

## General Terms and Conditions for the Supply of Electrical and Electronical Products and Services ("GTC")

### Article I: General Provisions

1. Legal relations between the Supplier and the Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as "**Supplies**") shall be solely governed by these GTC. The Purchaser's general terms and conditions shall apply only if expressly accepted by the Supplier in writing. The scope of delivery shall be as agreed between the parties in writing or otherwise as determined by the Supplier.

2. The Supplier herewith reserves any and all intellectual property rights and rights of use pertaining to its cost estimates, drawings, and other documents ("**Documents**"). The Documents shall not be made accessible to third parties without the Supplier's prior written consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. The previous provisions of this clause 2 shall apply respectively to the Purchaser's Documents, save that the Purchaser's Documents may be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.

3. The Purchaser has the non-exclusive right to use standard software and firmware, provided that

- (a) it remains unchanged,
- (b) it is used within the agreed performance parameters, and
- (c) it is used on the agreed equipment.

The Purchaser may make one back-up copy of standard software.

4. Partial deliveries are allowed unless the parties agree in writing that they are unreasonable to accept for the Purchaser.

5. The term "**claim for damages**" used in these GTC includes claims of any nature, whether for indemnification or expenditure.

### Article II: Prices, Terms of Payment, and Set-Off

1. Prices are ex works and exclude packaging; Prices are exclusive of value added tax, which shall be payable in addition at the then applicable rate.

2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed in writing, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. for traveling and transport as well as allowances.

4. The Purchaser may set off only those sums which are agreed in writing and undisputed.

### Article III: Reservation of Title

1. The items pertaining to the Supplies ("**Reserved Goods**") shall remain the property of the Supplier until payment for such Reserved Goods has been received in full by the Supplier.

2. During the existence of the reservation of title as described above, the Purchaser is prohibited from pledging or transferring ownership by way of security and resale is only permitted to bona fide purchasers in the ordinary course of business and only on condition that ownership is not transferred to the customer until the Purchaser has fulfilled its payment obligations to the Supplier.

3. Should Purchaser resell Reserved Goods, it hereby assigns to the Supplier by way of security all claims arising from the resale, including any security rights and all balance claims, without any further declarations to this

effect being necessary. If the Reserved Goods are resold together with other items and no individual price has been agreed with respect to the Reserved Goods, the Purchaser shall assign to the Supplier that part of the total price claim which is attributable to the price of the Reserved Goods invoiced by the Supplier.

4. Until further notice, the Purchaser may collect assigned claims relating to the resale. The Supplier is entitled to revoke Purchaser's authorisation to collect for good cause, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, or justified indications for over-indebtedness or pending insolvency of Purchaser. In addition, the Supplier may, upon expiry of a reasonable period for disclosure of the assignment, realize the claims assigned and demand that the Purchaser informs its customer of the assignment.

5. The Purchaser shall inform the Supplier forthwith of any seizure or other interference by third parties. If a justified interest is substantiated, the Purchaser shall, without undue delay, provide the Supplier with the information and/or Documents necessary to assert its rights against its customers.

6. Where the Purchaser fails to fulfill its duties, including, but not limited to delayed payment or the expiry of a reasonable time-period set by the Supplier, the Supplier shall be entitled to withdraw the contract and take back the Reserved Goods; the statutory provisions on the dispensability of such reasonable period shall remain unaffected. The Purchaser shall be obliged to return the Reserved Goods to the Supplier. If the Purchaser does not return the Reserved Goods within a reasonable period, the Supplier may enter the Purchaser's premises to repossess the Reserved Goods. The return or the assertion of the reservation of title or the seizure of the Reserved Goods by the Supplier shall not constitute a rescission of the contract, unless the Supplier has expressly declared such rescission.

## Article IV: Time Limits for Supplies; Delay

1. Compliance with time limits for deliveries shall be conditional upon the timely receipt of all documents and necessary approvals and releases to be provided by the Purchaser, as well as compliance with the agreed terms of payment and other obligations on the part of the Purchaser. If these preconditions are not met in time, the time limits shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay.

2. If non-observance of the times set is due to:

(a) a force majeure event, including mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout) or pandemics ;

(b) attacks on the Supplier's IT systems occurring despite reasonable protective measures being in place that complied with the principles of reasonable care;

(c) delays or prohibitions with regard to UK, German, US or other applicable national, EU or international rules of foreign trade law and/or sanctions and embargoes or with regard to other circumstances for which the Supplier is not responsible; or

(d) the fact that the Supplier does not receive its own supplies in due time or in due form

(each a "**Force Majeure Event**"), then such times shall be extended accordingly for the duration of the Force Majeure Event and a reasonable period of time thereafter.

3. If the Supplier is responsible for the delay (hereinafter referred to as "**Delay**") and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim compensation as liquidated damages at an agreed amount of 0.5 % for every full week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which due to the Delay could not be put to the intended use.

**4.** Subject to Article XII No.2, Purchaser's claims for damages due to delayed Supplies exceeding the limits specified in No. 3 are excluded in all cases of delayed Supplies. Rescission of the contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change regarding the burden of proof to the detriment of the Purchaser.

**5.** At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it withdraws the contract due to the delay in delivery or insists on the delivery of the Supplies.

**6.** If dispatch or deliveries delayed at the request of the Purchaser by more than one month after notification of readiness for dispatch, the Purchaser may be charged storage costs of 0.5 % of the price of the items of the Supplies for each additional month or part thereof, but not exceeding a total of 5 %. The contracting parties shall be free to prove higher or, as the case may be, lower storage costs.

#### Article V: Transfer of Risk

Even if delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:

**(a)** in the case of delivery without installation or assembly, at the time when it is shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense.

**(b)** in the case of delivery with installation or assembly on the day of delivery and assembly at the Purchaser's premises or, if agreed, after successful trial operation.

**2.** If the dispatch, delivery, commencement, performance of assembly or installation, taking over in the Purchaser's own works or trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser is in default of acceptance for any other reason, the risk shall

pass to the Purchaser on the date such delay or default begins.

#### Article VI: Assembly and Installation

Unless otherwise agreed in written form, assembly and installation shall be subject to the following provisions:

**1.** Purchaser shall provide at its own expense and in due time:

**(a)** all ancillary work outside the Supplier's scope, including the necessary labor, construction materials and tools;

**(b)** the equipment and materials necessary for assembly and commissioning;

**(c)** energy and water at the point of use including connections, heating and lighting;

**(d)** suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the installation personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the installation personnel at the site;

**(e)** protective clothing and protective devices needed due to particular conditions prevailing on the specific site;

**(f)** all necessary consents, approvals and releases required to undertake the assembly and installation.

**2.** Before the installation work starts, the Purchaser shall provide necessary information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

**3.** Prior to assembly or installation, the materials and equipment necessary must be available on the site of assembly or installation

and any preparatory work must have advanced to such a degree that assembly or installation can be started as agreed and carried out without interruption.

4. If assembly, installation or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Supplier or the installation personnel.

5. If the Supplier demands acceptance of the Supplies after completion, the Purchaser shall do so within a period of two weeks. Acceptance shall be deemed to have taken place if the Purchaser allows the two-week period to elapse or if the Supplies are put to use after completion of any agreed test phases.

#### Article VII: Minor / Insignificant Defects

The Purchaser may not unreasonably refuse to accept Supplies due to minor and/or insignificant defects.

#### Article VIII: Defects as to Quality

The Supplier shall be liable for defects as to quality (hereinafter referred to as "**Defects**") as follows:

1. The Supplies are free from Defects if at the time of the passing of risk, it complies with the contractually agreed requirements or the requirements as the Purchaser could expect with regard to the specific Supplies. If the parties have agreed on the quality of the Supplies, the question as to whether the Supplies meet the objective requirements shall be determined exclusively by such agreement.

2. Defective parts or defective services shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.

3. Claims for rectification or replacement delivery are subject to a limitation period of 12

months, calculated from the time of the transfer of risk; the same applies to withdrawal, rescission and reduction. This shall not apply

(a) where longer periods are prescribed by law,

(b) in case of willful intent and

(c) in case of fraudulent concealment of the Defect.

4. Notifications of Defect by the Purchaser shall be given in written form without undue delay.

5. In case of claims for Defects, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred.

6. The Supplier shall be given the opportunity to repair or to replace the Defect within a reasonable period of time.

7. If rectification or replacement is unsuccessful, the Purchaser is entitled to withdraw the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 9 of this Article VIII shall be unaffected.

8. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, or damage arising after the passing of risk because of faulty or negligent handling, excessive strain or unsuitable equipment. Claims based on defects resulting from improper modifications, installation/removal, or repair work carried out by the Purchaser or third parties are excluded.

9. Subject to Article XII No.2, all other claims for damages by the Purchaser based on Defects are excluded.

10. All warranties, conditions, guarantees, representations and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act

1979 and Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from these GTC and the contract.

#### Article IX: Intellectual Property Rights; Legal Defects

**1.** Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' intellectual property rights in the country of the place of delivery. If a third party asserts a justified claim against the Purchaser based on an infringement of an intellectual property right ("IPR") by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser for any claims or losses the Purchaser may suffer in respect of the same, in each case within the time-period stipulated in Article VIII No. 3 on the following basis:

**(a)** The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies in such a way that they no longer infringe the IPR or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to withdraw the contract or reduce the purchase price pursuant to the applicable statutory provisions.

**(b)** The Supplier's liability to pay damages is governed by Article XII.

**(c)** These obligations shall apply only if the Purchaser **(i)** immediately notifies the Supplier of any such claim asserted by the third party in written form, **(ii)** does not concede the existence of an infringement and **(iii)** leaves any protective measures and settlement negotiations to the Supplier's discretion.

**2.** Notwithstanding the previous provisions of these GTC:

**(a)** Claims of the Purchaser shall be excluded if the Purchaser is responsible for the infringement of the respective IPR;

**(b)** claims of the Purchaser shall be also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier; and

**(c)** any other claims of the Purchaser against the Supplier or any such claims exceeding the claims provided for in this Article IX, based on a legal defect are excluded,

in each case subject to Article XII No.2.

#### Article X: Foreign Trade Law / Embargoes

**1.** The fulfillment of this contract is subject to the condition that there are no restrictions or obstacles due to national, EU or international regulations of foreign trade law or any embargoes or other sanctions.

**2.** The Purchaser shall provide the Supplier with all information and documents required for export, transport and import purposes.

#### Article XI: Impossibility of Performance; Adaptation of Contract

**1.** To the extent that the Supplier is unable to deliver the Supplies, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. Subject to Article XII No.2, the Purchaser's claim for damages shall be limited to an amount equal to 10 % of the value of that part of the Supplies which, is impossible to deliver. The Purchaser's right to withdraw the contract shall be unaffected.

**2.** Where events within the meaning of Article IV No. 2 (a) to (c) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adjusted appropriately in good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to

withdraw the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to withdraw the contract, it shall notify the Purchaser thereof without undue delay.

#### Article XII: Other Claims for Damages

1. Subject to No.2 below, unless otherwise provided for in these GTC or otherwise agreed in writing, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, and the following types of loss are wholly excluded:

- (a)** loss of profits;
- (b)** loss of sales or business;
- (c)** loss of agreements or contracts;
- (d)** loss of anticipated savings;
- (e)** loss of use or corruption of software, data or information;
- (f)** loss of or damage to goodwill; and
- (g)** indirect or consequential loss.

2. Nothing in these GTC or the contract shall limit or exclude either Party's liability to the other for:

- (a)** death or personal injury caused by its negligence or intent, or the negligence or intent of its employees, agents or subcontractors;
- (b)** fraud or fraudulent misrepresentation; or
- (c)** any liability which cannot be limited or excluded by pursuant to applicable law.

#### Article XIII: Venue and Applicable law

This contract is subject to the laws of England and Wales. The exclusive place of jurisdiction for all disputes arising from or in connection with this contract shall be also the Supplier's registered office. The application of the UN

Convention on Contracts for the International Sale of Goods is excluded.

#### Article XIV: Severability Clause

The ineffectiveness of individual provisions of this contract does not affect the effectiveness of the other provisions and of this contract as a whole. An ineffective term is considered as being replaced by a term which comes closest to the purpose of the ineffective provision which the parties have intended when they concluded the contract.

#### Article XV: General

1. These GTC, the Software Clause, the Distribution Agreement, and the contract (in each case where applicable and entered into between the parties) constitutes the entire agreement between the parties. Each party acknowledges that in entering into the contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the contract or GTC. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract or GTC.

2. No variation of the contract or these GTC shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

3. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

4. The contract and these GTC do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any contractual terms.

## Software Clause for the Transfer of Standard Software as part of Deliveries

### **Supplement and Amendment to the "General Terms and Conditions for the Supply of Nihon Kohden Products and Services".**

#### Article I: Scope of application of the Software clause

1. This Software clause shall apply exclusively to the provision of standard Software, whether for a limited or unlimited period, which is provided for use as part of or in connection with a delivery of the associated hardware ("Software"), as well as to the entire Supplier, insofar as a breach of duty or defect in performance has its cause in the Software. Hardware shall be solely subject to the GTC. Insofar as this Software clause does not contain any provisions, the GTC shall apply.

2. Firmware is not "Software" within the meaning of this Software clause. The Supplier shall not be obliged to provide any services under this Software clause; these shall be subject to a separate agreement between the parties. The Software shall be provided exclusively in machine-readable form (object code).

#### Article II: Documentation

Supplementary to Article I No. 2 GTC the following applies: The provision of documentation requires a separate written agreement. If documentation is provided, the term "Software" hereinafter also includes the documentation.

#### Article III: Rights of Use

Article I No. 3 GTC shall be replaced as follows:

1. The Supplier grants the Purchaser the non-exclusive right to use the Software in accordance with this contract. Unless otherwise agreed, the right of use shall refer to the country of the place of delivery of the

hardware and in the territory of the UK, European Union or another contracting state of the Agreement in the European Economic Area. The right of use is limited to the agreed period of time.

2. If the right of use is granted for a limited period of time, the following provisions shall apply: The Purchaser may use the Software only with the hardware named in the contractual documents, in the absence of such naming with the hardware delivered together with the Software. The use of the Software with another hardware requires the express written consent of the Supplier. This shall not apply insofar and as long as the Purchaser temporarily uses the Software with a replacement device to the agreed extent due to a defect of the agreed device.

3. The right of use and exploitation is limited to the contractually agreed purposes of use. The right of use may be granted as a single or multiple license. The single license covers the use of the Software on one device. The multiple license must be expressly granted in writing and extends to the number of permitted devices where the Software may be used simultaneously, the number of reproductions/copies allowed and the license to use the Software in networks.

4. The right to reproduce/copy the Software is limited to the installation necessary for loading, displaying, running, transferring and saving the Software and to the right to make a backup copy. In the case of a multiple license, the right to reproduce/copy shall extend to the instructions provided by the Supplier. The Purchaser shall keep records of the whereabouts of all reproductions/copies and submit them to the Supplier upon request.

5. The right to edit the subject matter of the license is limited to maintaining or restoring the agreed functionality of the subject matter of the license.

**6.** The Purchaser shall not be entitled to modify, decompile, translate or isolate parts of the software if these rights are not expressly granted by the Supplier

**7.** Upon request and to the extent that there is a legitimate interest in doing so, the Purchaser shall permit the Supplier or a third party commissioned by it to examine whether the use of the Software is within the scope of the rights granted herein; the Purchaser shall support the Supplier in carrying out such examination to the best of its ability.

**8.** The Supplier grants the Purchaser the right to transfer the right of use granted to the Purchaser to third parties for permanently provided Software. The Purchaser, to whom the Software is not transferred for the purpose of commercial resale, may only transfer the right to use the Software to third parties together with the device which it has acquired from the Supplier together with the Software. In the event of a transfer of the right of use to third parties, the Purchaser shall ensure that the third party is not granted any further rights of use to the Software than those imposed on the Purchaser under this contract. In this context, the Purchaser may not retain any copies of the Software. The Purchaser is not entitled to grant sub-licenses. If the Purchaser transfers the Software to a third party, the Purchaser shall be responsible for compliance with any export requirements and shall indemnify the Supplier against any obligations.

**9.** If the Supplier only owns the derived rights of use to the Software (third party software), the terms of use agreed between the Supplier and the provider of the third-party software shall apply in addition to and in priority to the provisions of this Article 3. The Supplier shall notify the Purchaser of such conditions and make them available upon request.

**10.** For open-source software, the original terms of use of the open-source software shall take precedence over the provisions of this Article 3. The Supplier shall notify the

Purchaser of such conditions and make them available upon request.

#### Article IV: Transfer of Risk

In addition to Article V of these GTC, the following shall apply:

If Software is provided by means of electronic communication media (e.g. via the Internet), the risk shall pass when the Software leaves the Supplier's sphere of influence (e.g. during download).

#### Article V: Obligations of the Purchaser, Liability

In addition to Article VI of these GTC, the following shall apply:

The Purchaser shall take all necessary and reasonable measures to prevent or limit potential damages caused by the Software. The Purchaser shall ensure a regular backup of programs and data. If the Purchaser breaches this obligation, the Supplier shall not be liable for any resulting consequences and for the replacement of lost or damaged data or programs.

#### Article VI: Defects as to Quality ("Defects")

**1.** For Software provided on a permanent basis, the following provisions shall apply instead of Article VIII GTC:

**(a)** The limitation period for warranty claims due to material defects shall be 12 months from the statutory commencement of the limitation period delivery. This does not apply to claims for damages due to gross negligence or willful misconduct.

**(b)** Only deviations from the Software specification that are proven and reproducible by the Purchaser shall be deemed to be Defects of quality of the Software. A Defect shall not be deemed to exist if it does not occur in the latest version supplied to the Purchaser, and the Purchaser can be reasonably expected to use it. This shall not apply if the last contract in the supply chain is a sale of consumer goods.

**(c)** Notification of potential Defects by the Purchaser must be made in writing without undue delay. Potential Defects and the relevant data processing environment shall be described as precisely as possible therein.

**(d)** Claims based on Defects are excluded in the case of any of the following:

- insignificant deviations from the agreed specification;
- only minor impairment of usability;
- Defects arising from faulty or negligent handling by the Purchaser;
- Defects arising from particular external influences not foreseeable under the contract;
- modifications or amendments of the Software made by the Purchaser or third parties, and any consequences resulting therefrom; or
- incompatibility of the Software with the data processing environment of the Purchaser.

**(e)** In the case of defective Software, the Supplier shall first be given the opportunity to remedy the defect within a reasonable period of time. The Supplier shall have the right to choose between the types of supplementary performance. The supplementary performance shall generally take place as follows:

- The Supplier will provide a replacement by way of an update or an upgrade of the Software if obtainable with reasonable efforts by the Supplier. If the Purchaser has been granted a Multiple License, it may make a corresponding number of copies of the update, or upgrade.
- Until an update or upgrade is provided, the Supplier shall offer the Purchaser a workaround that bypasses the Defect, provided that this does not lead to disproportionate effort of the Supplier.
- If a data medium or documentation supplied proves to be defective, the Purchaser's right shall be limited to

demanding that the Supplier replaces it with a non-defective version.

- The Supplier shall have the right to choose whether it fixes the Defect at the location of the Purchaser or at another location.
- If the Supplier chooses to fix the Defect at the Purchaser's location, the Purchaser shall assure that the required hardware and software as well as the required operating conditions (including the required computing time) and qualified operating personnel are available.
- The Purchaser shall submit to the Supplier the documents and information available to it and required for Defect correction.
- The Purchaser shall provide the Supplier with access to remote maintenance upon request.

**(f)** If the Defect cannot be fixed, the Purchaser shall be entitled to rescind/terminate the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Article XII of the GTC.

**(g)** Claims for damages shall furthermore be subject to Article XII of the GTC. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Article, if based on a Defect, shall be excluded.

2. For Software not provided on a permanent basis Article VI, No. 1 (a) does not apply.

## Article VII: Defects of Title / Intellectual Property Rights

Article IX of the GTC shall be specified by the following:

**1.** Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' intellectual property rights in the country of the place of delivery. If a third party asserts a justified claim against the Purchaser based on an infringement of an intellectual property right ("IPR") by the Supplies made by the

Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser - in case of Software provided for a permanent basis within the contractual limitation period stipulated for Defects; in case of temporarily provided Software within the statutory limitation period - as follows:

**(a)** The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies in such a way that they no longer infringe the IPR or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to withdraw the contract or reduce the purchase price pursuant to the applicable statutory provisions.

**(b)** The Supplier's liability to pay damages is governed by Article XII of the GTC.

**(c)** These obligations shall apply only if the Purchaser **(i)** immediately notifies the Supplier of any such claim asserted by the third party in written form, **(ii)** does not concede the existence of an infringement and **(iii)** leaves any protective measures and settlement negotiations to the Supplier's discretion.

**2.** Claims of the Purchaser shall be excluded if the Purchaser is responsible for the infringement of the respective IPR.

**3.** Claims of the Purchaser shall be also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.

**4.** Any other claims of the Purchaser against the Supplier or any such claims exceeding the claims provided for in this Article VII, based on a legal defect are excluded.