General Terms and Conditions

(As of February 21, 2012)

1. Applicability

1.1 These General Terms and Conditions, as amended from time to time ("**Terms and Conditions**"), shall apply to all current and prospective business relationships relating to the sale of software licenses ("**Software**") between us, the Software NCP engineering GmbH ("**we**", "**us**", or "**NCP**") and you as NCP's customer ("**Customer**"). Deviating, conflicting or amending terms and conditions (including, but not limited to terms and conditions that are attached to or contained or referenced in an order or a delivery confirmation of the Customer) shall not apply, unless the Parties have expressly agreed otherwise in writing.

1.2 With regard to the Software delivered by us, the terms and conditions of our Software License Agreement ("**Software License Agreement**") shall apply in addition to these Terms and Conditions. The Software License Agreement can be downloaded in a printable version on http://www.ncp-e.com and is delivered to the Customer upon request and. In the event of a conflict between a provision of these Terms and Conditions and the Software License Agreement, the respective provision of these Terms and Conditions shall prevail. In the event of a conflict between a provision of these Terms and Conditions and a provision of a framework agreement concluded with the Customer (e.g. of a Distribution Agreement), the respective provision of the framework agreement shall prevail.

2. Quotes

Our quotes are subject to change, and we expressly reserve the right to amend technical details to the extent reasonably acceptable. We may accept any order made by the Customer by an order confirmation or by delivery of the ordered Software within four (4) weeks upon receipt of the Customer's order.

3. Prices and payment conditions

3.1 Our prices are quoted ex works, excluding packing. All prices are exclusive of VAT.

3.2 Invoices issued by NCP shall be due for payment according to the payment terms agreed with the Customer. Unless agreed otherwise, all payments shall be made within thirty (30) days as of the invoice date without any deduction.

3.3 In the event that the Customer does not settle an invoice which is due for payment within thirty (30) days as of Customer's receipt of the first dunning letter, Customer's right of use to the Software to which the respective invoice relates shall automatically and entirely terminate.

4. Time of delivery

In case we indicate a delivery time, such indication shall be considered as a mere estimate and shall not be binding upon us, unless such binding character has been expressly agreed in an individual written agreement with the Customer.

5. Passing of risk

The risk of any accidental loss or deterioration of the Software passes to the Customer upon delivery of the Software to the carrier, shipper or any other individual or institution dedicated for the delivery, or upon transmittal of the relevant license key to the Customer, as the case may be. Customer's default of acceptance shall have the same effect as the delivery of the Software to the carrier.

6. Liability for material defects and third party right infringements

6.1 NCP's liability for defects of the Software, including defects in title (collectively "Defects") shall be governed by this Section, unless otherwise provided in Section 8 of the Software License Agreement (Third Party Rights).

6.2 The Customer understands and accepts that in accordance with the present state of the art it is impossible to develop computer programs, in particular those which are combined with other programs or systems, in a manner so that they work entirely free of errors. Under the current state of the art it is not possible to warrant that the Software will operate free of interruptions or deficiencies, nor to warrant the complete removal of any Defects in the Software. The contractually agreed characteristics of the Software (i.e. the measurement criteria for the suitability, operability and dedicated usability) are therefore exclusively determined and set forth in the NCP data sheet as related to and delivered along with the Software. Only substantial deviations from the respective NCP data sheet which result in a limitation of the functionalities described therein shall qualify as a Defect. Individual requirements of the Customer shall only be deemed as part of the contractually agreed characteristics of the Software, in case and to the extent the Parties have defined such characteristics expressly in writing in a jointly developed solutions design document.

6.3 Any liability of NCP for Defects under this provision requires that the Customer has notified NCP of the Defect concerned without undue delay in writing and during the limitation period. In case of such written notification of a Defect, NCP shall have the right to make two attempts to remedy the Defect following reasonable remedy periods in each case, and for that purpose and at NCP's discretion to either repair the Defect or deliver a replacement solution. To the extent reasonably acceptable for the Customer, NCP shall further have the right to remedy the Defect by providing a work around or alternative solution. The Customer shall provide NCP with all reasonable assistance in remedying the Defect, including, in particular, that Customer shall send in the Software (as in usage at the time the Defect occurred) upon NCP's request and to provide computing capacity as well as to install corrections or replacement solutions as provided by NCP. In case NCP's efforts to remedy the Defect should fail after a second attempt within a reasonable period of time, the Customer shall have the right to rebate the remuneration paid or payable for the license key(s) of the Software concerned, or – following a final written warning – to rescind from the order of the license key(s) concerned. Any eventual claims for damages by the Customer shall remain unaffected, provided that NCP's liability in this respect shall be exclusively governed by Section 7 (Liability). The Customer agrees and acknowledges that NCP has successfully remedied a Defect within the meaning of this Section 6.3 in the event that NCP either (i) brings out and makes a

available to the Customer within two (2) months following the Customer's notification of the Defect a new version of the Software, in which the Defect concerned is remedied, or (ii) in case NCP does not make available such a new version, if NCP remedies the Defect in accordance with the modalities set forth in this Section 6.3 sentences 1-5 within three (3) months following the notification of the Defect by the Customer or by providing a replacement or a work around solution.

6.4 Any claims for Defects are subject to a limitation period of 12 months from the beginning of the limitation period under statutory law. To the extent NCP intentionally conceals a Defect or has assumed an express guarantee for the characteristics of the Software, the statutory provisions of statute of limitation shall apply without alteration.

6.5 The Parties agree that any guarantee shall require an express written agreement in which the guarantee must be explicitly identified as a "Guarantee".

6.6 To the extent any actual occurrence of problems is the result of third party software products or of the hardware used by the Customer, rather than of the Software made available by NCP, the Customer shall have no warranty claims against NCP with view to such problems. Correspondingly, the same shall apply to the extent the Customer has used the Software in breach of the provisions of these Terms and Conditions or to the extent the Customer or a third party acting on his behalf has made changes or modifications to the Software, or in the event of insubstantial deviations from the contractually agreed characteristics of the Software.

7. Liability

7.1 Subject to the provisions in Section 7.2, NCP's statutory liability for damages shall be limited as follows:

(i) NCP shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the contract in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. contractual obligations fulfillment of which only enables the proper performance of the Agreement, non-fulfillment of which would endanger the purpose that both Parties intend to achieve through the relevant individual order and on the fulfillment of which the Customer regularly relies).

(ii) NCP shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

7.2 The aforesaid limitation of liability shall not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), liability for assuming a specific guarantee or liability for damages caused by willful or grossly negligent misconduct, or any kind of willfully or negligently caused personal injuries.

7.3 Customer shall take all reasonable measures to mitigate or to avoid damages, including, in particular, an obligation for the Customer to make back-up copies of data on a regular basis and to carry out security checks (in particular for the purpose of defending or detecting viruses and other disruptive programs within the Customer's IT System).

7.4 NCP shall not be liable for indirect and/or consequential damages, independent of its legal basis, in particular including loss of profit and loss of interest, unless any such damage has been caused by willful misconduct or gross negligence.

7.5 To the extent NCP's liability is limited or excluded, the same shall apply in respect of any personal liability of NCP's legal representatives, employees and vicarious agents.

8. Export/Import control regulations

The Software may be subject to certain export and/or import control laws and regulations of certain countries. In case any approval by any public authority or compliance with any other official requirements is required for the Customer's acquisition, carriage, deployment or other contractually agreed use of the Software, the Customer shall obtain any such approval and/or fulfill any such requirements at the Customer's own expense and if necessary produce evidence to NCP on demand. The Customer shall be solely responsible for compliance with any laws, regulations or other binding requirements that may apply to the Customer's acquisition, carriage, deployment or other contractually agreed use of the Software.

9. Set-off and retention rights

The Customer may set-off against claims by NCP only based on such claims which are undisputed or have been asserted by final binding court decision. The Customer may exercise retention rights or other rights to refuse performance only based on counterclaims which (i) originate from the same contractual relationship as our own claims in questions; and (ii) are either undisputed or have been asserted by final binding court decision.

10. Place of fulfillment, place of venue, jurisdiction

10.1 Nuremberg, Germany, shall be the place of fulfillment for any obligation arising from these Terms and Conditions.

10.2 The courts of Nuremberg, Germany, shall have exclusive jurisdiction for any disputes and/or enforcements arising from or in connection with these Terms and Conditions. However, NCP may institute legal proceedings against the Customer also in any other court having proper jurisdiction over the Customer.

10.3 These Terms and Conditions as well as any individual order placed by the Customer shall be governed by the laws of Germany with the exception of the United Nations Convention on the International Sale of Goods (CISG).

11. Severability clause

In case any provision of the agreement with the Customer, including these Terms and Conditions and the Software License Agreement, is or will be held invalid or unenforceable, or in case it is incomplete, the remainder shall continue in full force and effect.