General Terms and Conditions of Sale and Delivery of epis Automation GmbH & Co. KG with registered office in Albstadt, Germany

I. Scope of application

1. Our General Terms and Conditions of Sale and Delivery only apply to persons who at completion of contract act in exercising their commercial or self-employed professional activity (companies) as well as to legal entities under public law and a public-law special fund. They do not apply to natural persons who conclude the contract for a purpose that cannot be attributed to a commercial or a self-employed professional activity (consumer).
2. Our offers, deliveries and other services for the legal entities mentioned in section 1 subsection 1 are carried out solely based on these General Terms and Conditions of Sale and Delivery. This also applies to all future transactions between the parties without explicit special reference or that we explicitly refer to them. Conflicting terms and conditions, or general terms and conditions of the customer not contained in these General Terms and Conditions of Sale and Delivery, are not accepted even if we unconditionally perform deliveries or services for the customer in the knowledge of such general terms and conditions of the customer.
3. Verbal agreements with our representatives and employees deviating from these General Terms and Conditions of Sale and Delivery only apply when confirmed in writing.
4. References to the validity of statutory regulations are only made for clarification purposes. Even without such clarification, statutory provisions apply unless directly modified or expressly excluded in these General Terms and Conditions of Sale and Delivery.

II. Subject matter of contract and scope of services

1. Subject matter of these contractual terms is the sale and the delivery of hardware and software listed in the product portfolio of epis Automation GmbH & Co. KG (hereinafter delivery item).
2. For deliveries and services other than that (e.g. software maintenance, setup and installation of software) separate contracts must be concluded.
3. The customer has verified prior to completion of contract that the software specification meets the needs and wishes of the customer. The customer is familiar with the essential operating features and conditions of the software.
4. Product descriptions, illustrations, test programs and so forth are specifications but no guarantees.
5. For software designed according to the wishes of the customer, we will create a functional specification document that defines the performance requirements as comprehensively as possible. The customer agrees to cooperate as stipulated in subsection XIII. If the customer makes samples or drawings available to us, customer is responsible that this does not entail infringement of third-party rights, in particular copyrights and industrial property rights. The customer is obliged to indemnify us against all claims of third parties arising from such infringement, to support us in defending these rights violation and to reimburse all damages, including legal fees and litigation costs, incurred to us. The same applies if we create a delivery item according to specifications of the customer.
6. The customer receives the software, i.e. program and user's manual. The software delivery technology is governed by the respective agreements reached; in the absence of other agreements, program and manual will be provided on CD-ROM.
7. The delivery of software is carried out without disclosure of the respective source code.

III. Conclusion of contract and content, right of modification

1. Our offers are always non-binding. A contract only comes into effect through our written order confirmation. We can accept orders or commissions within 14 days of receipt, unless a specific period of acceptance has been expressly agreed. Our written order confirmation is decisive for the scope of delivery. Orders confirmed via EDP are valid without signature. Collateral agreements and modifications must be confirmed by us in written form.
2. Costs arising due to modifications or cancellations of confirmed orders must be paid by the customer if the customer is responsible for the modification or cancellation.
3. Documents or information on the delivery item or service (e.g. scope, nature and quality) associated with the order, as well as our depictions thereof (e.g. drawings and illustrations), are only approximate, unless the usability for the contractually agreed purpose presupposes an exact match or such depictions have not been expressly confirmed as binding. These are not guaranteed quality features but rather descriptions or identifications of the delivery or service. Customary deviations and deviations due to legal regulations or product improvement, as well as the replacement of components with equivalent parts, are permitted provided they do not impair the usability for the contractually intended purpose.
4. We reserve all rights of property and copyrights, as well as other industrial property rights in the field of intellectual property, to documents, especially cost estimates, illustrations and drawings and similar information tangible or intangible belonging to the orders even if in electronic form. Any reproduction and / or use is not permitted without our express written consent; they may not be disclosed to third parties, especially competitors.

IV. Prices and payment

1. Prices are quoted ex-works excluding packaging, shipping and insurance costs plus the applicable statutory VAT.
2. Unless otherwise agreed, our invoices are due and payable in full within 10 days from date of invoice. A payment has been made if we can dispose of the amount without recourse risks (receipt of payment). Bills of exchange and checks are accepted only in lieu of performance and only deemed paid until credited to our bank without reservation. All costs arising, especially bank fees, charges for discounts or bills of exchange or other expenses plus VAT will be invoiced to the customer and are immediately due for payment.
3. The customer is in default upon maturity of the payments without the need for a separate reminder. In case of delayed or deferred payment, the customer owes default interest to the amount of nine (9) percentage points above the base rate. The right to claim further damages shall not be limited thereby. Notwithstanding any provision to the contrary of the customer, payments will first be credited against the oldest debt of the customer. If costs and interest have already accrued, the payment will first be credited against the costs, then against the interest and finally against the primary obligation.
4. If, after the acceptance of orders, reasonable doubt as to the solvency or creditworthiness of the customer arise or the customer is in default from the business relationship, we are entitled even prior to delivery to demand either immediate payment of all existing claims from the contractual relationship or security. If the customer does not meet our request within two (2) weeks after notification or if the debt is not settled, we are entitled to withdraw from the contract. In case of withdrawal, we shall be entitled to demand a lump sum compensation to the amount of 20 % of the net delivery value. The customer has the right to furnish evidence that the damage was not incurred or incurred to a lesser extent. This does not affect right to raise further claims for damages or the rights under section 321 of the German Civil Code (BGB).
5. Price adjustments

(1) The agreed price shall be the price stated in our offer and/or confirmed in the order confirmation or contract confirmation. Fluctuations in material costs within a range of ± 3% (based on our procurement of materials/components) shall be deemed included in the agreed price.
(2) If, until the customer places the order and/or until call-off under a contract, or between order/contract confirmation (including call-off) and delivery, our verifiable procurement costs or ancillary procurement costs (in particular for materials/components as well as freight, customs duties/charges and levies) increase by more than 3%, we shall be entitled to adjust the price to the extent of such cost increase.
(3) We shall inform the customer of any price adjustment in text form. If the price increase exceeds 10%, the customer shall be entitled, within 14 days after receiving such notice, to withdraw from the contract with regard to services not yet delivered.

5a. Consequences of withdrawal pursuant to Section IV.5 (3)

(1) If the customer exercises the right of withdrawal pursuant to Section IV.5 (3), such withdrawal shall apply only to goods or services not yet delivered.
(2) Materials/components which we have already procured or ordered up to receipt of the withdrawal declaration for performance of the specific customer order/contract and which can no longer be cancelled or were manufactured to customer specifications (including ancillary procurement costs such as freight, customs duties/charges and levies) shall be taken over by the customer at our verifiable cost price or, alternatively, reimbursed to us at our verifiable cost price.
(3) We shall credit any expenses saved as well as any reasonable alternative use (replacement use/resale). The customer shall remain entitled to prove that we incurred no expense/loss at all or a substantially lower expense/loss.

6. Offsetting or retention of payments is permitted only if legal claims of the customer are acknowledged by us, undisputed, ready for or established by a final decision. Defects of delivery do not affect reciprocal rights of the customer, especially from subsection X. 3. of these General Terms and Conditions of Sale and Delivery.
7. The customer has to bear all fees, costs and expenses incurred in the course of a successful prosecution against the customer outside Germany.
8. We are entitled to assign all claims against the customer, to the extent permitted by law.

V. Delivery and performance period, delay in acceptance

1. Only the delivery periods or delivery dates confirmed by us in text form shall apply. Delivery times or delivery dates are not binding, unless expressly otherwise agreed between the parties. Agreed delivery times begin with the forwarding of the order confirmation, however not before all specifications of the configuration ordered by the customer have been received by us. Not included in the delivery period is the time during which the customer is in arrears with the agreed payment, i.e. the delivery period is extended by the time in which the customer is in arrears. Compliance with the delivery period requires the timely and proper fulfillment of the commitments and obligations of the customer, in particular the timely receipt of all documents, necessary permits and approvals to be furnished by the customer. In the event that the customer wants a contract modification, which renders compliance with the original delivery date impossible, the delivery period is reasonably extended.
2. The delivery time is appropriately extended – also within a default – in the event of force majeure and all unforeseeable obstacles occurring after conclusion of the contract for which we are not responsible, in particular also in the event of measures in connection with labor disputes as well as supply chain disruptions and allocations, insofar as such obstacles demonstrably affect the performance of the contractually owed services. We will notify the customer of the beginning and end of such impediments as soon as possible and, where the impact is material, without undue delay. If the impediment continues for more than three (3) months, or if it is certain that it will continue for more than three (3) months, both we and the customer can withdraw from the contract.
3. Compliance with the delivery period is subject to correct and timely delivery to us from our suppliers. We will inform the customer of any apparent delays as soon as possible. The delivery date is met as soon as delivery item has left the factory or notification of readiness for dispatch has been sent.
4. The customer grants us a reasonable grace period of at least two weeks in text form in the event of delay of delivery.
5. If we are in default with the delivery of the machine due to simple negligence, our liability for compensation for delay in delivery, which may be demanded in addition to the delivery, is limited to 0.5% of the net delivery value for each week

of the delay, however capped at 5 % of the net delivery value. If the customer claims damages in lieu of delivery in the above cases, the claim for damages is limited to 20 % of the net delivery value. The liability limitations of sentences 1 and 2 above do not apply to delays due to
i. intent or gross negligence on our part, or that of our legal representatives or agents,
ii. injury to life, limb or health, or
iii. if a transaction for a delivery by a fixed date was agreed, i.e. a business, which crucially depends on compliance with the specified performance period.
6. If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). In such cases, we charge a flat-rate compensation amounting to 0.5% of the net delivery value per calendar week, but not more than 5%, beginning with the delivery period or - in the absence of a delivery period - with the notification of readiness for dispatch of the delivery item. Our right to prove that we have incurred higher damages and our other legal claims (especially compensation for additional expenses, adequate compensation, withdrawal from contract) remain unaffected; the flat-rate compensation will however be offset against any further monetary claims. The customer has the right to prove that we have incurred no, or significantly lower, damages in relation to the abovementioned flat-rate compensation.

VI. Transfer of risk

1. The delivery is EXW (ex-works) pursuant to Incoterms 2020. As a result, the risk of loss or deterioration of the delivery item passes to the customer as soon as the delivery item is handed over to the transport company. The same applies to partial deliveries or if we have agreed to provide additional services (e.g. shipping or freight charges).
2. Software provided as a free download is deemed delivered by making the latest release available for download on our server.
3. If the delivery is delayed or omitted due to circumstances for which we are not responsible, the risk passes to the customer from the day of notification that the order is ready for dispatch.
4. Partial deliveries are permissible if they are reasonable for the customer.

VII. Acceptance (custom or customized software only)

1. Acceptance dates are mutually arranged by the parties. The same applies to partial deliveries provided they are explicitly agreed on. Prior to acceptance, we grant the customer the possibility to perform functional tests for at least four (4) weeks. These functional tests can only begin after we have fulfilled the contractual (partial) services and (partial) deliveries properly and comprehensively. We will make the necessary preparations for the acceptance and provide the customer with all necessary and appropriate support for the implementation of the acceptance. The customer is granted a period of four (4) weeks to conduct the acceptance.
2. All acceptances must be performed according to formal rules. The parties undertake to draw up and sign an acceptance protocol. If the deliveries and services are not ready for acceptance, we are obliged to remedy the defects immediately. The acceptance test must be repeated within 5 working days from receipt of the notification that defects were removed.
3. Prior to the final acceptance, the acceptance of last delivery or service ordered must be successfully performed. Criteria for the functional testing as part of the acceptance are listed in the functional specification document, which we will draw up with the customer. The acceptance must also verify the interaction between the partially accepted performances if any. In the event that errors are found, the defects will be allocated to the service element to be accepted.

VIII. Retention of title

1. Ownership of the delivered hardware and the rights according to section IX. shall only pass to the customer after full settlement of all - even future - claims (including all subsidiary claims such as financing costs, interest) from the business relationship with the customer. If current account arrangement was agreed, we retain ownership until full payment of the recognized current account balance. Prior to this, the customer only has a preliminary, revocable right of use under the law of obligations. This also applies to all future deliveries, even if we do not always refer to this. For delivery of several items for a total price, we reserve ownership of all delivery items until full payment of the total price and ancillary claims if any.
2. The customer is obliged to treat the delivery item with care and to inform us immediately in case of seizure, confiscation, damage and loss as well as other dispositions by third parties. The customer bears all costs to be expended to replace the delivered goods particularly in the context of third-party proceedings, provided they cannot be collected from third parties.
3. The customer may process and sell the reserved goods in the orderly and usual business, but is not allowed to pledge or assign them as collateral.
4. In case of discrepancies about the whereabouts of the delivery item, the customer grants us the right to inspect the delivery on his business premises in his presence as of today.
5. If customer is in default of payment by a substantial part of his obligations as well as in case of other culpable breach of contract, we have the right to withdraw from the contract after we have set a reasonable deadline for performance. The customer shall bear all costs incurred for the return of the goods. We are entitled to dispose of the repossessed delivery item and satisfy us from the proceeds. The proceeds from the exploitation will be set off against those amounts owed to us by the customer after we have deducted a reasonable amount for the exploitation costs.
6. Processing or transformation of the delivery item by the customer is always carried out on our behalf. If the delivery item is processed with other items that are not our property, we acquire joint ownership of the new item in proportion of the invoice value of the delivered goods to the invoice value of the other processed items plus processing value. Furthermore, the provisions of subsection VIII. shall apply accordingly to new item created by such processing.
7. As of today, the customer assigns the claims from the resale or processing of the delivery item or other legal reason (e.g. insurance case or in the event of an unauthorized action) pertaining to the delivery item, including the recognized balance from a current account agreement, to the amount of the invoice value of the delivery item to us. We hereby accept this assignment. The customer is revocably authorized to collect claims assigned to us in his own name. The direct debit authorization can only be revoked if the customer does not meet his payment obligations as required. At our request, the customer in such case provides the necessary details as regards the assigned claims required for direct debiting, provides respective documents and informs the debtor about the assignment. This assignment of receivables is designed to secure all, including future, claims arising from the business relationship with the customer.
8. If the realizable value of the securities allowed to us according to the regulations above exceeds our claims vis-à-vis the customer not only temporarily by more than 20 %, we will release securities at our discretion to that extent if requested by the customer. The rights of the customer to resell and use the delivery item as well as the authorization to collect assigned claims are lost in case of suspension of payment, filing or opening of insolvency proceedings or out-of-court conciliation. The statutory rights of a liquidator, including those of a preliminary liquidator, are not affected by this.

IX. Use and exploitation rights

1. All software (program and manual) is legally protected. Copyright, patent rights, trademark rights and all other ancillary copyrights to the software and other items that we give or make available to the customer in the contract formation process and implementation of contract belong exclusively to us within the contractual relationship. In the event that rights are held by third parties, we hold corresponding exploitation rights.
2. The customer is entitled to integrate or install the supplied control systems, computer panels, industrial PCs and other hardware designed for the integration in the machines, cabinets or equipment marketed or operated by the customer, and install the associated software in the machines produced by the customer. The customer is entitled to establish the necessary interoperability of the software provided with customer's own programs required for the functioning of the machines. The customer receives all rights of use as simple rights, including the right to remedy errors, which are required for the installation and the associated data processing.
3. Software that is part of commercial PCs and not intended for installation in the machines sold by the customer, may only be used by the customer for processing their own data for their own purposes on their premises. Other data processing devices (e.g. hard disks and central processing units) to which the programs are fully or partially copied or transferred temporarily, briefly, or permanently must be located on the premises of the customer and be in the customer's immediate possession. We hereby grant the customer the necessary powers for this use as a simple right of use, including the right to remedy errors.
4. The customer has the right to make the necessary backup copies of the programs for secure operation. The backup copies must be safely stored and, wherever technically feasible, labeled with the copyright notice of the original data storage device. Copyright notices may not be deleted, modified or suppressed. Copies that are no longer required must be deleted or destroyed. The user's manual as well as any documents provided by us may only be copied for internal purposes.
5. The customer is only entitled to transfer the software to third parties together with the associated hardware. Only the original data storage devices may be used in the process.
6. If the software is transferred to third parties, the customer must finally discontinue the use of the transferred software or software components. The customer undertakes to delete all other copies of the software (irrespective of their status) in particular on data storage devices and in read-only or random access memories. The discontinuation of use must be confirmed to us in text form.
7. The above provisions also apply if the customer performs error removal or other work on the programs as permitted by subsections 2 or 3.
8. Other exploitation, particularly leasing, rental and distribution in tangible or intangible form, use of the software by or for third parties, is not permitted without our prior written consent.

X. Warranty

1. The customer undertakes to examine the documents and samples submitted. By accepting an offer and upon release the customer approves the documents and samples, to the effect that no defect-related rights arise provided the delivered item essentially corresponds to the documents.
2. In the event of a sale of, or a contract for, the delivery of movables still to be produced or manufactured, which is a commercial transaction for both parties, the customer shall give notice of any defects, except for hidden defects, within 10 working days (Saturday does not count as a working day) after delivery in text form; otherwise, the delivery item is deemed approved. Notice of hidden defects must be made immediately, at the latest within 10 days from the discovery, in text form; otherwise, at the latest however 12 months after transfer of risk, the delivery item is deemed approved as regards these defects. This does not affect the obligations of the customer under section 377 of the German Commercial Code (HGB). Negotiations on a complaint constitute no waiver of the defense of delayed, insufficient or unsubstantiated notice of defect.
3. Insofar as the delivery item has a defect for which we are responsible, we shall be entitled at our discretion to either remedy the defect (improvement) or deliver a flawless item (replacement), in each case subject to subsection 4 below. If

i. we are not willing or able to perform such repair or replacement,
ii. the repair or replacement is delayed beyond reasonable periods for reasons for which we are answerable,
iii. or in case that the repair or replacement fails in any other way,
the customer, provided that further attempts at subsequent performance are unacceptable for him, shall be entitled at his discretion to either withdraw from the contract or reduce the purchase price. A withdrawal of the customer from the contract in case of a negligible defect is only possible with our consent.
If the delivery item constitutes software, the agreed quality or the contractually intended use is relevant for assessing the defectiveness; in the absence of agreement, the assessment is determined by the ordinary use. It satisfies the criterion of practical suitability and is of a quality typical for software of its type; it is, however, not error-free. A functional impairment of the program, which results from hardware defects, environmental conditions, operating errors, etc. is not considered a defect. A negligible reduction in quality shall not be considered. In the event of software defects, at least three (3) attempts at subsequent improvement must be tolerated. An equivalent new program version or the equivalent previous program version that does not contain the flaw must be accepted by the customer if this is reasonable for the customer.
4. Rights due to material defects only arise if the delivery item has a material defect upon transfer of risk. Excluded from the warranty for defects shall be rights due to inappropriate or improper storage, use, faulty assembly or handling of the delivery items, natural wear and tear or improper conditions of use etc.
5. Claims for defects expire 12 months after delivery of the goods delivered by us or in case of custom or customized software from acceptance by the customer.
6. We are only liable for damages caused by the defectiveness of the delivery item within the limits set in subsection XII.
7. If the examination of a notice of defect results in the finding that there is no defect, or that the customer is responsible for the defect, we are entitled to charge the costs incurred by the inspection and, where appropriate, the removal of the defect.

XI. Defects of title
1. We warrant that the contractual use of the software by the customer does not conflict with any third party rights. In the event of defects of title, we warrant that we will, at our discretion, provide the customer with a legally flawless possibility to use of the software or an equivalent software.
2. The customer undertakes to inform us immediately in text form in the event that third-party rights to the software are asserted against him. The customer authorizes us to conduct the dispute with the third party on our own. While we are making use of this authorization, the customer is not permitted to acknowledge third-party claims without our consent. In this case, we will ward off the third-party claims at our expense and exempt the customer from all cost incurred in the defense of these claims, provided that the claims are not due to a breach of duty by the customer (e.g. use of the programs in breach of contract).

XII. Exclusion of liability
1. We are liable in accordance with the provisions of the German Product Liability Act (ProdHaftG) as well as in the cases of inability or impossibility for which we are responsible. In addition, we shall be liable for damages in accordance with statutory provisions in cases of intent, gross negligence, upon assumption of a guarantee, as well as injury to life, limb or health for which we are responsible. In case that we violate an essential contractual obligation (so-called cardinal obligation, German: “Kardinalpflicht”) with simple negligence, i.e. a duty whose fulfillment is essential for the due and proper implementation of the contract and on whose observance the customer can reasonably rely on, our liability shall be limited to foreseeable damages typical of the contract. The liability limitation in case of delays in delivery shall remain unaffected. In all other liability cases, claims for damages for the breach of an obligation arising from obligations under the agreement and tort are excluded, to the effect that we are not liable for lost profits or other financial damages of the customer.
2. Insofar as our liability is excluded or limited in accordance with the provisions above, this shall also apply to the personal liability of our employees, workers, staff, representatives and agents.

XIII. Duties of cooperation
To use individual programming services, the customer is obliged to provide us with the profile of requirements needed for the programming. Furthermore, the customer is obliged to assist us in processing customer-specific solutions, the customer is in particular required to determine its internal needs and to provide us with documents and operational knowhow and give access to customer premises if necessary.

XIV. Confidentiality
1. Both parties mutually agree to keep knowhow and trade secrets disclosed to one another in the implementation of this contract and all knowhow that is not public knowledge secret vis-a-vis third parties and engage their employees accordingly.
2. This confidentiality obligation subsists for a period of seven (7) years from termination of the contract.
3. Each culpable breach of the above confidentiality obligations is subject to liquidated damages to the amount of 10,000 to 50,000 EUR, as determined in our reasonable discretion. Decisive for this is the importance of the injured obligation, the disadvantage of the creditor (including the intangible disadvantage) and the degree of breach of duty and the fault of the debtor. In case of dispute over the appropriate amount, each party is free to seek decision by the Regional Court Hechingen, Germany. This does not affect further claims of the parties; the forfeited penalty is to be credited against the damage suffered.

XV. Packaging
We will take back transport packaging to our place of business. This does not include third-party packaging or dirty packaging that is not recyclable or can only be recycled with difficulty. We will only take back empty packaging. In case of recurring deliveries, packaging will be taken back at the next delivery.

XVI. Applicable law, place of jurisdiction, severability clause
1. This agreement and all legal relations between the customer and us shall be governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of jurisdiction for all rights and obligations of the contractual parties from transactions of any kind, including disputes about bills of exchange and checks, shall be Albstadt (Federal Republic of Germany). The same place of jurisdiction applies if the customer has no general place of jurisdiction in Germany, moves its place of residence or normal abode abroad after conclusion of the contract, or if its place of residence or normal abode is not known on the date the legal action is filed. However, we are also entitled to sue the customer at its general place of jurisdiction.
3. If any provision of this agreement is, or shall become, invalid or unenforceable, this shall not affect the validity of the remaining provisions. In this case, the invalid or unenforceable provision shall be replaced by a valid or enforceable clause, which is closest to the original intent of the invalid or unenforceable provision. The same applies to the closing of any contractual loopholes.