

# **FREQUENTIS ORTHOGON GMBH**

## **STANDARD LICENSE TERMS AND GENERAL TERMS OF DELIVERY**

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### **PREAMBLE**

Frequentis Orthogon GmbH (hereinafter referred to as Frequentis Orthogon) is a manufacturer and licensor of various software programs whose features and functions are described in the operating instructions related thereto, as well as in the “Program Certificate” related thereto.

Frequentis Orthogon owns all rights of use to the software programs which are the object of the Agreement.

These Standard License Terms and General Terms of Delivery (hereinafter referred to as the Standard Terms) govern and regard the granting of rights to the Customer in respect to the software licensed to the Customer and set forth terms and conditions of the contractual relationship with the Customer related to the software. These Standard Terms also govern and regard Frequentis Orthogon's delivering of hardware to the Customer and set forth terms and conditions of the contractual relationship with the Customer related to such hardware.

*CONFIDENTIALITY NOTICE: This document is confidential and contains proprietary information and intellectual property of Frequentis Orthogon. Neither this document nor any of the information contained herein may be reproduced or disclosed under any circumstances without the express written permission of Frequentis Orthogon. Use of the document and the information contained therein is only permitted for the intended purpose and the intended recipient. Once the document is no longer needed, it must be deleted or returned to Frequentis Orthogon.*

## 1.0 Validity

The following Standard Terms apply to all software licensed and hardware delivered to the Customer by or on behalf of Frequentis Orthogon pursuant to all license and delivery agreements entered into by the Customer and Frequentis Orthogon.

Frequentis Orthogon's acceptance of orders and quotations and licensing of software and delivery of hardware and software is subject to these Standard Terms. Frequentis Orthogon is not bound to the Customer's general terms and conditions or other Customer terms, unless Frequentis Orthogon explicitly confirms and agrees to be bound to such Customer's terms and conditions in writing.

These Standard Terms shall apply in accordance with the most recent version and to all future transactions between the parties without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

## 2.0 Definitions

### 2.1 Software

In these Standard Terms, the term "Software" refers to all computer instructions that are run on the Customer's Hardware in the form of a computer program(s) and are licensed and provided to the Customer by Frequentis Orthogon under the Agreement. The Software includes the Software Documentation.

### 2.2 CPU (Central Processing Unit)

In these Standard Terms, the term "CPU" (central processing unit) refers to the smallest data processing unit on which it is possible to run the Software.

### 2.3 Network

In these Standard Terms, the term "Network" refers to a system consisting of two or more connected CPUs that enables the Customer to operate the Software simultaneously on two or more user stations (computer systems).

### 2.4 Development License

In these Standard Terms, the term "Development License" refers to a license to use Software only for designing Application Software in accordance with and to the extent expressly authorized in these Standard Terms.

### 2.5 Runtime License

In these Standard Terms, the term "Runtime License" refers to a license to use Software only in conjunction with other software products belonging to the Customer and in accordance with and to the extent expressly authorized in these Standard Terms and not for designing Application Software.

### 2.6 CPU License

In these Standard Terms, a "CPU license" means a license entitling the Customer only to a single installation of the Software on a stipulated CPU and to operate the Software only on this CPU and not load or run more than one copy or version of the copy at a single time, and in accordance with and to the extent expressly authorized in these Standard Terms. These Standard Terms shall apply in accordance with the most recent version and to all future transactions between the parties without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

### 2.7 Floating License

In these Standard Terms, a "Floating License" means a software license to use Software on a Network in accordance with and to the extent expressly authorized in these Standard Terms, but only up to the maximum number of simultaneous Multiple Users stipulated in the Program Certificate.

## 2.8 Application Software

In these Standard Terms, “Application Software” means software that the user designs directly as authorized under a Development License and that processes data for the user by the user’s entering data and commands.

## 2.9 Price List

In these Standard Terms, the term “Price List” means the then currently valid price list for Frequentis Orthogon products.

## 2.10 Program Certificate / Other Contract Documents / Agreement

The number and type of licenses, the Hardware and Software environments, the operating system on which the Software is to be used, and a description of the Software or other licensed program(s) are set out in the “Program Certificate”. These Standard Terms as well as the Program Certificate and the other necessary additional written documents agreed upon by the parties or provided by Frequentis Orthogon to be part of the agreement between the Customer and Frequentis Orthogon (in particular and without limitation, license key requests, quotations, order confirmations, price lists and framework agreements (“Other Contract Documents”)) compose the “Agreement” between the parties.

## 2.11 Hardware

In these Standard Terms, “Hardware” means the equipment or machinery of computer systems delivered under the Agreement to the Customer by or on behalf of Frequentis Orthogon, whether such equipment or machinery is delivered in totality or one or more parts.

## 2.12 Multiple Use or Multiple Users

In these Standard Terms, the term “Multiple Use” refers to simultaneous multiple and parallel use of Software by means of simultaneous multiple and parallel running and start-up of functions of Software installed on one or more CPUs.

“Multiple Use” also refers to simultaneous multiple and parallel use of Software by means of simultaneous multiple and parallel operation and running of Software and use of Software functions. Technically, numerous Multiple Uses can occur simultaneously on one CPU. The implementation of the Software and the introduction of Multiple Use is possible on a system- or user-dependent basis.

# 3.0 Object of the Agreement

## 3.1 Software and Hardware under the Agreement

Frequentis Orthogon provides the Customer with the rights to the Software under the Agreement and delivers such Software solely: (a) as such Software is described in the Program Certificate, (b) in the object code version of the Software, (c) for use in accordance with the operating instructions, Software description, technical releases and specifications provided hereunder by Frequentis Orthogon therefore (the “Software Documentation”), and (d) subject to these Standard Terms (including, without limitation, the scope described under item 6.0 of these Standard Terms).

Provided and to the extent that Frequentis Orthogon has additionally or exclusively undertaken under the Agreement to deliver Hardware to the Customer, Frequentis Orthogon shall deliver the Hardware to the Customer solely: (a) as such Hardware is described in the Other Contract Documents mentioned in item 2.10 of these Standard Terms, (b) for use in accordance with the operating instructions, Hardware description, technical releases and specifications of the Hardware manufacturer provided hereunder by Frequentis Orthogon therefore (the “Hardware Documentation”), and (c) subject to these Standard Terms.

## 3.2 Application Environment

Hardware and software environments (including, in particular but without limitation, software operating systems) are stipulated in the Program Certificate, with respect to which environments the obligations of Frequentis Orthogon and the rights of the Customer under these Standard Terms are limited.

## 4.0 Delivery

### 4.1 Delivering the Software

Following the Customer's written order for and the parties' agreement on the terms and conditions of the Customer's use of Software, Frequentis Orthogon will deliver the Software to the Customer in machine-readable form (object code) along with the Program Certificate, the Software Documentation and, to the extent the Customer is granted a Development License, the Application Documentation pursuant to item 6.3.3.

### 4.2 License Key

Frequentis Orthogon is entitled to take any and all precautions deemed appropriate by Frequentis Orthogon in connection with the Software to be licensed, whether by way of a license key or otherwise, to protect the Software against usage by the Customer or a third party in breach of the Agreement or otherwise in an unlawful manner.

### 4.3 Delivering the Hardware

- 4.3.1 Either Frequentis Orthogon itself or a third party (for example, the manufacturer or a forwarding agent) shall deliver the Hardware at the Customer's own risk and cost to the Customer's address or another delivery address as stipulated in one or more of the Other Contract Documents.
- 4.3.2 The features and operating conditions of the Hardware provided under the Agreement are set forth in the relevant manufacturer's written specifications and guidelines or in the manufacturer's documented technical releases and specifications, as furnished to the Customer by Frequentis Orthogon prior to the effect of the Agreement. Further details regarding the features or operating conditions may be found in the Hardware Documentation supplied by the relevant manufacturer delivered along with the Hardware.
- 4.3.3 The Customer is not permitted to produce copies of the Hardware Documentation or the manufacturer's written specifications and guidelines, documented technical releases and specifications described in item 4.3.2 or any other materials or documentation provided or made available by the manufacturer without the written consent of the manufacturer.
- 4.3.4 The Customer, at its sole expense, shall be responsible for installing, operating and maintaining the Hardware, and shall do so in accordance with the Hardware Documentation, except to the extent that the Customer and Frequentis Orthogon agree in a separate agreement that installation will be carried out by Frequentis Orthogon, which separate agreement shall be made in accordance with item 5 of these Standard Terms.

### 4.4 Transfer of Risk

When the Hardware, or the medium on which the Software is stored, is passed on from Frequentis Orthogon or another third party (for example, the manufacturer) to the carrier / forwarding agent, then the risk of loss related to the Hardware, medium, and Software immediately is transferred to the Customer pursuant to section 447 of the German Civil Code (BGB).

### 4.5 Delivery Dates

- 4.5.1 Delivery dates shall be separately established and confirmed in writing by Frequentis Orthogon or agreed upon in writing by the parties in the Other Contract Documents and, only upon such confirmation or agreement, shall be legally binding.
- 4.5.2 If Frequentis Orthogon fails to deliver Hardware or Software by the agreed upon delivery date, the Customer will notify Frequentis Orthogon of such failure and shall stipulate a reasonable period of time thereafter for Frequentis Orthogon to deliver the Hardware or Software. If Frequentis Orthogon fails to deliver Hardware or Software by the new delivery date, the Customer will be entitled to terminate the Agreement as set forth therein.
- 4.5.3 In the event that Frequentis Orthogon informs the Customer of Hardware or Software delivery problems with Frequentis Orthogon's suppliers, which problems may result in

delivery delays or non-delivery, Frequentis Orthogon shall be released from its duty to deliver the Hardware or Software to the extent that the Hardware or Software, despite Frequentis Orthogon's reasonable efforts, is not supplied according to the contracts between it or its licensors and the suppliers, is supplied late, or is not supplied at all. Frequentis Orthogon will inform the Customer about such events without undue delay as soon as they are known. If Frequentis Orthogon is released from its duty to deliver Hardware or Software in accordance with this item 4.5.3, then the Customer shall not be liable to make payment for the delivery of such Hardware or Software – to the extent such is not delivered. Any payments made by the Customer for Hardware or Software that is not delivered to the Customer shall be reimbursed by Frequentis Orthogon without undue delay.

- 4.5.4 In the event that Frequentis Orthogon informs the Customer of any force majeure event or other event beyond Frequentis Orthogon's reasonable control, which event causes delivery delays or non-delivery with respect to Hardware or Software to be delivered under the Agreement, Frequentis Orthogon shall be released from its duty to deliver the Hardware or Software to the extent of the event. Frequentis Orthogon will inform the Customer about such events without undue delay as soon as they are known. If Frequentis Orthogon is released from its duty to deliver Hardware or Software in accordance with this item 4.5.4, then the Customer shall not be liable to make payment for the delivery of such Hardware or Software – to the extent such is not delivered. Any payments made by the Customer for Hardware or Software that is not delivered to the Customer shall be reimbursed by Frequentis Orthogon without undue delay.

## 5.0 Additional Services

Frequentis Orthogon shall only provide services beyond the delivery of the Software or Hardware under and as set forth in the Agreement, such services may include - for example - instruction, installation, adaptation, maintenance and training, if and to the extent such provision of such services is additionally and separately agreed upon by the Customer and Frequentis Orthogon in writing.

## 6.0 Scope of Use of the Software

### 6.1 General Terms of Use

- 6.1.1 The scope of use of the Software is dependent on the type of license granted by Frequentis Orthogon. In any event, the Customer may only use the Software and Software Documentation in the ordinary course of its business operations and for its own business purposes.
- 6.1.2 Under a Runtime License or Development License, Frequentis Orthogon grants to the Customer a non-exclusive, non-transferable, limited scope, perpetual license (subject to item 12.2) to use the Software in machine-readable form (object code) and the Documentation, all subject to the terms of the Agreement, including without limitation these Standard Terms. "Documentation" as used herein include the Software Documentation, the Application Documentation pursuant to item 6.3.3 (to the extent the Customer is granted a Development License) and the Program Certificate and license key provided by Frequentis Orthogon.
- 6.1.3 Any installation, loading, running or copying for back-up of the Software by the Customer permitted under these Standard Terms shall be limited to that undertaken within the scope of use set forth in the Agreement.
- 6.1.4 The Customer's right to use the Software is limited to the Software's object code. Frequentis Orthogon is not obliged to provide the Customer with, and the Customer shall have no rights to use, the Software's source code.
- 6.1.5 Copyright notices, serial numbers, product designations and other features appearing in or on the Software or media containing the Software or serving as program identification may not be removed or altered. Trademark notices and logos may not be removed or altered.
- 6.1.6 Duplication of the Software and Documentation, whether through the use of electromagnetic, optoelectronic or other means or media, is prohibited, except that the Customer may reproduce the Software (a) to the extent it is automatically electronically done in the process

- of a single installation of the Software onto the designated CPU, (b) to the extent it is automatically electronically done in the course of downloading or printing data from the running Software as used in accordance with and as permitted under these Standard Terms, and (c) to the extent necessary to create one back-up copy made by an authorized person pursuant to section 69d (2) of the German Copyright Act (UrhG).
- 6.1.7 Translation, processing, adaptation, modification, rearrangement, creation of derivative works based upon, and redesign of the Software is strictly prohibited, as is duplication of the results generated by the Software. The Customer is also prohibited from reengineering, reassembling, reverse engineering or decompiling the Software's object code and from processing it in any way. Except as stated in item 6.3.3 under Development Licenses, the Customer shall not combine or merge any part of the Software or Documentation with or into any other software or documentation.
- 6.1.8 The Customer shall not refer to or otherwise use any Software and Documentation for which Frequentis Orthogon holds the exclusive rights as part of any effort either to develop software or any program having functional attributes, visual expressions or other distinguishing features similar to those of the Software.
- 6.1.9 The Customer is not entitled to sublicense or lease the Software to third parties. Save as provided in item 6.3.4 or item 7.3, the Customer may sell, distribute, transfer or otherwise grant any person (the "Recipient") any right in or to the Software or Documentation, whether on the Customer's behalf or otherwise, only upon approval by Frequentis Orthogon. Frequentis Orthogon will give its consent to Customers based in the European Union or another country of the European Economic Area if
- 1) The Customer has fully fulfilled its payment obligations according to the Agreement and these Standard Terms,
  - 2) The Recipient agrees in writing with Frequentis Orthogon to be bound legally to the terms and conditions of the Agreement, including without limitation these Standard Terms,
  - 3) in case of a sale of the Software the Customer has completely deleted all versions and copies (whether made with or without authority) of the Software except the transferred version, wherever residing and in whatever media, so that, among others, they cannot be recovered, in whole or in part, and confirms in writing that it has deleted all versions and copies of the Software except the transferred version.
- 6.1.10 Frequentis Orthogon reserves any and all rights, title and interest in and to the Software and Documentation except to the extent explicitly stated in the Agreement or these Standard Terms. Without limiting the foregoing, Frequentis Orthogon reserves all distribution, exhibition, representation, performance and publication rights to the Software.
- 6.1.11 The Customer undertakes to allow Frequentis Orthogon or an agent of Frequentis Orthogon to audit whether the Customer's use of the Software is consistent with the rights granted to the Customer herein upon request of Frequentis Orthogon and provided there is a legitimate interest therein and to give full cooperation to Frequentis Orthogon or its agent carrying such audit.

## 6.2 Runtime License

Frequentis Orthogon grants to the Customer a Runtime License either in the form of a CPU License or in the form of a Floating License, to the extent set forth in the Program Certificate and these Standard Terms.

### 6.2.1 CPU License

To the extent that Frequentis Orthogon grants a license to the Software in the form of a CPU license, the Customer is entitled only to a single installation of the Software and to operation and use of the Software simultaneously on one specified CPU. The Customer has the right to change the CPU and to use the Software and the output data on another CPU of the same type, provided it informs Frequentis Orthogon in writing of this in advance and the installed Software and all resident output related thereto



are deleted from the previously used CPU so that recovery is not possible. The Customer is prohibited from continuing to use the Software on the CPU used before the change.

### 6.2.2 Floating License

To the extent that Frequentis Orthogon grants a license to the Software in the form of a Floating License, the Customer is entitled only to use the Software in accordance with these Standard Terms on CPUs connected to the Network and appropriate under the circumstances pursuant to the Program Certificate, provided that the number of Multiple Users stated in the Program Certificate may not be exceeded. If the Customer is granted a Floating License and desires to increase the number of Multiple Users, it must inform Frequentis Orthogon of this in writing without undue delay and apply for an extension of the Floating License. Extended Multiple Use in the Network will be permitted once an appropriate extension of the Agreement is determined by Frequentis Orthogon and the Customer pays in full the agreed fee for the extension of the license.

## 6.3 Development License

- 6.3.1 Frequentis Orthogon grants to the Customer a Development License either in the form of a CPU License or a Floating License, to the extent set forth in the Program Certificate and these Standard Terms.
- 6.3.2 To the extent the Customer is granted a Development License to the Software, the Customer is entitled to use the Software either in the form of a CPU License, on the stipulated CPU, or a Floating License, in the Network within the framework of the number of Multiple Uses, as stated in the Program Certificate. The Customer's use of the Software under a CPU License is subject to item 6.1 and 6.2.1. The Customer's use of the Software under a Floating License is subject to item 6.1 and 6.2.2.
- 6.3.3 Under the Development License Frequentis Orthogon grants to the Customer a non-exclusive, non-transferable, limited scope, perpetual license (subject to item 12.2) to use the Software for developing Application Software with the help of the tools provided in the Software licensed by Frequentis Orthogon and to combine it with other computer programs exclusively for this purpose. The "Application Documentation" contains a description of the interfaces intended for this purpose. The Customer however is prohibited from using the Development License to create Application Software, which has the same or substantially similar objective, features, or field of application as the Software.
- 6.3.4 The Customer is not entitled to transfer its rights of use to the Development License to third parties, be it in full or in part, and to grant third parties corresponding rights of use. The Customer is only authorized to grant rights of use to third parties in or to the Application Software created by the Customer under these Standard Terms.

## 7.0 Test Period

- 7.1 Frequentis Orthogon, in its sole discretion, may provide the Customer with the Software free of charge for a trial period for a period stated in the Program Certificate. The test period begins when Frequentis Orthogon delivers to the Customer the Software and ends on the date stated in the Program Certificate.
- 7.2 During the test period, the Customer shall have the right to review the Software to see if it is interested in licensing the Software other than on a test basis. During the test period, the Software may only be used in accordance with, and the Customer shall be bound to item 6.0 of these Standard Terms. Operative use is strictly prohibited. Frequentis Orthogon does not provide any warranty for the operative use of test software.
- 7.3 The Customer is not entitled to transfer its rights of use to the test software to third parties, be it in full or in part, and to grant third parties corresponding rights of use.
- 7.4 At the end of the test period, as stated in the Program Certificate, the Customer shall completely delete all versions and copies (whether made with or without authority) of the Software, wherever residing and in whatever media, so that, among others, it is not possible to reproduce, in whole or in part, the Software or output data. The Customer shall confirm deletion of the Software with Frequentis Orthogon in writing within one week following the end of the test period.

## 8.0 Fees and Prices

- 8.1 The fee due from the Customer for the rights granted by Frequentis Orthogon in the applicable Software is dependent on the type and scope of use of the Software in question as described in the Program Certificate. The fee due for each type and scope of use is stipulated in one or more of the Other Contract Documents.
- 8.2 The license fee represent a one-time license fee.
- 8.3 Frequentis Orthogon will invoice the fees and other amounts to the Customer in accordance with the Agreement. Frequentis Orthogon may stipulate in the Agreement that delivery is subject to payment in advance for new Customers or such Customers having failed to pay properly in the past. Invoices are due and payable within thirty (30) days after the invoice date. In the event of a default of payment on the part of the Customer, interest on arrears in the statutory amount provided for in Article 288 of the German Civil Code shall accrue. Frequentis Orthogon reserves all rights to claim further damages for delay.
- 8.4 All prices are quoted net in EURO, excl. VAT. Any taxes, levies, fees, royalties, duties (including but not limited to customs clearance fees, import VAT as well as any withholding taxes) or other charges that may be imposed in relation to the Agreement are not included in the price and shall be paid by the Customer additionally and directly at the respective fiscal authorities and shall not be financed in advance by Frequentis Orthogon.
- 8.5 For each breach of the provisions of item 6.0 of these Standard Terms by the Customer the Customer must pay a further license fee that may be determined at the discretion of Frequentis Orthogon and in case of dispute revised by the competent court. Generally, this further license fee will amount to 150% of the fee that would be due in accordance with the Price List for such action or use. Such payment shall not prohibit or limit Frequentis Orthogon's right to pursue any and all other remedies available to Frequentis Orthogon therefore.
- 8.6 The fees and other amounts payable by the Customer hereunder do not include taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software, Hardware, or Documentation delivered to the Customer, the licenses granted under these Standard Terms or the services provided under these Standard Terms, or otherwise assessed or imposed in connection with transactions contemplated by these Standard Terms, including sales, use, excise, value added, export, import and withholding taxes, excluding only taxes based upon Frequentis Orthogon's net income. The Customer shall directly pay such taxes assessed against it, and the Customer shall promptly reimburse Frequentis Orthogon for any such taxes payable or collectable by Frequentis Orthogon.
- 8.7 In so far as the Customer is based in the European Union outside the Federal Republic of Germany, it is bound to observe the sales tax on imports of the European Union. The Customer must give Frequentis Orthogon details of his tax identification number and, if applicable, inform of any change without solicitation. On request the Customer is obliged to give information about his capacity as a taxable person, the application and transport of the supplied goods as well as to provide statistical details as the regulations require.
- 8.8 Furthermore, the Customer is obliged to compensate Frequentis Orthogon for costs Frequentis Orthogon incurs due to missing or incomplete information regarding sales tax on imports, unless Frequentis Orthogon, its legal representatives or executives, through intentional misconduct or gross negligence, have failed to fulfill their duties.

## 9.0 Price Escalation

- 9.1 All Prices for one-time-payments and recurring payments shall be subject to adjustment for inflation in accordance with the "Harmonized Index of Consumer Prices (HICP), monthly data, Euro area" published by Eurostat under the link <https://ec.europa.eu/eurostat/>.
- 9.2 The reference value for adjustments shall be the last figure published for the above referenced index in the month before Frequentis Orthogon submitted the offer upon which the Agreement is based. Adjustment shall be done upon invoicing of the respective payment in accordance with the increase of the index figure released for the month before the respective payment becomes due, compared to the reference value, also taking into account price adjustments due to cost increases in the supply chain, as described below.



- 9.3 In view of the fact that the costs incurred by Frequentis Orthogon for goods (in particular hardware and software) and/or services to be purchased during the entire term of this Agreement may increase by more than what is reflected by the aforementioned index, while prices of its suppliers are valid only for a shorter period, Frequentis Orthogon reserves the right to adjust the prices beyond the indexation ("price adjustment due to increases in the supply chain"), after expiry of twelve (12) months after the start of the Agreement. In any case, Frequentis Orthogon is entitled to such price adjustments due to increases in the supply chain per year at its own reasonable discretion up to a maximum of 10% on the basis of the prices, as last amended. If a price adjustment due to increases in the supply chain exceeds the aforementioned percentage, Frequentis Orthogon is entitled to a price adjustment to the extent cost increases in the supply chain are evidenced.

## **10.0 Retention of Title**

All copies of the Software and all Hardware delivered by Frequentis Orthogon shall remain in the sole ownership of Frequentis Orthogon until the complete payment of the fees. Upon breach of the Agreement or these Standard Terms, in particular on default of payment, Frequentis Orthogon shall be entitled to require at the Customers expense the return of all copies of the Software or all Hardware in which Frequentis Orthogon has retained ownership, or if applicable, to demand the assignment of the Customer's right of return against third parties. In such case upon Frequentis Orthogon's request the Customer shall confirm in writing that no copies of the Software were retained and that all installations of the Software have been irrevocably deleted from the Customer's or third party's systems.

## **11.0 Offsetting Payment and General Lien**

- 11.1 The Customer may only have the right to offset insofar as its counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- 11.2 The Customer may only claim retainer rights to the extent such rights are based on the same transaction.

## **12.0 Term of the Agreement**

- 12.1 The licenses granted hereunder to the Customer for the use of the Software are of unlimited duration, except as provided in item 12.2 or as otherwise agreed by Frequentis Orthogon and the Customer in writing.
- 12.2 Frequentis Orthogon may terminate the Agreement without notice if the Customer causes a material breach of these Standard Terms. Without limiting anything else, any violation of the Customer's duty of payment according to the Agreement and these Standard Terms, of the right of use granted to the Customer under items 6.1.2 to 6.1.5, 6.1.7 to 6.1.10 or of item 21.1 of these Standard Terms shall generally be deemed a material breach of these Standard Terms.
- 12.3 Upon termination of the Software licenses pursuant to item 12.2, the Customer shall promptly return to Frequentis Orthogon the Software and the medium on which it was delivered to the Customer, and all copies thereof, and shall promptly completely delete all other versions and copies (whether made with or without authority) of the Software, wherever residing and in whatever media, so that, among others, the Software can never be recovered, in whole or in part.

## **13.0 Duty to examine and report Defects and Obligation to provide Information**

- 13.1 The Customer shall examine the Software and Hardware delivered, including the Documentation, within 8 working days after shipment, in particular, among others, regarding the completeness of the shipment, including manuals, the correct condition of the Software and Hardware, and condition as required of the Software and Hardware by the Agreement, as well as the basic functions of essential Hardware and Software elements. Frequentis Orthogon must be informed in writing within three further working days (after the initial 8-day period) of any Defects identified or identifiable. The notification of Defects must contain a detailed description of the Defects and must observe the specifications of a Defect form created by Frequentis Orthogon, if enclosed with the delivery.

- 13.2 Defects which are not identifiable within the limits of the proper examination described in item 13.1 must be reported to Frequentis Orthogon in writing within 8 working days after their discovery, but in no event more than one year after delivery to the Customer of the Software or Hardware that is the subject of the Defect, in compliance with the requirements regarding notification of a Defect stated in items 13.1 and 16.1.
- 13.3 The Customer shall be deemed to have accepted the Software, Hardware and Documentation, unless a Defect is present and the Customer reports the Defect as required under this item 13.0.

## 14.0 Hardware or Software Defects

“Defects” in Hardware or Software for the purposes of these Standard Terms are defined as deviations to the quality of the Hardware or Software agreed between the parties in writing in the Agreement and the Other Contract Documents. To the extent the quality of the Hardware or Software is not specified in the Documentation or the Other Contract Documents, a Defect to Hardware or Software only exists if it is unsuitable for the use as described in the Agreement. Otherwise a Defect is only present if the Hardware or Software is unsuitable for the prescribed use or does not possess the quality expected of comparable products which customers of comparable products can expect to receive. A Defect is also present if the wrong item is supplied or an incomplete quantity is delivered.

## 15.0 Data Back-up

- 15.1 The Customer is obliged to regularly carry out and create methods of backing up stored data in accordance with the current state of the art and technology at the time. Data back-up covers the entire software system (including, without limitation, the Software and Hardware) and the regular back-up of master and transaction data and must be carried out in accordance with the principles of correct data processing.
- 15.2 The Customer is also obliged to have all data used or attained in connection with the Software ready as back-up copies separated logically and physically from the computer in machine-readable form, so that lost data can be reconstructed with an acceptable amount of effort.
- 15.3 If the Software or data maintained by the Software is accessible through the Internet or other networked environment, the Customer shall maintain, in connection with the Software, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.
- 15.4 In a scope always corresponding to the current state of the art and technology, the Customer shall guarantee that the software and development environment it uses is free of viruses and other malicious code.

## 16.0 Warranty

### 16.1 The Customer's Obligations to cooperate

Precondition for any warranty claim of the Customer is the Customer's full compliance with all requirements of item 13.0. The Customer shall give a proper notice of Defects, as described in item 13.0 and shall state what effect the Defect has and under what circumstances it arose. The Customer shall provide all reasonable assistance and support to Frequentis Orthogon in Frequentis Orthogon's determining and eliminating Defects. On request of Frequentis Orthogon, the Customer shall create and print out information related to the Defect and the Customer's discovery thereof and, by providing any further information, shall support the error analysis and elimination work as well as permit immediate examination of documents in which more details about the reported Defect can be found. The Customer shall name a contact in its company who can supply the necessary information and cooperates in line with the obligations of it described in this item 16.1.

### 16.2 Subsequent Compliance

Frequentis Orthogon is entitled to remedy Software and Hardware Defects as well as Defects in Documentation – in several attempts if necessary – at its own choice through means of additional deliveries (deliveries of Defect-free Hardware or Software) or by rectifying (removal of) Defects.

Frequentis Orthogon is entitled to refuse such subsequent performance if this is only possible with disproportional costs for Frequentis Orthogon or when the Defect is insignificant, or in particular, when the Defect has an insignificant effect on the Hardware or Software.

If Frequentis Orthogon delivers Defect-free Hardware or Software for the purpose of subsequent performance, the Customer is then obliged to immediately return to Frequentis Orthogon the Defective Hardware or Software (including the original media and all copies of such) and to completely delete the Defective Software and all files made with the Defective Software in all memory stores so that the files cannot be reconstructed.

### **16.3 Cancellation of Agreement / Reduction of fee**

If, without a legitimate reason, Frequentis Orthogon genuinely and conclusively refuses to undertake efforts to cure any Defects or if Frequentis Orthogon fails to cure any Defects, then the Customer is entitled to terminate the Agreement or to reduce the amount of the fee. Subsequent performance is deemed to be not successful after the second attempt has failed to remedy the Defect, unless the circumstances give Frequentis Orthogon the right to undertake more attempts. Frequentis Orthogon may especially make a further attempt at subsequent performance if (a) Frequentis Orthogon had referred to other potential solutions to remedy the Defect already before the last attempt to remedy the Defect was made and had mentioned the possible risk of the attempt failing, provided the Customer accepts Frequentis Orthogon's proposal on how to proceed and that the further attempt takes place without undue delay, or if (b) Frequentis Orthogon, at the request of the Customer, deviates from the original proposal to remedy the Defect made by Frequentis Orthogon or if (c) further attempts at subsequent performance are made in time before the planned first use of the Software or the Hardware. The Customer is not allowed to terminate the Agreement if the Defect is insignificant or has an insignificant effect on the use of the Hardware or Software agreed upon between the parties.

### **16.4 Reimbursement of Expenses**

To the extent any of the Customer-reported Defects is not attributable to Frequentis Orthogon, and Frequentis Orthogon performs work or services to attempt to remedy the Defects, the Customer shall reimburse Frequentis Orthogon at the rates of the currently valid Price List at that time for the resulting work time, or, if such rates do not appear in the Price List, at Frequentis Orthogon's then current rates, and for the arising costs (in particular travel expenses) incurred.

### **16.5 Cessation of the Warranty Obligation**

Frequentis Orthogon shall have no liability under the provisions of the Agreement with respect to warranty to the extent attributable to any unauthorized or improper use or modification of the Software or Hardware, any unauthorized combination of the Software or Hardware with third party software or hardware (other than indicated in the recommended configuration) or any use of the Software in hardware or software environments not set forth in the Program Certificate.

### **16.6 Exclusion of the Warranty**

Without limiting anything else, the Customer's warranty rights regarding a Defect are void if the Customer is aware of the Defect on or before delivery of the Hardware, Software or Documentation or if the Defect has remained unknown to the Customer due to reasons of the Customer's gross negligence.

### **16.7 Warranty for Deficiency in Title**

The warranty for deficiency in title is governed by item 18.0 of these Standard Terms.

### **16.8 Exclusive Remedy**

The remedies set forth in this item 16.0 shall be the sole and exclusive remedies available to the Customer for Defects in the Software, Hardware, and Documentation. The remedies set forth in item 18.0 shall be the sole and exclusive remedies available to the Customer for claims of intellectual property infringement related to the Software, Hardware, and Documentation. Item 19.0 of these Standard Terms remains unaffected.

## 17.0 Manufacturer's Guarantee

If the Hardware manufacturer gives a (including in particular, but without limitation a non-independent) guarantee for the Hardware delivered by Frequentis Orthogon to the Customer, Frequentis Orthogon shall pass on this guarantee to the Customer. The Customer shall bindingly sign any guarantee card provided with regard to the Hardware and shall return it to Frequentis Orthogon. To safeguard guarantee claims the Customer shall directly contact the manufacturer in the event of errors / Defects arising which fall under the guarantee and while doing so shall observe the provisions of the guarantee of the relevant manufacturer, in particular regarding the intactness of the Hardware, the way of reporting Defects and the like. In the event of an error or Defect arising which falls under the manufacturer's guarantee, the Customer shall in each case also inform Frequentis Orthogon with regard to the possible assertion of guarantee claims and shall keep Frequentis Orthogon up to date on the manufacturer's processing of the guarantee. Manufacturer guarantees do not constitute a guarantee concession by Frequentis Orthogon.

## 18.0 Third Party Rights / Warranty for Deficiency in Title

18.1 If a third party asserts valid claims against the Customer or Frequentis Orthogon due to an infringement of intellectual property rights such as copyright through the Customer's authorized use of the Software in accordance with the Documentation and the Standard Terms delivered by Frequentis Orthogon, and if the Customer's use of the Software is impeded or prohibited because of this, Frequentis Orthogon

- 1) may process and alter the Software at its own choice and own expense in such a way that no rights are infringed anymore, but that the Software nevertheless essentially corresponds to the agreed specifications therefore, or
- 2) shall release the Customer from the license fees of the third party due for the use of the infringing portion of the Software.

If this is not possible under reasonable conditions, Frequentis Orthogon or the Customer may terminate the Agreement with respect to the infringing portion of the Software and Frequentis Orthogon is obliged to reimburse the fee paid by the Customer with respect to the infringing portion of the Software, less a reasonable rental charge calculated by dividing the license fees paid by a depreciated life of sixty months and multiplying the number of those months in which the Customer has use and enjoyment of the Software. The Customer's right to reduce the fee as described in item 15.3 of these Standard Terms in this case is excluded.

18.2 Frequentis Orthogon's liability under item 18.1 is contingent upon the Customer immediately informing Frequentis Orthogon in writing of such third party claims of infringement, the Customer not acknowledging or suggesting the veracity of the infringement claimed and the Customer tendering sole defense and settlement of the claim to Frequentis Orthogon or, if this is not possible, the Customer conducting all out-of-court and legal disputes only in agreement with Frequentis Orthogon and providing all reasonable cooperation and assistance to Frequentis Orthogon in its defense of such claims. If the Customer suspends the use of the Software in order to reduce the potential damage or for other reasons, the Customer is obliged to point out to the third party that this conduct does not represent any acknowledgement or suggestion regarding the veracity of the infringement claim.

18.3 The obligations of Frequentis Orthogon under item 18.1 of these Standard Terms are not applicable if the Customer itself is liable for the infringement, in particular if rights are infringed because of the Software delivered by Frequentis Orthogon not being used in the valid, unchanged original version or being used under application conditions other than those stated in the Program Certificate or because of the Software being processed or changed by the Customer or being combined with programs or data provided by the Customer.

18.4 Item 16.2, sentence 3, items 16.5 and 16.6 of these Standard Terms are correspondingly valid. Item 19.0 of these Standard Terms remains unaffected.

## 19.0 Liability

- 19.1 Frequentis Orthogon is fully liable under the Agreement or related to Software or Hardware delivered by Frequentis Orthogon for culpable damages concerning loss of life, injury or damage to health.
- 19.2 Frequentis Orthogon is fully liable under the Agreement or related to Software or Hardware delivered by Frequentis Orthogon for other damages, which are caused through intentional misconduct or through gross negligence by Frequentis Orthogon, or Frequentis Orthogon's legal representatives or executives.
- 19.3 Frequentis Orthogon is liable under the Agreement or related to Software or Hardware delivered by Frequentis Orthogon for other damages, which are caused by infringement of an essential obligation (cardinal obligation) of Frequentis Orthogon under the Agreement. To the extent the breach of the Agreement is caused by slight negligence, the level of compensation is limited to the cost of replacement of foreseeable damages typical to the Agreement. Liability for damages is otherwise excluded.
- 19.4 Liability under the Agreement or related to Software or Hardware delivered by Frequentis Orthogon for the lack of assured features (guarantee), malicious intent, as well as liability in accordance with the Product Liability Act remain unaffected by the provisions stated in item 19.1, 19.2 and 19.3.
- 19.5 In the event of data loss or destruction, Frequentis Orthogon is only liable if the Customer has not violated its data back-up obligation as described in item 14 of these Standard Terms, unless the data loss or destruction would also have been occurred in case of proper fulfillment of data back-up obligations. Items 19.1 to 19.4 of the Standard Terms apply.
- 19.6 The Customer is obliged to notify immediately Frequentis Orthogon in writing of any damages or to have Frequentis Orthogon record them so that Frequentis Orthogon is informed as soon as possible and if required can work on reducing the damages together with the Customer.

## 20.0 Period of Limitation for Warranty Claims

Any and all warranty claims by the Customer including claims for damages due to a material Defect or deficiency in title of the Hardware or Software or Documentation shall be brought within one (1) year after delivery by Frequentis Orthogon to the Customer. Customer's right to terminate the Agreement must also be exercised within the same period of limitation.

## 21.0 Final Provisions

### 21.1 Confidentiality

The Customer is obliged to protect with due care the Software, Hardware and Documentation (in particular, but without limitation the separately sent interface description and the back-up copy) from unauthorized knowledge of third parties; this also includes the knowledge of unauthorized employees. The Customer releases Frequentis Orthogon from damages resulting from infringements of this confidentiality obligation.

### 21.2 Other Limitations

The warranties made by Frequentis Orthogon under these Standard Terms, and the obligations of Frequentis Orthogon under the Agreement, run only to the Customer and not to its affiliates, customers, or any other persons. Under no circumstances shall any affiliate or customer of the Customer or any other person or entity be considered a third party beneficiary of the Agreement or otherwise entitled to any rights or remedies under the Agreement, even if such persons or entities are provided access to the Software or data maintained by the Software. The Customer shall have no rights or remedies against Frequentis Orthogon except as specifically provided for in these Standard Terms.

### 21.3 Amendments and Supplements

Amendments and supplements to this Agreement are only effective as between the parties if they are set forth in writing signed by both parties.



## **21.4 Place of Performance**

The place of performance is Bremen.

## **21.5 Jurisdiction**

In any action relating to or arising under the Agreement, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the Courts in Bremen.

## **21.6 Choice of Law**

This Agreement is subject to German law. The Viennese UN Convention on Contracts for the International Sale of Goods shall not apply.

## **21.7 Art. 12g Council Regulation (EU) No 833/2014**

If the Customer is seated outside the European Union and UNITED STATES OF AMERICA, JAPAN, UNITED KINGDOM, SOUTH KOREA, AUSTRALIA, CANADA, NEW ZEALAND, NORWAY, SWITZERLAND, ICELAND and LIECHTENSTEIN, the Customer shall not sell, export or re-export, or otherwise make available directly or indirectly, on its own or through any other third party, to Russia or Belarus, or for use in Russia or Belarus, the goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Regulation (EU) No 833/2014 or Article 8g of Regulation (EC) No 765/2006, as amended from time to time. The Customer shall commit to the same for any supplied software or other intellectual property related to such goods. The Customer shall assume that anything supplied by Frequentis Orthogon falls under these restrictions unless Frequentis Orthogon explicitly informs the Customer otherwise. For information, virtually all Frequentis Orthogon-made electronics and information technology equipment such as networking equipment, cameras, servers, PCs, CPUs, memory, and active or passive electronic components do fall under the restrictions.

A violation through fault of the Customer shall constitute a material breach of an essential element of the present agreement and Frequentis Orthogon shall be entitled to appropriate remedies, including, but not limited to: (i) termination of this agreement; and (ii) a penalty of 10% of the total value of this agreement or price of the goods exported, whichever is higher.

## **21.8 Salvatorian Clause**

If any term or provision of these Standard Terms is held to any extent unenforceable, invalid or prohibited under law, then the legal effectiveness of the remaining terms and provisions shall not be affected. Frequentis Orthogon and the Customer agree that the invalid, unenforceable or legally prohibited terms and provisions shall be replaced by terms and provisions, which are economically and legally closest to the invalid, prohibited or unenforceable terms and provisions. The same is true in the case of a loophole in the provisions.