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Sale, Delivery and Service Conditions

1. Scope

In the absence of any other written agreement, the present *Sale, Delivery and Service Conditions* fully apply to all sales of products and services by Bachmann electronic GmbH and/or its affiliated companies ("Bachmann"), unless more specific terms apply. The *Sale, Delivery and Service Conditions* are updated from time to time; the most recent version may be viewed on

www.bachmann.info/en/service/terms-and-conditions

In any case, the version which is most recent at the time of order confirmation applies.

The *Sale, Delivery and Service Conditions* are available in a German and an English language version; relevant is the version whose language is identical to the language of the order confirmation. Individually negotiated agreements (e.g. on confidentiality) shall take precedence over the relevant provisions of the *Sale, Delivery and Service Conditions*.

2. Contract Formation, Place of Performance

A contract shall be formed when Bachmann has issued its written order confirmation. The (revised) offer submitted by Bachmann prior to Purchaser's purchase order shall be part of the contract. In case of a contradiction between this offer and a provision of these *Sale, Delivery and Service Conditions* the latter shall prevail. Place of performance shall be the seat of the relevant (supplying) Bachmann entity or as otherwise agreed between the parties.

3. Purchaser's Terms and Conditions

Any pre-existing terms and conditions – whether designated as "conditions of purchase", "general terms and conditions/T&Cs" or similar – used by the Purchaser shall not apply, not even if Bachmann unconditionally accepts documents (e.g. purchase orders) in which they are referenced, and/or unconditionally executes a contract of sale or service and/or by any other act or omission of Bachmann.

4. Retention of Title

Bachmann retains title in all hard- and software supplied until full payment of the purchase price as well as interest and costs (if any). Purchaser shall be obliged to inform Bachmann immediately and in writing if any lawsuit has been filed or other claim is made in respect of the Bachmann-supplied hard- and/or software. Should such retention of title not be legal or effective under local law, Purchaser shall be obliged to immediately provide an adequate alternative means of securing Bachmann's position.

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5. Custom Duties and Other Taxes

If not agreed differently in writing, any custom duties, taxes or other levies resulting from the sale of hard- or software to a specific country or the rendering of services in that country are on account of and to be paid by Purchaser. Purchaser shall indemnify and hold Bachmann completely harmless in this respect.

6. Warranty

6.1. Hard- and Software

Bachmann warrants that all hardware supplied is state-of-the-art and owns the characteristics generally assumed and/or specifically agreed, in particular complies with the technical specification. This is an exclusive warranty.

The following warranty periods (allowing Purchaser to make a claim) apply:

- Controller components: **12 months**
- Terminals: **6 months**

The above periods start with delivery.

Purchaser shall be obliged to ensure full identification and traceability of all hardware supplied by state-of-the-art means (e.g. registration of serial and batch numbers, date codes, etc). Failing this, all resulting damage shall be borne by Purchaser.

As regards Bachmann's standard software products, the warranty stipulations of the Software Licence Agreement/SLA (see below) shall exclusively apply supplemented by the following provisions on cyber-security:

At the time of delivery, all hard- and software has been tested to be free of viruses, deactivation codes or other malware (such as spyware, computer worms, time/Logical bombs, computer hatches, trojan horses).

As regards Bachmann's own software, Bachmann warrants that all software has been developed according to state-of-the-art methods and all measures have been taken which are provided for by ISO 27001 to ensure software is safe. As regards third party software (e.g. Windows, VxWorks, Linux) Bachmann undertakes to pass on to its customers or publish in a general way any relevant information from the software producer concerning security gaps, etc to the extent those – in Bachmann's discretion – may impact the Purchaser and Purchaser should act accordingly.

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6.2.   Warranty Exclusion

Bachmann does not warrant the functioning of the hardware in the following cases:

- natural wear and tear;
- no suitability of the automation or condition monitoring system to perform a certain task;
- usage contrary to its intended use or specification;
- improper handling;
- application error (e.g. wrong or improper entry/exit wiring);
- mechanical abuse or excessive impact during transportation, storage, operation or handling of the hardware.

Moreover, any manipulation of the hard- and software by Purchaser and/or third parties shall limit or exclude any warranty.

If Purchaser uses hardware (including PC-cards, flash-memories or USB-sticks) or software which was not supplied by Bachmann in combination with Bachmann-supplied hard- or software, Bachmann does not warrant the functioning of the complete system.

6.3.   Relevance of the Product Manual

Statements in the specification sheet, on the Bachmann-website (www.bachmann.info), in newsletters, promotion materials and the like as well as oral statements by Bachmann employees or third parties are for information purposes only and do not constitute any warranty as regards the product's (safety) characteristics; these statements are non-binding. Any product's characteristics (including safety instructions) are laid down exclusively in the respective product manual. Customer is aware of and agrees to safety instructions being available for a download on the Bachmann-Website only.

6.4.   Handling of Warranty Cases

The handling of a warranty case shall be – in Bachmann's final discretion – either repair or replacement and will be executed at Bachmann's headquarter in Feldkirch, Austria, or in the facilities of any subsidiary equipped for such repair/replacement. Transportation (including appropriate packing) of the hardware product in question as well as insurance and (de-) installation shall be procured by and paid for by Purchaser. In case Purchaser sends in for repair a number of hardware items, the items shall be packed according to their site of operation and/or type of defect; failing this, Bachmann's warranty obligation may lapse.

Purchaser accepts that Bachmann may use third parties for any kind of repair job and that any hardware which is being repaired will automatically receive a firm-/software update. Any data on the piece of hardware concerned will be deleted to the full extent; for this reason, Purchasers are strongly advised to create a full copy of such data before sending in an item for repair.

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6.5.   Warranty regarding Services

In case of services (e.g. repairs or development of Purchaser-specific software) being rendered by Bachmann, Bachmann warrants that defective services will be – in Bachmann's final discretion – repaired or re-performed. The warranty period shall be **6 months** as from the completion of the service. The warranty works will be performed in Purchaser's location only, if it is inevitable from a technical point of view. Spare parts used in connection with the service are warranted for in accordance with the stipulations herein.

7. Public Law

All hardware products supplied by Bachmann comply with applicable national and European law requirements regarding e.g. electronic products and machine safety as well as low voltage and electromagnetic compatibility. In addition to that, no warranties are granted. It remains Purchaser's exclusive obligation to ensure that the hard- and software supplied complies with the legal and technical requirements applicable in the respective site of operation; government approvals (if any) need to be procured by Purchaser.

8. Standard Software Products

Use of any of Seller's standard software products (including firmware) shall be governed by the Software Licence Agreement/SLA as amended from time to time (www.bachmann.info/en/service/terms-and-conditions). Purchaser's right of use shall not be limited to one specific place; support in respect of such software, however, will be available only in Purchaser's principal place of business. In case of a contradiction between the SLA and a provision of the *Sale, Delivery and Service Conditions* the latter shall prevail.

9. Purchaser-Specific Software

Development of any Purchaser-specific software requires a specification sheet to be agreed in advance between Bachmann and Purchaser. Purchaser shall have all rights in and pertaining to the Purchaser-specific software. This does not include algorithms and general, non-Purchaser-specific software function blocks (developed by Bachmann or acquired from third party) which may be part of such software; in this regard, all rights remain with Bachmann.

10. Documentation

When

- Purchaser is supplied with new hard- or software;
- technical specifications change (e.g. due to software releases)

Bachmann provides Purchaser with the associated documentation in German or English language on a single data medium or online; software development manuals, however, will be provided in English language only. Purchaser shall be entitled to reproduce such documentation and to integrate it in its own documentation provided Bachmann's copyright is clearly indicated.

11. Delivery and Payment Conditions

In the absence of another written agreement, hardware deliveries will be made EXW Feldkirch, Austria, or Rudolstadt, Germany (Incoterms 2010). Partial shipments have to be accepted by Purchaser.

Full payments (excluding all types of expenses) are to be made within 30 calendar days after the invoice date in the currency agreed. Payment shall be on time if Bachmann is able to unconditionally dispose of the invoice amount on the last day of the payment period. Invoices will be issued in electronic form only and sent to the email address provided by Purchaser. Purchaser shall ensure that such email address is monitored at any time.

Under certain circumstances, Bachmann reserves the right to supply on the condition of advance payment.

In case of late payment, Purchaser shall be obliged to pay interest on the outstanding invoice amount in accordance with – at a minimum – statutory provisions as well as the reminder fee. In the absence of any other agreement, incoming payments shall be taken into account as follows:

1. Reminder fee;
2. Outstanding interest amount;
3. Most senior invoice amount.

12. Late Delivery

If due to Bachmann's fault any delivery term or a specifically agreed delivery date is not complied with – allowing plus/minus 2 working days –, Purchaser shall grant an adequate grace period. When this grace period has passed without result, Purchaser may rescind the respective contract; in the case of a contract involving partial shipments this shall be permitted only for the outstanding deliveries. Actual or potential late deliveries which Bachmann is not responsible for (due to e.g. non-delivery by Bachmann's suppliers; Force Majeure as defined below) shall be communicated by Bachmann to Purchaser as soon as possible. Bachmann undertakes to take all reasonable measures to limit the damage resulting from such late delivery as much as possible.

13. Liability

Purchaser shall be obliged to make a comprehensive and continuous criticality assessment whether or not the system to be supplied and/or components thereof are suitable for the intended usage and whether or not the risk resulting from a

possible failure or malfunctioning of the system is justifiable under predictable circumstances. Bachmann's liability in this respect is fully excluded. Furthermore, Purchaser undertakes to protect the physical integrity of human beings, property and the environment as much as possible by programming the application software accordingly and – beyond the automation or condition monitoring system – taking the appropriate electrical, hydraulic, pneumatic, mechanical and other safety measures.

Bachmann shall exclusively be liable for damage resulting from intent and gross negligence. In the latter case, Bachmann's liability shall be limited by the net price of the underlying order item with a maximum liability of **EUR 1'000'000** per damage event. Beyond that, both Bachmann and Purchaser shall be liable according to statutory provisions.

Bachmann shall not be liable for loss of business, profit and/or production, loss of income and data as well as reputational damage or punitive damages and the like; likewise, Bachmann shall not be liable for any damage which results from Purchaser and/or third party manipulating the hard- and/or software without Bachmann's prior written approval. Any contributory negligence on the part of Purchaser (e.g. because of non-observance of technical regulations regarding installation, putting-in-operation or operation of the system or respective public law conditions) shall be taken into account.

14. Set-Off, Assignment

Purchaser shall not be entitled to set-off its own claims (including claims of affiliated companies) against claims of Bachmann, unless such claims have been recognized in writing or finally determined by court.

Bachmann shall be entitled to assign its claims to third parties without Purchaser's consent.

15. Compliance (Trade Restrictions, Data Protection, etc)

In their relationship, both Bachmann and Purchaser undertake to comply with applicable law.

In particular, Purchaser shall be obliged to observe all applicable trade restrictions (if any) placed on the Bachmann-supplied hard- or software by any government or state and – upon request – to provide Bachmann readily with the internal compliance programme put in place to ensure compliance with such restrictions. Purchasers situated in the EU shall be obliged to check on a regular basis whether or not a government approval is required for the export of Bachmann -supplied hard- and/or software to third countries. Bachmann shall be fully indemnified and held harmless in this respect.

Additionally, each party shall be obliged to observe all applicable European and national laws and regulations on data protection and shall collect, store and process personal data only in accordance with such rules.

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16. Confidentiality

Both Bachmann and Purchaser undertake to keep the other party's business and/or trade secrets confidential – whether the respective media are marked as such or not – and not to disclose them to third parties. Documents and all other media remain the property of the party who has provided them and shall be immediately returned to that party upon its request; no copies may be retained. This confidentiality obligation applies also to the existence and terms of any specific contract between Bachmann and Purchaser.

17. Force Majeure

Force Majeure shall be any unpredictable event which cannot be avoided by exercising appropriate prudence in line with industry standards and/or taking reasonable economic measures and which prevents either party momentarily or permanently from fulfilling its contractual obligations ("Force Majeure"). Examples of Force Majeure are natural disasters (such as earthquakes, floods, hurricanes), epidemics, terrorist attacks and war as well as labour disputes and changes of applicable law.

For the avoidance of doubt, lack of financial liquidity and/or one's own or third party (transient or permanent) insolvency shall under no circumstance constitute Force Majeure.

The party affected shall immediately inform the other party hereof in writing and take all reasonable measures to minimize the effects of the Force Majeure event. For as long as the Force Majeure situation persists, the party affected shall be excused for not fulfilling its contractual obligations.

18. Form

Any offer by Bachmann is binding only if in writing, and only for as long as indicated therein. Any specific (supply, service, etc) contract between Bachmann and Purchaser shall be formed by the order confirmation to be made by Bachmann. Any change of contract shall be in writing and require the signature of authorized representatives of both Bachmann and Purchaser.

19. Ineffective Provisions

In case one or several terms hereof are or become illegal, ineffective or unenforceable, this shall not affect the remaining part. In such a case, the illegal, ineffective or unenforceable term shall be deemed replaced by one that approximates the economic and legal effect of the original term as much as possible. Unintended gaps in these terms and conditions are to be filled in accordance with statutory provisions and/or industry practice.

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20. Disposal of Hardware, Return of Packing Materials

All hardware and other electronics supplied by Bachmann is not intended for use by consumers but for use in an industrial context only. Hardware may not be disposed as household or residual waste.

Defective hardware which cannot be repaired shall be returned to Bachmann or disposed of in an appropriate manner in accordance with local law. In case of return, Purchaser shall readily make available all information and other support needed by Bachmann for compliance purposes. Additional information on disposal may be found in the respective product manual (chapter "Disposal of Hardware"). Packing materials may be returned to Bachmann also or shall be disposed of in an appropriate manner in accordance with local law.

21. Governing Law and Dispute Resolution

Any specific contract and the relationship between Bachmann and Purchaser resulting therefrom shall be governed and interpreted by the material law – excluding the rules and regulations on conflict of laws as well as the Vienna Convention on the International Sale of Goods – of the jurisdiction in which the relevant (supplying) Bachmann entity has its principal place of business.

All disputes resulting from a contract between Bachmann and Purchaser shall be decided by the court having jurisdiction over the relevant (supplying) Bachmann entity. In lieu thereof, Bachmann shall be entitled to file a claim with any other court having jurisdiction over such dispute.