General License Terms and Conditions for the Delivery/Handing Over of Computer Software (GLTC) of Baumüller Nürnberg GmbH

1. Fundamentals/Validity of the GLTC

1.1 Handing over and licensing of software will be effected exclusively on the basis of these terms and conditions of Baumüller Nürnberg GmbH, hereinafter referred to as Baumüller; Baumüller is the Licensor. The Licensee is the ordering party as specified in the basic contract. These GLTC shall constitute an integral part of the basic contracts, that is, of the contractual relationship as defined by Baumüller's acknowledgment of an order or the separate individual project contract upon handover of the software; they are deemed to be acknowledged by order placing, at the latest. Furthermore, the Licensee explicitly agrees to the provisions of these GLTC by opening the sealed media for the software. The Licensee likewise agrees to the inclusion of the GLTC when downloading the software from the homepage of a company of the Baumüller group of companies and having accepted, by confirmatory click on a button, the validity of the GLTC. In the case of permanent business relations, they shall also apply to future contracts. Any deviating/conflicting terms and conditions of business shall be valid only when Baumüller has explicitly/in writing consented to the validity thereof. In case the Licensee does not agree thereto, it is imperative that Baumüller be **immediately** informed thereof in writing. In this event, Baumüller reserves to withdraw its offers without any claims, of whatever nature, existing against Baumüller.

1.2 To the extent that the software is handed over subject to regulations relating to foreign trade and payments (in particular AWG [Law on Foreign Trade and Payments], AWV [Order for Implementing the Foreign Trade and Payments Law], Dual Use Regulations, KWKG [War Arms Control Law], (U.S.) export control laws, embargo laws), the Licensee shall have sole responsibility for observing all provisions and stipulations. Any authorizations required will be obtained by the Licensee. If and when the Licensee transfers the software to a third party, the latter shall comply with all relevant regulations relating to foreign trade and payments; the Licensee shall indemnify Baumüller from any and all obligations in relation to the compliance with the export regulations.

1.3 Software within the meaning of these GLTC shall be any machine-readable material (= object language) that is stored on CD/other data carrier or is available for use by the Licensee after downloading into a data processing device. The software within the meaning of these GLTC and the form in which it is handed over shall be specified in the basic contract and/or in Baumüller's acknowledgment of an order. The software handed over may, on the one hand, be standard software; on the other hand, it may involve so-called individual software that has been specially designed and programmed for the Licensee. In addition, a user manual will be supplied (printed or in printable form). The user manual is understood by the parties to be a written collection of that technical information which is intended to enable the Licensee to use the software parts -- which are operable per se **in any case** -- in conformity with the contract.

1.4 A prerequisite for the preparation/handing over by Baumüller of individual software shall reside in that the Licensee provides, at least 4 weeks prior to the start of the performances agreed on, a complete system specification covering all necessary performances by Baumüller. It shall **not** be Baumüller's duty to examine the system specification. Should Baumüller nevertheless recognize that the system specification as handed over includes errors, or is incomplete, **not** objectively practicable, or **not clear**, Baumüller will inform the Licensee thereof, and the latter shall then correct/complete the system specification within a reasonable time limit. Any costs that may result here from shall be borne by the Licensee.

1.5 There shall be **no** claim to disclosure of the so-called source code for the software handed over; any interfaces will be set forth for practical use/comprehension by an exact interface description on the part of Baumüller.

1.6 Baumüller points out that, applying the state of the art, it is not possible to establish software so as to make it work faultlessly in any and all conceivable applications/combinations.

1.7 The basic contract/acknowledgment of order specifies with binding force the hardware/software environment required for proper and faultless operation of the (unchanged) software, more particularly the clock frequency, processor, storage space, operating systems, software statuses. In addition to this, it shall be basically the Licensee's responsibility to arrange for an appropriate operating environment.

2. Rights of Use / Scope of License

2.1 Baumüller grants to the Licensee the non-exclusive, non-transferable right, in the form of a license, to use the software in accordance with the terms and conditions of the basic contract/these GLTC, except as provided in 2.7. In case **no** time limit is provided in the basic contract/these GLTC, the software is made available for an unlimited period of time.

2.2 This right of use shall be subject to payment in full of the remuneration for the software handed over. An assertion of reservation of title shall not be deemed a rescission of the contract, unless Baumüller explicitly notifies the Licensee thereof. Upon assertion of the reservation of title, the Licensee's right to continue to use the software shall become extinct.

2.3 The Licensee is granted the right, for the period of time as stipulated in the basic contract, to use the software on one single data processing device only and at one single location only. A change to a different data processing device for using the software is possible provided that it can be proven that the use on the original data processing device has previously been discontinued (workstation license). This means that the software must not be loaded and/or used on more than one data processing device at any one time. This shall also apply if a shipment includes several copies of the same software (possibly on different formats of media). In such a case it shall further not be permitted to prepare a backup copy, for lack of interest in such backup. Unless otherwise agreed, the right of use shall be restricted to the country where the place of delivery is.

2.4 The license is, in principle, a so-called single license. A multiple license in the sense of a permission to use the software on several data processing devices and/or workstations at the same time shall exist **only** if same has been explicitly agreed in the basic contract. In order to use the software in a plurality of data processing devices or at several workstations simultaneously, involving multiple licenses, the Licensee shall require a right of use to be agreed on separately and

in writing. The same shall be applicable to the use of the software in a network, even if this does not involve duplication of the software.

2.5 The software handed over may be duplicated by the Licensee **only** once, exclusively for the purpose of data backup (= backup copy, Section 69 d II of UrhG [German Law on Copyrights and Related Property Rights]). Any further duplications, which shall also include printing out of the program code, shall be permissible only upon Baumüller's prior approval.

2.6 Except in the cases of Section 69e of UrhG, any editing or manipulation of the software, especially by modification, decompilation, reverse engineering/ translation, as well as removal of any parts thereof shall be permitted only upon the prior written consent by Baumüller or upon separate acquisition (against payment) of the source code. Any commercial use of the software that is the subject matter of the contract on behalf of third parties by way of so-called Application Service Providing (ASP) shall **not** be permitted.

2.7 Any use beyond the extent as specified in clause 2 shall constitute use that is **contrary to the terms of the contract**. The Licensee undertakes to pay an indemnification in the amount of twice the price of the uses made, in accordance with the standard price list for software of Baumüller, for the period of time of the use contrary to the terms of the contract.

2.8 Any protective notes, such as alphanumeric identifiers, trademarks, other copyright notes of Baumüller on/in the software must not be removed and must also be included on copies/edited versions and on the respective data carriers. This shall also apply to any and all protective notes of software of other manufacturers contained in the volume of delivery of Baumüller.

2.9 Only upon the prior written consent by Baumüller shall the Licensee be permitted to grant rights of use, more particularly sublicenses, also including any temporary grant of any other rights whatsoever, to any third parties (while continuing the use itself).

2.10 In case of transfer to a third party of the right of use granted to the Licensee by Baumüller, the Licensee shall make a written agreement with the third party according to which the third party submits to the validity and application of the present GLTC; this requires that the Licensee completely discontinue its own use and delete any existing copies or return them to Baumüller. The rights of use of the Licensee shall expire on such transfer to the third party.

2.11 Where the Licensee is handed over any software in respect of which Baumüller holds only a derived right of use (so-called third party software), the conditions of use agreed on between Baumüller and its Licensor shall apply supplementarily and with priority also to the Licensee; the latter hereby explicitly agrees thereto. The Licensor's conditions of use for Baumüller will be made available by Baumüller upon request. Should the Licensee infringe the conditions of use of the third party software, both Baumüller and also its Licensor shall be entitled to assert any claims and rights in their own name vis-à-vis the Licensee.

2.12 The Licensee undertakes to keep records that document the software, including the respective version, the place where it is located, and the number of copies prepared. The Licensee will immediately present these records to Baumüller upon request.

3. Reservation of Rights / Secrecy

3.1 The software that is the subject matter of the contract is protected by copyright. All rights in and to the software and any edited versions, in particular ownership, intellectual property rights and copyrights belong to Baumüller, subject to clause 2.11, unless otherwise expressly agreed in the present GLTC/in the basic contract.

3.2 The software contains confidential information, trade and business secrets (within the meaning of Section 17 of UWG [German Unfair Competition Law] of Baumüller. The Licensee undertakes to maintain the secrecy of the software, including any backup copies/other information, in its entirety or of parts thereof, and to ensure by taking appropriate measures that they are under **no** circumstances made available to any third parties. This shall apply in particular to any cases of dispute. The undertaking shall be effective for an indefinite period of time. It shall survive the termination of the contract (also as provided in clause 14 of the present GLTC).

4. Handover of the Software / Assistance by the Licensee

4.1 The software is handed over in machine-readable form, along with a user manual (the latter in printed form/electronically printable). Delivery of the software (program carrier and user manual) is effected ex works Baumüller; if no program carrier is handed over, the transfer/import of the program into the data processing equipment of the Licensee shall be deemed handover of the software. In such cases where the software is downloaded from the homepage of a company of the Baumüller group of companies, the handover shall be deemed to be effected upon the Licensee's acceptance of the validity of the GLTC by the click on a button and upon transfer of the software, inclusive of the user manual.

4.2 The benefits, expenses and risk shall pass to the Licensee as from the handover of the software and of the user manual; in case individual software is prepared/made available, the benefits, expenses and risk shall pass upon acceptance and handover of the user manual, Section 640 of BGB [German Civil Code].

4.3 Based on its duties to assist, the Licensee will contribute to enabling Baumüller to commence in due time with the performances agreed and to carry them out without hindrance/interruption. In particular in the case of preparation of individual software, the Licensee, in addition to providing the information as per clause 1.4, will ensure that Baumüller has free access, to the full extent (including on-line via remote data transmission), to the required hardware/software systems and can use them free of charge, and the Licensee will also provide suitable operating staff of the Licensee. Where the Licensee intends to make any modifications to systems, such as upgrades/migrations, the Licensee will coordinate such modifications with Baumüller in good time if these measures can have an impact on the provision of the services. If the Licensee fails to do so, Baumüller shall be entitled to suspend its own services to be provided, to the extent that the cause of a malfunction is attributable to such modifications. If the cause of the malfunction can not be removed, Baumüller shall be entitled to withdraw from the contract; any performances already effected shall have to be paid for.

5. Extent of Delivery and Delivery Time

5.1 For the type and extent of the handing over of software, the order/basic contract acknowledged in writing shall be solely authoritative. The software documentation/the user manual shall be supplied in German and in printed/printable form. The software was checked at an appropriate point in time prior to delivery/handover, using an up-to-date antivirus program. The result of this check was **negative** as regards an indication of any functional defects. The **time limits** for the preparation/handover/import of individual software will be reasonably extended if the final version of the system specification or the other documents/information required for the preparation of the software are not received by Baumüller in a timely fashion prior to the commencement of the provision of the services, in particular if the system specification needs to be corrected by the Licensee because of errors.

5.2 (Minor) technical changes/improvements shall be permitted until dispatch/handover of the software. More particularly, such technical changes shall be permissible which could not be foreseen at the time of formation of the contract and which do not have any negative effects on the scope of services agreed upon. The delivery times shall be apparent from the arrangements between the contracting parties and shall be approximate. Compliance therewith by Baumüller shall require that all commercial/technical issues have been clarified between the parties to the contract and that the Licensee has fulfilled all obligations incumbent on it; where this is **not** the case, the delivery time shall be reasonably extended. This shall **not** apply to the extent that Baumüller is responsible for the delay.

5.3 Compliance with the term of delivery/performance shall be subject to correct/timely self-delivery. In case any of Baumüller's suppliers do not effect performances on time, Baumüller shall be correspondingly released from compliance with the period of delivery to the extent that Baumüller duly placed its order(s).

5.4 The term of delivery shall be deemed complied with if and when the software has left Baumüller's works or upon notification of readiness for shipping/acceptance. In cases where the software is downloaded, Baumüller shall not be required to comply with any terms of delivery. If shipping/transfer/acceptance/taking delivery of the software is delayed for reasons for which the Licensee is responsible, the Licensee shall be charged the costs that have arisen due to the delay, starting one month from notification of readiness for shipping and acceptance.

5.5 Where non-observance of the term of delivery is caused by force majeure (in particular riot/war/terrorist attacks, strike, lockout) or other events that are beyond Baumüller's control, the time for delivery shall be reasonably **extended** at least by the period of time until the (operational) disruption has been removed. Baumüller shall inform the Licensee of the commencement and cessation of such disruptions without undue delay. In case of lasting disruptions resulting as a consequence of any of the aforementioned reasons, or in case that Baumüller is not supplied by its suppliers without any fault on the part of Baumüller, Baumüller shall further have the right to withdraw from the contract in full or in part; in such cases of non-availability of the service, Baumüller shall give notice thereof without delay. If Baumüller withdraws from the contract in such case, any services already received in performance of the contract shall be mutually restored without delay. Any claims for compensation for the benefit of the Licensee arising from the above-mentioned facts and circumstances shall be excluded, unless otherwise provided in clauses 8, 10, 11.

5.6 The Licensee may withdraw from the contract **without** setting a time limit if it becomes finally impossible for Baumüller to provide the entirety of the services prior to the passing of the risk. The Licensee may furthermore withdraw from the contract if, in connection with an order, execution of part of the delivery becomes impossible and the Licensee has a legitimate interest in rejecting the partial delivery. Where this is not the case, the Licensee shall pay the contract price attributable to the partial delivery. The same shall apply in case of inability to perform. Clauses 8, 10, 11 shall apply supplementarily. There shall be no claims in excess thereof. If impossibility or inability occurs during default of acceptance on the part of the Licensee, or if the Licensee is solely, or to a major extent, responsible for such circumstances, the Licensee shall remain under an obligation to pay the consideration.

5.7 If Baumüller is in default and the Licensee incurs a loss resulting here from and caused thereby, the Licensee shall be entitled to claim a lump sum compensation for default, which shall amount to 0.5% for each complete week of the delay, but to no more than a total of 5% of the value of that part of the overall delivery which can not be utilized in time or as provided for by the contract as a result of the delay. If Baumüller is in default and the Licensee grants to Baumüller a reasonable term for performance, taking into account the legal exceptional cases, and if such term is **not** complied with, the Licensee shall be entitled to rescind the contract within the scope of the legal provisions. Both claims for damages by the Licensee on the ground of a delay in the delivery and claims for damages in lieu of performance which exceed the limits mentioned herein shall be excluded in all cases of delayed delivery, even upon expiration of any time limit that may have been given to Baumüller for delivery/performance, with due regard to the restrictions as per clauses 8, 10, 11.

5.8 Partial deliveries/performances shall be permissible, in particular in the case of individual software handed over, and shall be paid according to their value as invoiced.

6. Passing of Risk, Acceptance of Individual Software

6.1 In respect of standard software, the risk shall pass to the Licensee as soon as the software has left the works of Baumüller or the download/transfer/import, inclusive of the supply of the user manual, has been completed, even when partial deliveries are made or Baumüller has agreed to provide further services, e.g., assumption of the shipping costs or delivery. If shipping/transfer/acceptance is delayed or omitted as a result of circumstances for which Baumüller is **not** responsible, the risk shall pass to the Licensee as from the date of notification of readiness for shipping/import. If and to the extent that acceptance is to be effected, the latter shall be authoritative for the moment in time of the passing of the risk.

6.2 In the case of individual software, acceptance must be carried out immediately by the acceptance date agreed on, alternatively, upon notification by Baumüller of

readiness for acceptance; the risk shall pass thereupon, provided that the user manual has been handed over. The Licensee must not refuse acceptance in the case of a defect that is **not** material. If the Licensee fails to accept the software within a reasonable time limit specified by Baumüller although the Licensee is obligated to do so, acceptance shall be deemed granted, Section 640 I 3 of BGB [German Civil Code]. The software shall also be deemed to be accepted if and as soon as the Licensee uses the software productively as being substantially operative or the Licensee failed to give written notice of any substantial defects during the acceptance period/test period.

6.3 The Licensee undertakes to take out an insurance policy at its own expense, which covers the economic risks in particular incident hereto.

7. Program Maintenance to be agreed on separately

7.1 The delivery/handover of the software does **not** mean that Baumüller assumes any obligation to provide software services. Any support/services to be provided by Baumüller, in particular in connection with the installation of the software on the computer system/data processing equipment of the Licensee shall require separate agreements to be made.

7.2 If the Licensee has agreed, by statements made to that effect, to accept software programs developed further, new software versions will be offered and handed over to the Licensee subject to the following proviso:
- The Licensee receives from Baumüller informative material and the new software version (data carrier and documentation), along with a computation of the royalty, under the applicable General Licensing Terms and Conditions (GLTC).
- The Licensee undertakes to either return the data carrier and the documentation to Baumüller unopened or to transfer the royalty to Baumüller within 30 days from receipt of the new software. The present GLTC shall apply mutatis mutandis.

8. Liability for Defects as to Quality

8.1 Baumüller makes sure that the software meets the specifications included in the system specification and is prepared with due care and professional knowledge. The specifications/particulars relating to the software do **not** constitute any representations/statements as to nature or quality/durability guarantees within the meaning of Section 443 of BGB [German Civil Code], unless they have been designated/confirmed as such by Baumüller in writing.

8.2 If the Licensee wishes the software to feature any specific necessary properties that are of particular importance to the Licensee, the Licensee shall have to point this out to Baumüller separately. There shall be no defect as to quality within the meaning of these arrangements if the Licensee failed to inform Baumüller accordingly and the properties or features concerned can **not** be expected by the Licensee from the type of the software.

8.3 Only those deviations from the stipulations according to 1.1 and 1.4 shall be deemed a defect as to quality of the software which are proven/reproducible by the Licensee and which already existed at the time of the passing of the risk. A defect as to quality is, however, given only if it appears also in the software that was handed over to the Licensee **last**, and the use of which is not unreasonable for the Licensee. Therefore, any and all claims based on defects as to quality shall be excluded
- in case of only insignificant deviations/defects;
- in case of only insignificant impairment of the usefulness;
- in case of damage or loss occurred after passing of the risk as a result of incorrect/negligent handling or treatment;
- in case of damage or loss that has occurred due to operating conditions/employment not intended by the contract, in particular outside the specifications of the basic contract/the system specification/the instructions for installation;
- in case of damage or loss occurred owing to specific external influences **not** provided for/not to be expected under the contract;
- for any changes made by the Licensee/third parties and any consequences resulting there from;
- for software extended by the Licensee or a third party beyond an interface provided by Baumüller;
- if the software is not compatible with the data processing environment used by the Licensee.
In addition, there shall be no liability for defects as to quality if the software is improperly edited/installed, maintained, repaired or otherwise used by the Licensee or third parties, unless the Licensee provides proof that such circumstances are **not** the cause of the notified defect.

8.4 Baumüller undertakes to remedy any reproducible software errors asserted by the Licensee within the period of limitation for which Baumüller is answerable and which are described and documented in the error notification, by removal, bypassing, or new delivery within a reasonable period of time. Baumüller shall have the right to choose between the types of such subsequent performance; the latter shall be effected
(a) by handing over a new release number of the software (update) or a new version (upgrade);
(b) or by means of handing over an interim solution for bypassing the defect until an update/upgrade is handed over;
(c) or, in case of a defective data carrier or user manual, by means of supply of an item in perfect condition.
Any further warranty claims and other claims, in particular for damages arising from so-called loss of profit, shall be excluded; this shall apply notwithstanding the provisions in clauses 8, 10, 11.

8.5 Any claims by the Licensee on account of the expenses required for the purpose of subsequent performance shall be excluded to the extent that the expenses increase because the software has later been transported to a location other than the place of business of the Licensee.

8.6 If an inspection of a notice of defect reveals that a case of so-called liability for defects is **not** involved, the inspection/removal costs will be charged at the respectively applicable hourly and other billing rates of Baumüller and shall be remunerated by the Licensee.

9. Notices of Defects

9.1 The Licensee shall examine the software **immediately** upon handover/supply and

shall give notice of any apparent defects without delay, but at the latest 14 days from receipt of the delivery. If the Licensee **fails** to notify a defect in writing within this period of time, the software shall be deemed to be **approved**. Any non-obvious defects must be notified in writing upon discovery **without delay**, but at the latest 14 days from discovery. If the Licensee **fails** to notify the defect discovered in writing within this period of time, the software shall be deemed to be approved. In so doing, the possible defect and the data processing environment should be described as exactly as possible. Regardless thereof, any claims based on defects will lapse one month from rejection of a notice of defect, to the extent that the Licensee fails to reply hereto. Inasmuch as any subsequent services have been performed (on account of liability for defects), the duties to examine and to give notice of a defect in accordance with the foregoing arrangements shall be applicable again in respect of any remaining/possible new defects.

9.2 The Licensee shall allow Baumüller an appropriate examination of any **notified** defects and shall, without this requiring a separate request, make available to Baumüller, free of charge, all necessary technical information, in particular test/process/measurement/load protocols. If Baumüller intends to effect the subsequent performance on the Licensee's premises, the Licensee shall make available, free of costs, the necessary hardware and software and the required computing time along with suitable operating staff. If the Licensee fails to do so, any defects of the software shall be deemed **not** notified and the software shall be deemed to be **approved**. If the Licensee makes any changes to the software by any interference, of whatever nature, which has not previously been approved by Baumüller, or if the Licensee performs any repair without Baumüller's prior approval, the Licensee shall lose its claims based on defects.

10. Defect in Title/Intellectual Property Rights/Copyrights

10.1 Unless otherwise expressly agreed, Baumüller shall be under an obligation to effect the delivery free of third party intellectual property rights/copyrights merely in the country of the place of delivery. To the extent that a third party lodges rightful claims against the Licensee due to infringement of property rights as caused by deliveries effected by Baumüller and used as provided for by the contract, Baumüller shall be liable as follows:
(a) Baumüller will, at its option and expense, either obtain a right of use of the software concerned; modify the software in such a way that the property right is not infringed, or exchange the software. If Baumüller is **not** in a position to do so on reasonable terms, the Licensee shall be entitled to withdrawal from the contract or reduction of the purchase price, as provided for by law.
(b) Baumüller's liability for damages shall be **finally** governed by clauses 8, 10, 11. Such obligations on the part of Baumüller shall **only** exist if the Licensee immediately notifies Baumüller in writing of the claims asserted by the third party and declines to acknowledge an infringement, and if all defense measures remain reserved to Baumüller. If the Licensee discontinues use of the products delivered for reasons of reduction in damage or for other good cause, the Licensee shall be under an obligation to point out to the third party that such discontinuance of use is **not** associated with an acknowledgment of property right infringement. Baumüller shall be informed accordingly without delay.

10.2 Any claims by the Licensee shall be **excluded** to the extent that the Licensee is responsible for the property right infringement. Any claims by the Licensee shall further be excluded to the extent that the property right infringement is caused by particular specifications of the Licensee, by an application that could not be foreseen by Baumüller, or because the products delivered have been changed by the Licensee or are used together with products not supplied by Baumüller.

10.3 In case of other defects in title the claims by the Licensee as arranged for above shall exist; the provisions of clauses 8, 10, 11 shall apply supplementarily and finally.

11. Liability (Damages/Compensation for Expenses)

11.1 The provisions of clauses 8, 10, 11 shall be applicable, to the exclusion of any further claims by the Licensee, if the software can **not** be used in conformity with its typical functions by the Licensee according to the contract through Baumüller's fault as a result of a failure to execute, or defective execution of, suggestions made/consultations held prior or subsequent to formation of the contract, or due to breach of other accessory duties under the contract, in particular instructions for operation/maintenance of the software.
Baumüller shall not be liable for any damage **not** caused to the object of the delivery itself, nor for any claims for damages/claims for compensation of expenses, for whatever legal ground, in particular based on default, Sections 280, 286 of BGB [German Civil Code], impossibility, other breach of duty, tort. This shall not apply if the Licensee's claim is based on
(a) loss of life, bodily injury or health injury;
(b) intent or gross negligence by the owner/executives or officers;
(c) a culpable breach of material contractual obligations (cardinal duties) by employees who are **not** executives or officers;
(d) fraudulent concealment of defects or warranted absence of defects;
(e) defects of the object delivered, to the extent that liability is mandatory under the Product Liability Law/general product liability for personal injury/damage to property.
In case of breach of a material contractual obligation (cardinal duty) based on simple negligence, the claim for damages against Baumüller shall be limited to liquidated damages for a loss which typically arises/would be foreseen. This shall normally be the contract value.

11.2 In case of a breach of duty which does **not** involve a defect of the software, the Licensee may rescind the contract only if Baumüller or the legal representatives or vicarious agents are responsible for the breach of duty and the statutory requirements for rescission are satisfied. Any claim for damages shall be excluded.

11.3 In view of the fact that liability for indirect damage/consequential damage is excluded, the Licensee will obtain a product/manufacturer's liability insurance appropriately covering the economic risks, and will provide written proof thereof to Baumüller.

11.4 The Licensee shall take all necessary and reasonable measures to prevent the software from causing any damage and/or to limit any such damage. In particular, the customer shall arrange for regular backup and reproducibility of pro-

grams/data. The risk of loss of, or damage to, data, data carriers, and the expenses for recovery/replacement of lost data shall be borne solely by the Licensee.

12. Statute of Limitations

Any claims by the Licensee against Baumüller, in particular based on defects of the standard software, shall become statute-barred after 12 months from delivery in full. In the case of preparation/handing over of individual software, the limitation period shall start to run as from the full delivery/acceptance thereof, the legal fiction of acceptance (Section 640 I of BGB [German Civil Code]), from notification of readiness for delivery, notification of readiness for acceptance/import, or from the Licensee's default in taking delivery. This shall **not** apply to the extent that **longer** limitation periods are mandatory as provided for by law under Sections 438 (buildings and products for buildings), 479 (recourse claims), and 634 a (defects of buildings) of BGB [German Civil Code], and in cases of loss of life, bodily injury or health injury, in the case of an intentional or grossly negligent breach of duty by Baumüller, in the case of fraudulent concealment of a defect, and in the case of legally mandatory product liability (Product Liability Law). The period of limitation in respect of claims arising from (any possible) defects of subsequent performances shall likewise end upon expiration of the above-mentioned period of limitation.

13. Remuneration

13.1 For the rights granted to the Licensee to use the software, the Licensee shall pay the royalty agreed on in Euros, plus value-added tax in the statutory amount, if applicable.

13.2 Separate agreements (maintenance/service contract) shall be entered into, if required, for any support services exceeding the basic contract; such services will be provided against payment.

13.3 Where a delivery period of more than 4 months has been agreed on, Baumüller shall be entitled to correspondingly pass on to the Licensee any increase in costs that may have occurred. In such case, the prices fixed by Baumüller on the date of delivery shall be deemed to be agreed upon. In all cases in which, for instance, the material/design/workmanship experience alterations because the documents/samples provided by the Licensee were **not** in conformity with the actual circumstances/were incomplete, Baumüller may reasonably change the prices even **after** formation of the contract in accordance with the costs incurred.

13.4 Invoices shall be payable without any deduction at the points in time as agreed under the contract, at the latest within 30 days from the due date and receipt of the invoice, an equivalent payment schedule or receipt of the delivery or the services. Upon expiration of such 30 days, a default will occur automatically.

13.5 In case of delayed payment, in particular in case of the Licensee's default in payment, interest shall be due at 8% above the ECB base interest rate valid at the time. The interest on default in payment shall be due immediately. Assertion by Baumüller of any further **damage** shall remain reserved.

13.6 The Licensee may offset only against such claims which are uncontested or have become res judicata. The same shall apply to an exercise of rights of retention.

13.7 In case of the Licensee's default with a payment, all accounts receivable by Baumüller from the Licensee shall become due immediately.

13.8 Notwithstanding Sections 366 et seq. of BGB [German Civil Code], Baumüller shall be entitled to appropriate any payments made by the Licensee to such outstanding debts of the Licensee as Baumüller may think fit.

14. Termination of the Contract

14.1 If Baumüller has granted to the Licensee in the basic contract a right of use that is limited in time and/or subject to notice of termination, the following shall apply supplementarily: Either party may terminate the contractual relationship upon giving 3 months' notice, to take effect at the end of each calendar year. Baumüller may give extraordinary notice of termination of the contractual relationship, effective immediately, in particular if and when
- the Licensee seriously infringes its contractual obligations, in particular the rights of use and protective rights agreed on/the data privacy law, or **fails** to perform its contractual obligations within 1 month from receipt of a written warning,
- insolvency proceedings are requested against the Licensee's assets.

14.2 Following termination of the contract/expiration of the time limit agreed, if any, the Licensee must **no** longer use the software. The Licensee will return all program carriers/documentations received and all copies and editions to Baumüller at its own expense within 2 weeks from the end of the contract, at the latest, and will assure in writing that the software, including all copies/editions, has been deleted or destroyed. The Licensee will provide proof hereof to Baumüller in an appropriate form upon request.

15. Final Provisions

15.1 The parties hereby agree on written form for any and all agreements to be entered into. Any **verbal** collateral agreements do not exist. They shall be effective only if confirmed in writing in each individual case. The requirement of written form shall also apply to the cancellation of this provision.

15.2 All rights conferred by and duties arising from the present contract shall be governed by the laws of the Federal Republic of Germany. The provisions of the United Nations Sales Convention (CISG) shall be excluded. In relation to the contractual rights and duties and in case of any litigation arising from or in connection with the performance of this contract, the courts at the respectively current principal place of business of Baumüller shall have exclusive jurisdiction and Baumüller's respectively current principal place of business shall be the place of performance; at present, this is Nuremberg, Germany. The Licensee may also be sued at its own principal place of business.

15.3 The Licensee shall ensure that all persons who are entrusted by the Licensee with the processing/performance of the contract comply with the legal provisions relating to the protection of data privacy. Baumüller may rescind the contract in full or in part if the contractor culpably **fails** to perform its aforesaid duties within a reasonable term set, in particular if data privacy protection regulations have been violated intentionally/by gross negligence.