Terms of use

1. Scope of the Software Clause

(a) This software clause shall only apply to the provision – limited or unlimited in time - of standard software, which is supplied as part of or in connection with a shipment of the related hardware or also as a pure software product for use; if necessary, the software shall be provided with the corresponding documentation. It is possible that the software is supplied on different PC's or other devices with different functions, such as tablets, handhelds, laptops, smart phones or other devices or via download over the Internet (hereinafter collectively referred to as "Software").

This software clause shall also apply to the entire delivery, unless a breach of contract has its cause in the Software. In all other respects, the General Terms and Conditions of Delivery of Big Dutchman shall apply to the hardware and the agreements made under the contract for delivery.

(b) Firmware shall not be deemed to be "Software" within the meaning of this software clause.

(c) Unless specified otherwise in this software clause, the General Terms and Conditions of Delivery of Big Dutchman or the agreements resulting from the contract for delivery shall apply.

(d) With this software clause Big Dutchman will accept no obligation to provide services. These shall require a separate agreement.

2. Documentation

Big Dutchman will reserve the unrestricted copyright and all exploitation rights to the software documentation. The documents may not be made accessible to third parties without the approval of Big Dutchman.

3. Rights of use

For the software, divergent to any other terms and conditions and contractual conditions, the following shall apply:

(a) Big Dutchman will grant Customer a non-exclusive right to use the software. The right of use shall apply unless otherwise agreed, in the country of delivery of the hardware. This right shall be limited to the agreed period and in the absence of such an agreement, the right of use shall be unlimited in time.

(b) To the extent that rights may be granted limited in time, the following additional provisions shall apply: Customer may use the Software only with the hardware referred to in the contract documents or specifically approved by Big Dutchman and in the absence of such reference, with the hardware delivered together and associated with the software. The use of the Software with another device shall require the express written consent of Supplier.

(c) If multiple devices are mentioned in the contract documents, then Customer may at any one time only install the delivered software on one of these devices or harness it (single license), unless Customer is granted a multiple license pursuant to paragraph 3 (j).

(d) The software shall be provided exclusively in machine-readable form (object code).

(e) Customer may make only one copy of the Software which may be used solely for backup purposes (backup copy). For the rest, Customer may reproduce the Software only as part of a multi-user license pursuant to clause 3 (j).

(f) Except in the cases of Section 69e of the German Copyright Act (decompilation), Customer shall not be not authorised to modify, reverse-engineer, translate or remove parts. Customer may not remove alphanumeric and other identifiers from the media and shall transfer the backup copy unchanged.

(g) Big Dutchman will grant Customer the further transfer of the right - revocable for good cause - to third parties that has been granted to Customer. In the case of a purchase together with a device, Customer may, however, pass on the right to use the software only with the device that they have purchased with the software from Big Dutchman to third parties. In the case of a transfer of rights of use to third parties, Customer shall ensure that the third party is granted no further rights to use the Software than Customer is entitled to under this Agreement, and that at least obligations under this Agreement associated with the software shall be imposed upon the third party. In this regard, Customer may not retain any copies of the software. Customer shall not be entitled to grant sub-licenses. If Customer left the software to a third party, then Customer shall be responsible for compliance with any export requirements and shall indemnify Big Dutchman of any obligations associated with the software.

(h) For software for which Big Dutchman has only derived rights to use and which is not open source software (third party software), the terms and conditions agreed upon between Big Dutchman and its licensors shall apply and supersede the provisions of this paragraph 3 to the extent that they relate to Customer (such as e.g. End User License Agreements). Big Dutchman will possibly notify Customer of these and make them accessible to Customer on demand.

(i) For open source software, the terms of use shall prevail over the provisions of this paragraph 3 to which the open source software is subject. Big Dutchman will only issue Customer the source code or make it available to the extent that the terms of use of open source software require. Big Dutchman will inform Customer on the existence and terms of use of provided open source software and make the terms of use available to them or provide it as required by the terms of use.

(j) In order to use the software on multiple devices, Customer will require a separate agreement on the right of use. The same shall apply to the use of software in networks, even if, in that connection, the reproduction of the software is not carried out. In the above cases (hereinafter uniformly referred to as "Multiple License") the following letters (aa) and (bb) shall apply in addition to and prevailing over the provisions under paragraph 3 (a) to (i):

(aa) The requirement for a Multiple License shall be an explicit written confirmation by Supplier of the number of permitted copies which may be created of the licensed software by Customer and the number of devices or workstations the software will be permitted to be used on. For Multiple Licenses paragraph 3 (g) sentence 2 shall apply subject to the proviso that the multiple licenses may only be transferred from Customer to a third party if they are transferred fully and with all the equipment on which the software may be used.

(bb) Customer shall observe the information provided by Big Dutchman along with the Multiple License for reproduction. Customer shall keep records of the whereabouts of all copies and submit them to Big Dutchman upon request.

4. Passing of the risk

In addition to article IV, p. 5 the Terms and Conditions of Big Dutchman for the Supply of Goods, the following shall apply: If the Software is provided via electronic communication media (e.g. via the Internet), then the risk passes when the software leaves the sphere of influence of Supplier (e.g. when downloading).

5. Additional obligations of Customer and liability

In addition to article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods, the following shall apply: Customer shall take all necessary and reasonable measures to prevent or limit damage to the software. In particular, Customer shall ensure regular backup of programmes and data. If Customer culpably violates this obligation, Big Dutchman will not assume any liability for any damage arising thusly, particularly not for the replacement of lost or damaged data or programmes. A change in the burden of proof shall not be associated with this above provision.

6. Material defects

(1) For software provided for an indefinite period, article VIII of the General Terms and Conditions of Big Dutchman for the Supply of Goods shall be modified as follows:

(a) The limitation period for claims based on defects in the software shall be 12 months. This shall not apply if the law prescribes longer periods according to Sections 438 Subsection 1 No. 2 (buildings and materials used for the construction of a building), 479, Subsection 1 (right of recourse) and 634a Subsection 1 No. 2 (defects or deficiencies in the construction of a building) of the German Civil Code and in cases of culpable injury to life, body or health, or an intentional or grossly negligent breach of duty by Supplier, fraudulent concealment of a defect or non-compliance with a guarantee on the condition of the respective service. The period shall begin at the time of the passing of the risk. The legal provisions regarding suspension of expiration, suspension and recommencement of limitation periods shall remain unaffected.

(b) A material defect in the software shall be deemed to be present only in the event of Customer proven and reproducible deviations from the specification. A material defect shall, however, not be deemed to be present if it is not present in the last version supplied to Customer and if the use of the software is reasonable to Customer.

(c) Notices of defects of Customer shall be given in writing immediately. In this context, the defect and the corresponding data processing environment shall be described as precisely as possible.

(d) Customer shall not be entitled to any warranty claims

- in cases of insignificant deviations from the agreed quality,

- in the event of only minor impairment of usefulness,

- in the event of damages that arise from faulty or negligent treatment,

- in the event of damages that arise from particular external influences not assumed under the agreement,

- in the event of any changes or supplements to the Agreement made by Customer or third parties and the resulting consequences,

- for delivered software which is compatible with the data processing environment used by Customer, and

- for delivered software which is compatible with devices not approved by Big Dutchman.

(e) Should the software have a defect, then Big Dutchman should first be given the opportunity to rectify the defect within a reasonable time. Big Dutchman shall be entitled to choose between the types of subsequent performance.

(f) If Big Dutchman does not select any other type of subsequent performance, then the subsequent performance shall be accomplished by the rectification of the defect of the software as follows:

(aa) Big Dutchman will provide a new revision (update) or a new version (upgrade) of the software as a replacement if in stock at Big Dutchman or procurable with reasonable effort. If Big Dutchman has granted customer a multiple license, then Customer may create a corresponding number of copies of the update or upgrade of a multiple license provided as a replacement.

(bb) Until an update or upgrade is provided by Big Dutchman, Customer will be offered an interim solution to bypass the material defect , as far as is possible with reasonable effort and if Customer cannot work on urgent tasks anymore due to this material defect.

(cc) If a data medium or documentation provided is defective, then Customer may only demand that Big Dutchman replaces such free of defects.

(dd) The rectification of the defect shall be carried out at the discretion of Big Dutchman at Customer's or Big Dutchman's premises, by remote maintenance or by Big Dutchman's authorised installers. If Big Dutchman selects the rectification at Customer's premises, then Customer shall be obligated to provide hardware and software, as well as other operating conditions (including the necessary computing time) in addition to qualified operating personnel. If Big Dutchman selects remote maintenance, then Customer shall provide the appropriate connection and online access to the delivered hardware and, if necessary, provide appropriate personnel available to check functions locally on instruction from Big Dutchman. Customer shall provide Big Dutchman with all documentation and information in their possession required for the rectification of the defect, possibly via online access.

(ee) At the request of Big Dutchman, Customer will allow remote maintenance access, if necessary, under the General Terms and Conditions of Big Dutchman for the Supply of Goods, which, for example, ensure data protection under German law.

g) If the subsequent performance fails, then Customer - without prejudice to any claims for damages in accordance with article VII General Terms and Conditions of Big Dutchman for the Supply of Goods – may withdraw from the contract or reduce remuneration.

(h) In the event of notification of defects, payments may be retained by Customer only to the extent proportionate to the defect which occurred. Customer may also only withhold payments if a complaint is made about whose justification there is no reasonable doubt. If the complaint is unjustified, Big Dutchman shall have the right to demand compensation from Customer for the costs incurred.

(i)Apart from that, article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods shall apply to claims for damages. Further or other claims than those regulated in this paragraph 6 of Customer due to a defect vis-à-vis Big Dutchman and its vicarious agents shall be excluded.

(2) For software provided for a limited time, in lieu of article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods, the following shall apply:

(a) A material defect in the software shall be deemed to be present only in the event of Customer proven and reproducible deviation from the specification. A material defect shall, however, not be deemed to be present if it is not present in the last version supplied to Customer and if the use of the software is reasonable to Customer.

(b) Notices of defects of Customer shall be given in writing immediately. In this context, the defect and the corresponding data processing environment shall be described as precisely as possible.

(c) Customer shall not be entitled to any warranty claims

- in cases of insignificant deviations from the agreed quality,

- in the event of only minor impairment of usefulness,

- in the event of damages that arise from faulty or negligent treatment,

- in the event of damages that arise from particular external influences not assumed under the agreement,

- in the event of any changes or supplements to the agreement made by Customer or third parties and the resulting consequences,

- For delivered software which is compatible with the data processing environment used by Customer, and

- For delivered software which is compatible with devices not approved by Big Dutchman.

(d) Should the software have a defect, then Big Dutchman should first be given the opportunity to rectify the defect within a reasonable time. Big Dutchman shall be entitled to choose between the types of subsequent performance.

(e) If Big Dutchman does not select any other type of subsequent performance, then the subsequent performance shall be accomplished by the rectification of the defect of the software as follows:

(aa) Big Dutchman will provide a new revision (update) or a new version (upgrade) of the software as a replacement if in stock at Big Dutchman or procurable with reasonable effort. If Big Dutchman has granted Customer a multiple license, then Customer may create a corresponding number of copies of the update or upgrade of a multiple license provided as a replacement.

(bb) Until an update or upgrade is provided by Big Dutchman, Customer will be offered an interim solution to bypass the material defect by Big Dutchman, as far as is possible with reasonable effort and if Customer cannot work on urgent tasks anymore due to this material defect.

(cc) If a data medium or documentation provided is defective, then Customer may only demand that Big Dutchman replaces such free of defects.

(dd) The rectification of the defect shall be carried out at the discretion of Big Dutchman at Customer's or Big Dutchman's premises or by remote maintenance or by any third party authorised by Big Dutchman at the Customer's premises. If Big Dutchman selects the rectification at the Customer's premises, then Customer shall be obligated to provide hardware and software, as well as other operating conditions (including the necessary computing time) in addition to qualified operating personnel. Customer shall provide Big Dutchman

with all documentation and information in their possession required for the rectification of the defect. If Big Dutchman selects remote maintenance, then Customer shall provide appropriate personnel available to check functions locally.

(ee) At the request of Big Dutchman, Customer will allow remote maintenance access.

(f) If the subsequent performance fails, then Customer - without prejudice to any claims for damages in accordance with article VII General Terms and Conditions of Big Dutchman for the Supply of Goods – may withdraw from the contract without notice or reduce remuneration.

(g)Apart from that, article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods shall apply to claims for damages. Further or other claims than those regulated in this Section 6 of Customer due to a defect vis-à-vis Big Dutchman and its vicarious agents shall be excluded.

7. Industrial property rights and copyrights; legal defects

As an additional requirement of Article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods, the following shall apply:

(1) Unless otherwise agreed, Big Dutchman will only be committed to delivery free of any industrial property rights and copyrights of third parties (hereinafter referred to as: "Intellectual Property Rights") in the country of the place of delivery. If a third party asserts any legitimate claims against Customer for infringement of Intellectual Property Rights caused by services rendered or contractually used by Big Dutchman, then Big Dutchman shall be liable vis-à-vis Customer for software provided for an unlimited period of time within the contractually agreed period of limitation for any material defects and for software provided for a limited period of time within the statutory period of limitation, as follows:

(a) Big Dutchman shall at their discretion and their own cost either effect a right of use for the deliveries in question, to change them to the extent that the Intellectual Property Right is not infringed or to exchange them. Should this not be possible under reasonable conditions for Big Dutchman, then Customer shall be entitled to the statutory rights of rescission or reduction.

(b) Supplier's liability to pay damages shall be otherwise subject to Article VII of the General Terms and Conditions of Big Dutchman for the Supply of Goods.

(c)The obligations of Supplier mentioned above will only apply if Customer notifies Big Dutchman of any such claims asserted by the third party in writing, states their unwillingness to acknowledge an infringement and leaves any protective measures and settlement negotiations reserved to Big Dutchman. If Customer stops using the Supplies for reasons of limitation of damage or for any other good cause, they shall be obliged to inform the third party that with the cessation of use, no acknowledgment of the alleged infringement shall be constituted.

(2)Claims of Customer shall be excluded if they are responsible for the infringement.

(3)Claims of Customer shall also be excluded if the infringement of an Intellectual Property Right is caused by specifications made by Customer, by an application not foreseeable by Big Dutchman or by the fact that the delivery was changed by Customer or used together with products not supplied by Big Dutchman.

(4) In the case of infringements of Intellectual Property Rights, the provisions of paragraph 6, clause 1 (h) and paragraph 6, clause 1 (e) sentence 1 shall apply accordingly to the rights of Customer defined in paragraph 7 clause 1 (a).

(5) For any other legal defects, the provisions of paragraph 6 shall apply.

(6) Further claims or claims other than those regulated in this paragraph 7 of Customer against Big Dutchman and its vicarious agents for legal defects shall be excluded.