General Terms of Delivery of the TQ-Group for Software Products

for the companies TQ-Systems GmbH, TQ-Systems Durach GmbH,
TQ-Systems International GmbH & Co. KG and TQ-Systems Shanghai Co.,Ltd.

§ 1 General - Scope

1. The following Terms of Business are applicable to all Software products produced by the TQ Group.

2. The agreements made between the licensor and the companies of the TQ Group as licensee which were given to the Purchaser to his attention also have priority as they are applied for the transfer of third-party software or firmware in relation to the Purchaser. The required transfer only of derived usage rights to third-party software or firmware occurs in these cases based on and according to separate license agreements, e.g. as the OEM End User License Agreement

3. They apply in supplement to the General Terms of Business (Allgemeinen Lieferbedingungen) for the aforementioned companies. If no special provision is included in the following Terms of Delivery and Agreement (Liefer- und Vertragsbedingungen), our General Terms of Business (Allgemeine Lieferbedingungen) shall continue to apply. Our Terms and Conditions of Delivery apply exclusively; we do not recognize any conditions of the Customer that are in conflict with, diverge from or are supplementary to our Terms and Conditions of Delivery, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Delivery shall also apply if we, having knowledge of any conditions of the Customer that are in conflict with, diverge from or are supplementary to our Terms and Conditions of Delivery, perform the delivery to the Customer without reservation.

4. An obligation of companies of the TQ Group to perform software-related services is not associated with the following Terms of Delivery and Agreement (Liefer- und Vertragsbedingungen) without an agreement which indicates this.

5. By opening the sealed package, the Purchaser states that he has understood the following Terms of Delivery and Agreement. Otherwise, the package may not be opened and must be returned to us in an unopened state.

§ 2 Initiation of Agreement and Conclusion of Agreement

1. If software or other products (e.g. proposals, test programs) are transferred to the Purchaser before conclusion of an agreement, the terms according to § 4 of these Terms of Delivery and Agreement only apply upon conclusion of the agreement. Until conclusion of the agreement, the software which has been provided remains exclusively our intellectual property.

2. The software may not be duplicated nor may third parties be given access to it. If conclusion of an agreement has failed, the Purchaser is obligated to return the software which has been provided or to delete it; it may not continue to be used.

3. Otherwise, the provision of these General Terms of Business and the General Terms of Delivery of the TQ Group in the currently valid version apply to the pre-contractual obligatory relationship.

§ 3 Subject Matter of Agreement

1. Solely the content of the order, the order confirmation, the order description and the product specifications as well as the technical and commercial performance specifications (documentation) are authoritative sources on the software which we produce. Here a distinction is to be made between three different software types (standard software, individual software and product-specific software):

   - **Standard software** means that no special specifications were agreed upon between us within the scope of the software which we have produced. Agreements which go beyond this scope are only binding if they have been agreed upon in writing.

   - If individual specifications of the Purchaser are a priority when producing the software, the software is **individual software.**

   - If the software is in conjunction with a certain product of the TQ Group (e.g. TQC Minimodules), it is **product-specific software.** This should be made sufficiently clear as part of the product description and in particular the product in question should be identified accordingly. Moreover, the area in which the Purchaser states the intended use of the software (**"Area of Application"**) should be clearly indicated in the aforementioned order documents for product-specific software.

2. The respective product description in the documentation is the authoritative source on the composition of the software supplied by us. We are not obligated to provide software which goes beyond the scope of this composition. The Purchaser cannot derive any such obligation from other depictions of the software, particularly in public statement or advertising by us unless we have confirmed the composition which goes beyond the scope of the product description both expressly and in writing. Warranties are expressly not applied through product descriptions. A warranty requires express written confirmation.

3. Transfer of the software is to occur exclusively in machine-readable form (object code) unless an agreement to the contrary has been made.

4. If the purchaser's order includes the copy/ implementation/ integration of a software component provided by the purchaser on the contractual products, the purchaser must

   confirm to us in writing by placing this order that he has the right to pass on the rights of use to the software to be specified in each case by copyright and that he has legally transferred to us in writing the simple right of use to reproduce the specified software. In the event of a claim to this effect by the copyright holder, the purchaser shall indemnify us in full.

5. The Purchaser has learned about the major function characteristics of the software and assumes the risk as to whether they meet his requests and needs.

§ 4 Scope of Use and Usage Period

1. If no other explicit agreement has been made, the rights to the software we create – particularly the copyright as well as other additional industrial property rights – remain exclusively with us and we are entitled to them even in the event that the software was modified by employees of the Purchaser. Apart from any expressly allowed duplication of transfer of the software the Purchaser is prohibited from using this software in a manner not in line with these Terms and Delivery of Agreement or any other agreement made between the Purchaser and TQ Group companies.

2. If no other written agreement has been made, we transfer to the Purchaser the single, non-exclusive, temporally unlimited and only according to the provisions described in these Terms of Delivery and Agreement transferable usage right to the software we created. We shall provide the Purchaser with a copy of the object or the binary code on a data medium and a program description (specification) for the proper usage of the software under the terms of the agreement.

3. If the software is **individual software**, we transfer to the Purchaser the exclusive and temporally unlimited usage right to the software we created. The Purchaser shall also receive a copy of the source code.

4. If the software is **product-specific software**, the usage right of the Purchaser only applies to the use of the software in direct conjunction with the product in question. The Purchaser is thereby prohibited from using the software developed by us even without the product in question or in conjunction with other products or to transfer it to third parties for compensation or without compensation without our express approval.

5. The transfer of usage rights when using software developed to be open-source (e.g. LINUX) occurs in taking into account the specific Open-Source Software Terms of Use (e.g. GNU General Public License), which are to be communicated to the Purchaser upon request.

6. The Purchaser is permitted to copy the software created by us completely or in part, temporarily or permanently, to a hard drive or a server of the Purchaser which are located within the premises of the Purchaser. Additional copying outside of the business offices of the Purchaser is only possible with our express written approval. The Purchaser is obligated to report any action which does not require approval in terms of §§ 69 d, 69 e German Copyright Law (UrhG) to the contractor in writing. In particular, this includes the modification of a computer program and reproduction of the results achieved, creation of a back-up copy and de-compilation. Outside of the scope of the cases indicated in §§ 69 d und e UrhG, the Purchaser is not entitled to modify, reverse engineer or translate the software or to remove components from it. Alphanumeric and other codes may not be removed by the Purchaser from transferred data media and are to be transferred unmodified to each back-up copy created by the Purchaser.

   The production, distribution, sale and the lease of the standard software is not permitted without our express permission to that effect.

   Each use of the software which goes beyond the scope of the previous provision requires our written approval. The right to assert damage claims is still reserved.

7. Regardless of the previous provisions, we remain authorized to also use the general know-how resulting as part of the software creation process, regardless of the form, outside of the contractual relationships with the Purchaser for our own purposes and for the purposes of third parties.

8. If there is no express approval to the contrary, the Purchaser is not authorized to sub-license.

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9. Use of the standard software provided by us or product-specific software in conjunction with several products of the same type or in networks based on a multiple license requires an explicit agreement to that effect.

10. A transfer of the Purchaser's rights to the software which we have created to third parties is only permissible with the provision that the third party indicates its agreement in writing with the unrestricted compliance with at least the rights and obligations included in these Terms of Delivery and Agreement. The Purchaser must also ensure that no more extensive rights to the software are granted to the third party than those to which the Purchaser is entitled based on the agreements which we have made with the Purchaser. Transfers based on a granted multiple license may only be made uniformly for all software products encompassed by the multiple-license and, in the case of product-specific software, taking into account a simultaneous transfer of all accompanying hardware products. In the event of a transfer of rights, the Purchaser is obligated to transfer the software and all duplicated copies made from it to the third party or to destroy not transferred copies. With good reason we are entitled to revoke the transfer authorization for the Purchaser granted in clause 1, effective in the future.

§ 5 Warranty; Liability

1. We make explicit reference to the fact that it is not possible with the acknowledged rules of technology to develop more complex software in such a way that error-free function is guaranteed under all application conditions. We therefore only assume liability in ensuring that the supplied software is suitable based on the description created or accepted by us on proper usage under the terms of the agreement.

2. In the event of major and reproducible deviations of the software functionality from the product description or specification, we are entitled to choose to either refund the purchase price paid by the Purchaser or to provide a subsequent performance in the form of a repair within a reasonable period of time or to provide a replacement shipment of the product. If, as part of the subsequent performance we have chosen by providing a defect-free update or upgrade of the software, we do not succeed in remedying the major deviations in the software functionality which have occurred or to find a work-around in a reasonable period of time which allows the Purchaser to properly use the software under the terms of the agreement, the Purchaser can request a discount for the stipulated compensation or to withdraw from the agreement. Claims of the Purchaser which go beyond this scope are precluded, if permitted by law.

3. We do not assume any liability for minor deviations in the functionality of the software from the product description or specification.

4. OpenSource-Software has been developed with the collaboration of many different developers under differing conditions. Thus, any liability for consequential damages arising out of the use of OpenSource-Software shall, if not compulsory regulated by law, be excluded or limited to modifications or alterations of OpenSource-Software which can clearly and definably be assigned to TQ or its auxiliary persons.

5. The Purchaser is obligated to support us in remedying deviations. In particular the Purchaser is obliged to log deviations according to type and time of occurrence in writing and to provide this record to us. A notification of defects is to be provided to us in writing by the Purchaser immediately upon determination of the defect. Unjustified notifications of defects entitle us to compensation for proven expenses.

6. The warranty is for one year if longer periods are not required by law. It begins with the acceptance of the software by the Purchaser or - if a formal acceptance is not planned or does not occur – after two weeks following the transfer at the latest.

7. The Purchaser is obligated to take all reasonable and necessary measures to avoid or limit the damage resulting from the software provided

8. We provide no warranty and assume no liability for the correct selection, application and use of the software. For software products (or other products) of the manufacturer Microsoft Corp. only the manufacturer Microsoft Corp. is liable, any liability of the TQ-Group is excluded. This particularly applies in the event of culpable use of unsuitable, in particular non-compatible hardware or data processing programs, modifications or enhancements of the software performed by the Purchaser himself or by his request, culpable failure to perform regular data back-up and to other cases of culpable or negligent handling by the Purchaser. If the Purchaser should use the software outside of the stipulated scope of application, all warranty obligations and other liability are rendered invalid. The aforementioned warranty or liability restrictions do not apply in instances of injuries affecting life, limb and health, liability covered under the scope of the Product Liability Law (Produkthaftungsgesetz), if a promised characteristic or guaranteed composition is lacking in the software or we assume culpability in the form of malicious intent or gross negligence.

9. Reference is also made to the liability restrictions of the General Terms of Delivery of the TQ Group (§ 9) in the currently valid version.

§ 6 Other Provisions

1. If the Purchaser is an entrepreneur in terms of § 310 para. 1 German Civil Code (BGB), our place of business is the exclusive jurisdiction if the law does not require proceedings be opened in another jurisdiction. We are also entitled to sue the Purchaser at the location of his residence or place of business.

2. If the order confirmation does not indicate otherwise, our place of business is the exclusive place of performance.

   The laws of the Federal Republic of German apply exclusively to these Terms of Delivery and Agreement with exclusion of international private law and the Convention on Contracts for the International Sale of Goods (CISG).

3. If one or more of the aforementioned provision should be or become invalid, the validity of the remaining provisions shall remain unaffected.