nor any part thereof, nor prejudice either party as regards any subsequent action.

### 2.18 Partial Invalidity.

Should any term, warrant, covenant, condition, or provision of these Sales Conditions be held to be invalid or unenforceable, the balance of these Sales Conditions shall remain in full force and shall stand as if the unenforceable part did not exist.

### 2.19 Headings.

Headings of these Sales Conditions are for reference only.



### 3. PURCHASE TERMS AND CONDITIONS

#### 3.1 Controlling Provisions.

All the provisions of these Terms shall apply between COESFELD and the Seller, except where explicitly agreed otherwise in writing by both parties. THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON COESFELD UNLESS EXPRESSLY ACCEPTED BY COESFELD IN WRITING. These Terms apply to the items set forth in a firm order submitted by COESFELD to Seller (the "Goods"). The provisions set forth in these Terms shall govern over any conflicting terms on COESFELD's order or Seller's quotation. In the case of sales outside of the Federal Republic of Germany, COESFELD and the Seller expressly agree that the provisions of the U. N. Convention on the Sale of Goods (C.I.S.G.) are herewith excluded.

#### 3.2 Offer/Order/Cooperation/Digital Documentation.

##### 3.2.1 Quotations

A quotation furnished by Seller shall constitute a firm offer and may not be changed or revoked at any time ("Offer"). COESFELD shall not be bound to respond to such Offer by Seller and shall not incur other liability as a result of a lack of response thereto within a reasonable time. If Seller, in the event of any inquiry by COESFELD with regard to certain products or services, should be able to offer a technically or economically better solution, Seller shall be obligated to offer such solution, and, in addition, to charge COESFELD no more than Seller's then current standard prices offer to all other Seller's customers for equivalent products and services. Only a written order shall be legally binding for COESFELD.

##### 3.2.2 Orders

Any order made or supplied by COESFELD, including calculations, descriptions, patterns, etc., ("Order") shall remain COESFELD's property and Seller agrees that such information contained in the Order is confidential and shall not be disclosed or otherwise used without COESFELD's express prior written consent.

##### 3.2.3 Cooperation

Seller shall submit the requested plans, calculations, specifications, drawings, samples or other descriptions ("Descriptions") on a timely basis, and free of charge. COESFELD's approval of such descriptions shall not relieve Seller of any of its obligations under these terms, particularly Section 8 of these Terms shall remain in full effect.

##### 3.2.4 Digital Documentation

COESFELD and Seller agree, if not agreed differently in writing or the file-format can be considered as PC-standard, to provide digital documentation to be compatible with one of the following programs:

- Eplan Electric P8 Vers. 2 / Eplan Cabinet 2.0 / Eplan 5.70.3 (german/english)
- SPS Spew 7 Vers. 5.5 / Step 7 MicroWin Vers. 4 / SIMATIC WinCC flexible 2008 (german/english)
- Catia V5 Release 19 (german/english)

#### 3.3 Time of Delivery/Packaging.

Seller as well as its agents will deliver the ordered Goods as promptly as possible and in accordance with the Order submitted by COESFELD, unless objected thereto timely by Seller in connection with a proposed delivery time agreed to by both parties in writing. Time is of the essence. In the event that Seller shall foresee that it will not be able to adhere to any agreed upon delivery time, Seller shall immediately inform COESFELD in writing together with the anticipated delivery time. Seller shall be obligated to timely request all the necessary information for fulfilment of the Order from COESFELD, including but not limited to calculations, descriptions, patterns, etc. Unless agreed otherwise, Seller shall use the most cost-effective and the most efficient means of delivery, use its standard packaging and shall set forth on each package COESFELD's order number and contents. Unless agreed otherwise, Seller shall not insure the ordered Goods. Seller warrants that it shall adhere to all the international and national packaging and labelling requirements for the Goods ordered.

#### 3.4 Invoice/Payment.

The purchase price for each Goods or services delivered and accepted shall be invoiced and paid on a per facility basis. Terms are Net 60 days from date of receipt of such Goods or services or date of invoice whichever is later. Seller warrants that the prices for the Goods or services sold to COESFELD under these Terms are not less favourable than those currently extended to any other customer for similar goods in similar quantities and services in similar transactions.



### 3.5 Quality Control.

Seller warrants that it shall assure an efficient quality control for its Goods and services. Upon COESFELD's request, Seller shall adhere to a quality control system in accordance with the standards of DIN ISO 9000 ff. COESFELD may, at its discretion and with at least one weeks' advance notice, by COESFELD itself or through its agents, inspect Seller's premises with respect to compliance with the aforesaid quality control standards. COESFELD shall bear the costs for such inspection. Seller shall bear the costs for the provision of the pertinent materials. In the event that such inspection should reveal significant deficiencies of Seller with regard to the adherence to such quality standards, Seller shall be obligated to bear the costs incurred by COESFELD with respect to the respective inspection. Seller's warranty as set forth in Section 8 of these Terms shall not be affected by such inspection. Proof of the pertinent material as well as of the inspection, if applicable, shall be made part of the documentation of the respective delivery of Goods.

### 3.6 Risk of Loss/Passage of Title.

The title to the Goods and risk of loss shall pass to COESFELD upon the acceptance of the Goods at COESFELD's plant.

### 3.7 Acceptance.

Payment for the Goods or services delivered hereunder shall not constitute acceptance thereof. COESFELD reserves the right to inspect such Goods or services within a reasonable time after delivery, but such inspection does not relieve Seller of its obligations under these Terms. COESFELD shall have the right in its sole discretion to reject any and all Goods or services that are in its sole reasonable judgment defective or nonconforming. Goods or services rejected as well as Goods or services supplied early, late, in incorrect quantities or that are incorrectly labelled may be returned to Seller at its expense and, in addition to COESFELD's other rights, COESFELD may charge Seller all expenses of unpacking, examining, repacking, and reshipping such Goods or services, if applicable. If COESFELD receives Goods or services whose defects or nonconformity is not apparent on examination, COESFELD reserves the right to require replacement of such Goods or services, as well as payment of damages.

### 3.8 Warranties.

SELLER EXPRESSLY WARRANTS THAT ALL PRODUCTS/SERVICES COVERED BY THESE TERMS SHALL CONFORM TO THE SPECIFICATIONS, DRAWINGS, DESIGNS, SAMPLES OR OTHER DESCRIPTION UPON WHICH ANY ORDER IS BASED, SHALL BE FIT AND SUFFICIENT FOR THE PURPOSE INTENDED, MERCHANTABLE, OF GOOD MATERIAL AND WORKMANSHIP, IN ACCORDANCE WITH THE CURRENT STANDARDS OF TECHNIQUE FOR A PERIOD OF EITHER (1) TWELVE (12) MONTHS FOLLOWING ACCEPTANCE; OR (2) EIGHTEEN (18) MONTHS AFTER DELIVERY, IF COESFELD SHOULD FAIL TO USE THE PRODUCTS FOR LESS THAN EIGHT THOUSAND (8000) HOURS OF OPERATION DURING SUCH EIGHTEEN MONTH PERIOD, WHICHEVER OCCURS EARLIER. THE PRODUCTS SHALL ALSO BE FREE OF ANY CLAIM OF ANY THIRD PARTY. SELLER WARRANTS THAT ALL SUCH GOODS OR SERVICES SHALL CONFORM TO ANY STATEMENTS MADE ON THE CONTAINERS OR LABELS OR ADVERTISEMENTS FOR SUCH PRODUCTS/SERVICES, AND THAT ANY PRODUCTS WILL BE ADEQUATELY CONTAINED, PACKAGED, MARKED AND LABELED. INSPECTION, TEST, ACCEPTANCE OR USE OF THE PRODUCTS/SERVICES FURNISHED HEREUNDER SHALL NOT AFFECT THE SELLER'S OBLIGATION UNDER THIS WARRANTY AND THIS WARRANTY SHALL SURVIVE INSPECTION, TEST ACCEPTANCE AND USE OF SUCH PRODUCTS/SERVICES. THIS WARRANTY SHALL RUN TO COESFELD, ITS SUCCESSORS, ASSIGNS AND CUSTOMERS AND USERS OF ITS PRODUCTS. COESFELD'S APPROVAL OF ANY SAMPLE OR ACCEPTANCE OF ANY PRODUCT/SERVICE SHALL NOT RELIEVE SELLER FROM RESPONSIBILITY TO DELIVER OR PERFORM, AS THE CASE MAY BE, PRODUCTS/SERVICES CONFORMING TO SPECIFICATIONS, DRAWINGS, DESIGNS, SAMPLES OR OTHER DESCRIPTIONS UPON WHICH ANY ORDER IS BASED.

SELLER WARRANTS AND AGREES THAT ALL PRODUCTS/SERVICES AND SPECIFICATION FURNISHED BY IT HEREUNDER AND THE USE THEREOF DO NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

COESFELD SPECIFICALLY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS/SERVICES OR SPECIFICATION PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY OR ANY OTHER WARRANTY RESPECTING THE CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR EXISTENCE OR ANY LATENT OR PATENT DEFECTS.

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If the Goods or services provided by Seller do not perform to the warranties set forth in this Section 8 above, COESFELD will have the option of (1) having Seller replace the Goods or replacing the Goods at Seller's expense that includes: removal, installation, if applicable, and replacement costs; (2) removal of the Goods at Seller's expense and a full refund of any and all payments received by Seller from COESFELD; or (3) an adequate refund of payments made and hereby by keeping the Goods delivered. COESFELD's remedies may be cumulative and remedies specified herein do not exclude any remedies allowed by law. Waiver of any breach shall not constitute waiver of any other breach of the same or other provision. Acceptance of any items or payment therefor shall not waive any breach. COESFELD may set off any amount due from Seller to COESFELD or any subsidiary of COESFELD, whether or not under these Terms, against any amount due to Seller hereunder.

### 3.9 Insurance.

Seller shall obtain and maintain, at its expense, all necessary insurance coverage, including without limitation, public liability with a sum insured of 5.000.000 € and a policy or policies of products liability insurance. All such policies shall provide that the coverage there under shall not be terminated without at least 30 days prior written notice to COESFELD. Upon request by COESFELD, Seller provides a copy of the respective policies of the aforesaid insurance coverage. Proof of such coverage shall not affect any warranties or covenants under these Terms.

### 3.10 Termination.

COESFELD may terminate any contract under these Terms in the event of any default by Seller, or if Seller fails to comply with any of the provisions of these Terms. In the event of any default by Seller, Seller shall be liable to COESFELD for any and all damages sustained by reason of the default, regardless whether COESFELD shall terminate the underlying contract or not. Without limiting the foregoing, COESFELD may terminate any contract under these Terms if Seller becomes insolvent, fails to pay its bills as due or makes an assignment for the benefit of its creditors.

### 3.11 Confidential Information.

All information or data furnished by COESFELD to Seller in connection with the performance of these Terms by Seller are the property of COESFELD. Such information and data are furnished solely for the purpose of Seller's performance of these Terms and on the express condition that such information and data shall not be disclosed to others nor used for any purpose other than in accordance with these Terms without the prior written consent of COESFELD. All such information and data are to be returned to COESFELD promptly upon written request from COESFELD to Seller. The obligations under this Section 11 shall survive the cancellation, termination or completion of these Terms or any underlying agreement hereunder.

### 3.12 Compliance with Laws.

Seller represents and warrants that it is in compliance with all relevant laws and regulations and that the Goods and services to be provided hereunder will be manufactured and provided in compliance with all relevant laws and regulations, including but not limited to, all laws and regulations relating to protection of the environment and public and employee health and safety. Unless expressly provided otherwise in the confirmation of COESFELD's order, Seller shall particularly comply with the rules and regulations of the "Preference Treaty" of the European Union.

### 3.13 Integration.

These Terms constitute the entire agreement and understanding by and between the parties with regard to the subject matter-except for the matters set forth in the Order- and no other agreement, statement, promise or practice relating to the subject matter shall be binding for the parties. This agreement may be changed only by a written amendment signed by both parties.





### 3.14 Indemnification.

Seller agrees to protect, defend, hold harmless and indemnify COESFELD, its officers, directors, employees, agents and customers from and against any and all claims, actions, liabilities, losses, costs, damages and expenses arising out of or related to (a) any actual, alleged, contributory or active inducement infringement of any patent, trademark, copyright or other intellectual property right by any Goods or services sold to COESFELD hereunder, or (b) any actual or alleged death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defect in such Goods or services, whether latent or patent, including without limitation actual or alleged improper construction or design of such Goods or services or the failure of such Goods or services to comply with specifications or with any express or implied warranties of Seller, or (c) any actual or alleged violation in connection with such Goods or services or the manufacture, possession, use or sale thereof, of any law, statute or ordinance or any governmental administrative order, rule or regulation or (d) Seller's installation, service, maintenance or updates of Goods or services.

### 3.15 Advertisement.

Seller shall only be able to advertise or otherwise display the parties' relationship subject to COESFELD's prior written approval.

### 3.16 Governing Law/Jurisdiction/ Successors and Assigns.

All agreements to which these Terms apply shall be construed in accordance with the substantive laws of the Federal Republic of Germany. Wherever applicable, the INCOTERMS 1990 shall apply to construe certain provisions under these Terms. The benefits and burdens of the parties shall bind and inure to their respective successors and assigns. The Seller and COESFELD stipulate and agree that the court of competent subject matter jurisdiction for the city of Dortmund, Germany, shall have jurisdiction and both parties agree that such venue is proper in such courts for all actions or proceedings with respect to these Terms. If COESFELD prevails in an action or suit to enforce these Terms, COESFELD shall be entitled to recover from Seller its costs, including attorneys' fees, incurred in such connection.

### 3.17 Waiver.

Failure by either party at any time to require performance by the other party or to claim a breach of any provision of these Terms will not be construed as a waiver of any subsequent breach nor affect the effectiveness hereof, nor any part thereof, nor prejudice either party as regards any subsequent action.

### 3.18 Partial Invalidity.

Should any term, warrant, covenant, condition, or provision of these Terms be held to be invalid or unenforceable, the balance of these Terms shall remain in full force and shall stand as if the unenforceable part did not exist.

### 3.19 Headings.

Headings of these Terms are for reference only.



## 4. TERMS AND CONDITIONS FOR DELIVERY OF SOFTWARE

### 4.1. Scope of Validity

In case, that software is within our scope of contractual delivery obligations, the following terms and conditions are further substantial provisions of our „Sales Terms and Conditions“.

### 4.2 License

The Software delivered by COESFELD is subject to the license conditions acc. following sections 3 – 10 which are acknowledged implicitly with installation and use of the software. The license is valid after payment of full contractually agreed order value by the Buyer.

### 4.3 Software from Sub Suppliers

In case, that software is within our scope of contractual delivery obligations, on which we do not have unlimited rights, COESFELD grants to the buyer a sublicense acc. to the license conditions of the original manufacturer COESFELD is bound on. This license is limited to the use of those software, as far as it is necessary to operate the equipment covered by the delivery contract acc. to the operating manual.

### 4.4 Coesfeld-Products

For Software that is manufactured by COESFELD and COESFELD has consequently the copyright as the author, we grant the Buyer a perpetual, unique, non-transferable, nonexclusive license to use this software. The license gives the authorised Customer the right to load and run one copy of the delivered software.

### 4.5 Rights to manifold

With fulfilling the obligations of the contract the Buyer has also the right to manifold the delivered Software for data safety reasons. The Buyer is not allowed hand the software of a copy to any third party.

### 4.6 Transfer of License

The Buyer is allowed to transfer the license to any other third party. From this moment on the Buyer has no longer the right to make use of the software. His license expires from the time of transfer the Buyer is obliged to

### 4.7 Warranty conditions for Software

For delivered Software the following terms and conditions become part of paragraph 8 of our „Sales Terms and Conditions“.

We guarantee the correct work of the delivered software. Two different cases have to be recognised:

Delivery of Hard- and Software: In this case the software will be supplied on a distribution kit and installed on the host hardware. The warranty covers hard- and software as a unit under circumstances and operations acc. the manuals and the use the system is dedicated for.

Delivery of Software: In this case the software will be supplied on a distribution kit. The capability of the hardware on which the software will be installed by the buyer as well as the proper function in all required circumstances is not granted. COESFELD is entitled to invoice the efforts to proof, that the complained malfunction of the system is not caused in the software or it is caused by the hardware.

### 4.8 Limitation of Liability

COESFELD is not liable for incorrect work or results of the software or theirs malfunction if they are caused by one of the following circumstances: The buyer has installed other software packages on the same system or did system parameterisation which influences the COESFELD software in a manner, that system resources, excess rights, processor capacity a.s.o. are not available in a necessary amount for correct work. Especially Coesfeld is not liable for other compliances resulting from those circumstances in other parts of our delivery.

### 4.9 Claiming of warranty efforts

Compliances are only excepted if they are made in written notice and with a description of the situation of their appearance.