

## General Terms and Conditions of Purchase of dSPACE GmbH

- Revised: November 2021 -

### A. General Section

#### 1. Applicability

##### 1.1

Unless expressly agreed otherwise, the following General Terms and Conditions of Purchase apply to all goods and services ordered by dSPACE GmbH (called "dSPACE" below) in business transactions with companies, legal persons under public law or entities incorporated under the terms of section 310, subsection 1 of the German Civil Code (called "Contractor" below).

##### 1.2

These General Terms and Conditions of Purchase form part of each contract entered into as part of an ongoing business-to-business relationship, including cases where dSPACE has not expressly stated this.

##### 1.3

No deviating, conflicting or supplementary general terms and conditions, including but not only the Contractor's terms of sale and delivery, form part of any contract, even where the Contractor makes references to such terms and conditions in a quotation or acknowledgment of order. No other interpretation can be derived from the fact that dSPACE makes payments or accept goods and services without explicit reservations.

##### 1.4

Individual contractual agreements always take precedence over these General Terms and Conditions of Purchase.

#### 2. Quotations and Conclusion of Contract

##### 2.1

Any order placed by dSPACE is legally binding if it is in writing or is confirmed in writing. Any quotation given to dSPACE by the Contractor constitutes a binding offer. dSPACE reserves the right to decide whether to accept the offer.

##### 2.2

dSPACE is bound by a legally binding order 5 days from the date of the order or confirmation.

##### 2.3

A contract is concluded either by the Contractor acknowledging a binding order placed by dSPACE or by dSPACE accepting an offer made by the Contractor.

##### 2.3

On consultation with the Contractor, dSPACE is entitled to require modifications to the goods or services, provided the Contractor can reasonably be expected to perform them. The Contractor must notify dSPACE immediately of any predictable effects of the modifications to goods or services.

#### 3. Prices and Terms of Payment

##### 3.1

The price stated in the order is binding. All prices include the applicable statutory value added tax unless this is stated separately.

##### 3.2

Unless otherwise agreed in a specific case, the price includes all services and subsidiary services performed by the Contractor (e.g., assembly, installation) and all incidental costs (e.g., proper packaging, delivery costs including any delivery insurance or liability insurance).

##### 3.3

Payment of the agreed price becomes due within 30 calendar days of complete delivery and service (including any acceptance test agreed on) and from receipt of a correctly drawn-up invoice. The Contractor grants a 3% discount on the net amount of the invoice provided dSPACE pays the amount due within 14 calendar days. Payment by bank transfer is deemed to be punctual if dSPACE's transfer order is entered at dSPACE's bank before expiry of the payment period; dSPACE cannot be held responsible for any delays for which the banks involved in the transaction are responsible.

##### 3.4

dSPACE is not liable to pay interest from due date. The statutory provisions apply to overdue payments.

##### 3.5

dSPACE has the right to offset or retain payment and to object on grounds of non-performance of contract to the extent provided for by law. This includes but is not limited to the right of dSPACE to withhold due payments in the event that dSPACE has outstanding claims against the Contractor from previous incomplete or faulty performance.

##### 3.6

The Contractor has the right to offset or retain performance only on the basis of counterclaims, that have been legally established or are undisputed.

#### 4. Delivery Period and Delay in Delivery

##### 4.1

The delivery period stated by dSPACE in the order is binding. The Contractor shall notify dSPACE immediately of any delays in delivery however caused.

##### 4.2

Any (intermediate) periods agreed on in a project schedule are contractual periods and therefore binding.

##### 4.3

In the event that the Contractor fails to deliver goods or services either completely or not within the delivery period, dSPACE shall have the rights provided for by law, including but not limited to the right to withdraw from the contract or to claim damages. This applies notwithstanding section 4.5.

##### 4.4

The Contractor can plead that dSPACE failed to provide necessary documents only if the Contractor sends a reminder that the documents are missing and does not receive them within a reasonable period.

##### 4.5

In addition to the rights set out in section 4.3, in the event of delayed performance dSPACE is entitled to claim a contractual penalty in the amount of 1% of the net purchase price per completed calendar week, but no more than 5% of the net price of the delayed goods. dSPACE reserves the right to prove and claim for higher damages due to the delay. The Contractor has the right to prove that no damage or only lesser damage was caused.

#### 5. Performance, Delivery, Passing of Risk and Default of Acceptance; REACH Regulation

##### 5.1

The Contractor is not entitled to employ third parties (e.g., subcontractors) to fulfill its obligations under the contract without the prior permission of dSPACE. The Contractor bears the procurement risk for the goods and services unless otherwise agreed in any individual case.

##### 5.2

All goods and services provided by the Contractor must be in accordance with the relevant current state of the art at the time of transfer or at the time of an acceptance test.

##### 5.3

The Contractor shall independently apply its general and specialist knowledge to check all images, plans, execution instructions, product descriptions, drawings, calculations, specifications, and other requirements made by dSPACE for errors and inconsistencies. In case of doubt, the Contractor shall inform dSPACE of any concerns in writing.

##### 5.4

Delivery shall be made "carriage free" within Germany, to the location stated in the order. If no location is stated and there is no specific agreement, delivery shall be made to our place of business in Paderborn. The place of destination in each case is also the place of performance and of any supplementary performance (Contractor's obligation to deliver).

##### 5.5

The delivery must be accompanied by a delivery note stating the date (date of delivery note drawn up and date shipped), contents of delivery (article number and amount) and dSPACE's order reference (date and number). If there is no delivery note or the delivery note is incomplete, dSPACE cannot be held responsible for any resulting delays in processing and payment. The Contractor further undertakes to send dSPACE a delivery notification containing the same details.

## 5.6

Partial deliveries require prior consent by dSPACE.

## 5.7

The risk of accidental loss and accidental impairment of the goods passes to dSPACE at the place of performance (section 5.4). If and when it has been agreed an acceptance test should be made, the risk is passed on successful completion of the test.

## 5.8

dSPACE shall be in default of acceptance only in accordance with statutory requirements. The Contractor shall also expressly offer its service to dSPACE in cases where a specific or calculable calendar period has been agreed for dSPACE to take action or contribute (e.g., by providing materials). If dSPACE is in default of acceptance, the Contractor is entitled to claim for additional costs as defined by law (section 304 German Civil Code). If the contract concerns non substitutable goods to be produced by the Contractor (custom-made products), the Contractor shall have further rights only if dSPACE has undertaken to cooperate and is responsible for failing to cooperate.

## 5.9

The Contractor guarantees that it will fulfill its statutory obligations to provide information to dSPACE promptly and to the necessary extent pursuant to Article 33 of Regulation (EC) 1907/2006 (REACH Regulation) and Article 7, lit. f) and Article 9 lit. f) of Directive (EU) No. 2011/65 (RoHS Directive) or the respective national implementations of the RoHS Directive.

## 6. Warranty, Right of Recourse

### 6.1

dSPACE's rights in the event of material defects or defects in title pertaining to the goods (including incorrect or short delivery and incorrect assembly, and deficient instructions for assembly, operation or use) and of other breaches of duty by the Contractor are subject to statutory regulations unless otherwise stated below.

### 6.2

In accordance with statutory regulations, the Contractor's responsibilities include, but are not limited to, ensuring that the goods have the agreed characteristics and are free from third-party rights. The agreed characteristics shall include in all cases the product descriptions that are the subject of the contract or that are included in the contract in a similar way as these General Terms and Conditions of Purchase, including but not only those designated or referenced in dSPACE's order. It is irrelevant whether the product description originates from dSPACE, the Contractor, or the manufacturer.

### 6.3

dSPACE has no duty to examine the goods or make particular inquiries regarding any faults at the time of concluding the contract. Contrary to section 442 subsection 1 s. 2 BGB, dSPACE shall have unlimited rights to claim for faults even if dSPACE was unaware of the faults at the time of concluding the contract due to gross negligence.

### 6.4

The statutory commercial inspection and defect notification requirement (sections 377, 381 German Commercial Code) shall apply with the following conditions: dSPACE's duty to inspect is limited to defects that are obvious on visual examination, including examination of the delivery documents, during dSPACE's incoming goods inspection (e.g., transportation damage, incorrect or short delivery) or that can be detected by sample tests performed during dSPACE's quality control. If an acceptance test has been agreed, there is no obligation to examine. Further, it depends on whether an examination is feasible in the regular course of business depending on the circumstances of each individual case. This does not affect dSPACE's duty to notify the Contractor of any defects that are discovered at a later time. Notwithstanding dSPACE's duty of examination, any notification of defects made by dSPACE shall be deemed prompt and punctual if it is given within 7 working days of discovery, or in the case of obvious defects, of delivery.

### 6.5

Subsequent performance also includes the deinstallation and reinstallation of the deficient goods where the goods are of a type and purpose that is normally installed in or mounted on another item; this does not affect dSPACE's statutory claim to compensation for associated costs. The Contractor shall bear the costs of examination and subsequent performance even where it transpires that there was no actual defect. This shall not affect dSPACE's liability in the event of an unjustified claim for rectification of defects; however, dSPACE is liable only if dSPACE did not detect that there was no defect or was grossly negligent in not detecting this.

## 6.6

Notwithstanding dSPACE's statutory rights and the provisions under 6.5, the following conditions apply: If the Contractor fails to fulfill its duty of subsequent performance, as decided by dSPACE – by remedying the defect (rectification) or by supplying a defect-free item (replacement), – within a reasonable period set by dSPACE, dSPACE can remedy the defect itself and claim compensation from the Contractor for the expenses or advance payment for doing so. If subsequent performance by the Contractor fails or is unacceptable to dSPACE (e.g., due to particular urgency, risk to operating safety or disproportionate imminent damage), no fixed period needs to be set; dSPACE shall notify the Contractor of such circumstances without delay, or wherever possible, in advance.

## 6.7

Further, in the event of a material defect or defect in title, dSPACE is entitled to reduce the purchase price or withdraw from the contract according to statutory provisions. In addition, dSPACE has the right to claim for compensation for damages and expenses according to statutory provisions.

## 6.8

If dSPACE and the Contractor have agreed on service levels for software services, the agreed period for the removal of the defects for each specific error class shall apply as appropriate periods for remedying the errors.

## 6.9

In the event of defect of title, the Contractor shall indemnify dSPACE against all claims and demands by third parties on first demand and defend dSPACE against all claims brought on the grounds of the violation of third parties' industrial property rights, including but not only copyrights and patents. The Contractor shall also, but not only, compensate dSPACE for all necessary defense costs incurred.

## 6.10

If the Contractor is or becomes aware of third-party rights to the contractual items that conflict with use of them by dSPACE, the Contractor shall notify dSPACE of this immediately.

## 7. Supplier's Recourse

### 7.1

dSPACE has all statutory rights to recourse within a supply chain (supplier's recourse according to sections 445a, 445b, 478 German Civil Code) in addition to the right to claim for defects. These include the right to specify the precise type of subsequent performance (rectification or replacement) to be made by the Contractor as owed by dSPACE to its customer in each individual case. This does not affect dSPACE's statutory right to decide about the type of subsequent performance (section 439 subsection 1 German Civil Code).

### 7.2

Before dSPACE acknowledges or meets a claim for defects made by its customer (including reimbursement of costs according to sections 445a subsection 1, 439 subsection 2 and 3 German Civil Code), dSPACE will notify the Contractor, briefly describing the situation, and request a written response. If no substantiated response is received within a reasonable period and no amicable solution can be reached, the claim for defects actually granted by dSPACE is deemed to be owed to dSPACE's customer. In this case the Contractor has the burden of proof to the contrary.

### 7.3

dSPACE's claims due to supplier's recourse shall also apply where the defective goods have been further processed by dSPACE or another company, e.g., by installation of another product.

## 8. Product Liability and Manufacturer's Liability

### 8.1

If the Contractor is responsible for damage to a product, it shall indemnify dSPACE against third-party claims insofar as the cause is located in the Contractor's sphere of control and organization and insofar as it is itself liable towards third parties.

### 8.2

In the framework of its duty to indemnify, the Contractor shall reimburse any expenses that are incurred due to or in connection with a third-party claim, including any recall campaigns carried out by dSPACE, according to sections 683, 670 German Civil Code. dSPACE shall inform the Contractor of the contents and scope of recall measures – insofar as this is possible and reasonable – and give the Contractor the opportunity to respond. This does not affect any further statutory rights.

### 8.3

The Contractor shall take out and maintain product liability insurance with insurance coverage of no less than 10 million Euros per injured person / property damage.

## 9. Statute of Limitations

### 9.1

The mutual claims of dSPACE and the Contractor shall expire according to statutory provisions unless specified otherwise below.

### 9.2

Contrary to section 438 subsection 1 no. 3 German Civil Code, the general limitation period for claims for defects is 3 years from transfer of risk. If an acceptance test has been agreed, the limitation period begins on successful completion of the test. The 3-year limitation period also applies accordingly to claims arising from defect of title, but does not apply to the statutory period of limitation for third-party claims for return of an item (section 438 subsection 1 no. 1 German Civil Code); further, claims arising from defect of title shall not expire as long as the third party is unable to make a claim against dSPACE, due to the absence of a period of limitation or for any other reason.

### 9.3

The limitation periods with regard to the sale of goods, including the extension defined above, shall apply -to the extend provided by law- to all contractual claims for defects. To the extent that dSPACE is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (sections 195, 199 German Civil Code) shall apply unless the application of the limitation periods pertaining to the sale of goods would result in a longer limitation period in an individual case.

## 10. Nondisclosure and Retention of Title

### 10.1

The Contractor undertakes to treat as confidential the information which is made available by dSPACE as part of cooperation, which the Contractor obtains from dSPACE during cooperation on certain matters, for example, of a technical, commercial or organizational kind, and neither to make use of the information itself for other purposes throughout the period of the contractual relationship and for an additional 3 years following that, nor to make the information available to third parties. Use of the confidential information is restricted solely to its application as part of cooperation between the parties. The Contractor shall protect confidential information from unauthorized access and treat it with the same care as the Contractor's own, similarly confidential information, but in any case no less than reasonable measures to prevent the disclosure of Confidential Information.

### 10.2

The terms laid out under section 10.1 do not apply to information that (i) is generally known at the time of its disclosure by dSPACE or becomes generally known following disclosure without violation of this duty of nondisclosure; or (ii) was already known to the Contractor at the time of disclosure; or (iii) following disclosure is made available to the Contractor by a third party, legally and without restrictions with regard to confidentiality or use; or (iv) is developed by the Contractor independently and without either direct or indirect recourse to confidential information or according to the exceptions defined here under (i) - (iv).

### 10.3

Statutory and regulatory disclosure obligations remain unaffected by the provisions of section 10.1. The Contractor shall notify dSPACE immediately of any disclosure wherever possible.

### 10.4

dSPACE retains all copyright and intellectual property rights to images, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for performance of contract and must be returned to dSPACE by the Contractor on completion of the contractual tasks. The documents must be kept secret from third parties, even after completion of performance of contract. The duty of nondisclosure does not expire until and insofar as the information in the documents provided by dSPACE becomes general knowledge.

### 10.5

Transfer of ownership of the goods to dSPACE must be unconditional and irrespective of payment of the price. In the event that dSPACE accepts an offer made by the Contractor in an individual case to transfer ownership on condition the purchase price is paid, the Contractor's retention of title shall expire no later than payment of the purchase price for the goods supplied. In the regular course of business, dSPACE remains entitled to resell the goods even before payment of the purchase price, following

assignment in advance of the claim arising from the resale (alternatively application of the simple retention of title extended to resale). All other forms of retention of title are thereby excluded, including but not only extended or assigned retention of title and the retention of title extended to resale.

## 11. Export Control, Import

### 11.1

The Contractor and dSPACE are aware that goods and services provided by the Contractor may be subject to export and import regulations. These include mandatory permit requirements, and goods and services may also be subject to restrictions abroad. The Contractor shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union, the United States of America, and the People's Republic of China, and with all other relevant regulations. Performance of contract by the Contractor is subject to the condition that the performance does not conflict with any national and international regulations of export and import law as well as any other statutory regulations.

### 11.2

The Contractor has a duty to inform dSPACE in its business documents, in good time before the first delivery and immediately in the event of any changes, of any mandatory permit requirements or restrictions regarding (re)export of the Contractor's goods and services contained in German, European, US and Chinese export and customs regulations and of the export and customs regulations of the country of origin of the Contractor's goods, and to provide the necessary information for goods that are subject to a permit requirement.

### 11.3

The Contractor has a duty to enclose in the delivery all the necessary documents, such as a commercial invoice, a delivery note, and the information required for a complete and correct import customs declaration.

## 12. Miscellaneous, Choice of Law and Place of Jurisdiction

### 12.1

In addition to these General Terms and Conditions of Purchase, dSPACE's Supplier Code of Conduct shall also apply; this can be viewed at [dSPACE Compliance Management - dSPACE](#) and will be sent free of charge by dSPACE at the Contractor's request.

### 12.2

These General Terms and Conditions of Purchase and the contractual relationship between dSPACE and the Contractor are governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

### 12.3

If the Contractor is a merchant in the meaning of the German Commercial Code, a legal person under public law or an incorporated entity, the place of jurisdiction for all disputes, including international disputes, arising from the contractual relationship, is exclusively dSPACE's place of business in Paderborn (Germany). The same applies where the Contractor is an entrepreneur as defined in section 14 of the German Civil Code. However, in all cases dSPACE is also entitled to file a claim at the place of delivery according to these General Terms and Conditions of Purchase or according to a prior individual agreement, or at the Contractor's general place of jurisdiction. Statutory regulations that take precedence, including but not only on exclusive responsibilities, shall remain unaffected.

## **B. Special Conditions for the Purchase of Software**

### **13. Scope of Delivery**

#### **13.1**

If the Contractor's duties in providing its goods and services include the supply and/or development of software (e.g., customer-specific and/or standard software produced by the Contractor and/or third-party software) and/or maintenance and support services for software, the following additional terms apply.

#### **13.2**

The Contractor shall supply all goods and services according to the generally recognized principles of software engineering and to the current generally recognized state of the art. The Contractor shall comply with generally recognized process descriptions and industrial standards, and also with any specific conditions, methods and practices that may have been agreed with dSPACE.

#### **13.3**

The Contractor has a duty to document its services in compliance with the specifications. The documentation must be provided either in printed form or electronically and in both German and English, or in English only if no German version is available.

#### **13.4**

In the event that the software is modified on the basis of these General Terms and Conditions of Purchase (e.g., by remedying a defect or supplying new software), the Contractor shall provide dSPACE with a corresponding addition/update to the documentation, including an explanation of the modifications made.

#### **13.5**

The Contractor shall check the goods and services, even if provided electronically, and all data medium used within the scope of the performance of services, for malware, using the latest testing and analysis processes, before they are provided to or used by dSPACE..

#### **13.6**

dSPACE is entitled to have the operation of the software carried out by a third party (e.g., as outsourcing or hosting).

### **14. Delivery of Customer-specific Software**

#### **14.1**

As used in these General Terms and Conditions of Purchase, the term "customer-specific software" comprises both individual adaptations of and extensions to standard software, and the development of completely new software including the corresponding software- and user documentation.

#### **14.2**

The customer-specific software to be developed by the Contractor, including the technical requirements, is defined by the specifications agreed between dSPACE and the Contractor.

#### **14.3**

The Contractor shall produce a report on the development progress and make it available to dSPACE either every month or as agreed in any individual case, and provide any other information requested by dSPACE, unless the provision of such information is unreasonable.

#### **14.4**

dSPACE acquires from the Contractor the exclusive, irrevocable, freely transferable, perpetual right of use, without any territorial restrictions, including all known and unknown types of use – including but not limited to the right to save and load, execute, duplicate, distribute, present, publish and replay, edit, modify and exploit the software – for all work results created in the performance of the contract (e.g., all results created by the Contractor in developing the customer-specific software, data collections, databases, and any physically recorded ideas, algorithms, processes, specifications and reports, as well as draft, documentation and training materials).

#### **14.5**

The Contractor expressly grants dSPACE the right to make either all or a part of the work results and the customer-specific software available to third parties to allow them to use it in their own business operations. This includes the right to grant third parties simple or exclusive rights to use the customer-specific software.

#### **14.6**

Insofar as it is legally possible, the Contractor shall ensure that no personal copyrights conflict with this and obtain declarations from the persons who might hold such rights for dSPACE at dSPACE's request.

#### **14.7**

The rights set out in sections 14.4 and 14.5 are transferred to dSPACE at the time they originate, but no later than the time of transfer of the specific work results and the customer-specific software. dSPACE is entitled at all times to require the Contractor to provide all copies of the customer-

specific software with all its preparatory steps and documentation materials, and all the documents associated with the customer-specific software.

#### **14.8**

The Contractor has a duty to provide and transfer ownership of the customer-specific software in object code and source code together with tools, compilers, databases and development and programming environments, as well as the associated documentation, on suitable data medium, unless otherwise agreed in the specifications document.

#### **14.9**

Notwithstanding the further terms of these General Terms and Conditions of Purchase, the Contractor has a duty to create customer-specific software that is free of third-party rights (including but not only patent rights, industrial design rights, trademark rights and other rights to intellectual property). In the event that the Contractor does not succeed in this, the Contractor shall ensure that the customer-specific software can be used by dSPACE in the same way as if it were free of third-party rights; this includes but is not limited to the Contractor making the appropriate license payments to third parties.

#### **14.10**

If protectable work results are created during the development of customer-specific software, the Contractor shall inform dSPACE of this immediately. dSPACE will then decide whether to apply for the appropriate rights or not. dSPACE is entitled to apply for a patent for the protectable work result in dSPACE's own name and at dSPACE's own expense. In such a case dSPACE shall bear the costs of the application and for the maintenance of the intellectual property right. In the event that dSPACE decides against applying, dSPACE shall release the protectable work result to the Contractor. In this case dSPACE shall retain a non-exclusive, sub-licensable right of use to all types of usage. At dSPACE's request, the Contractor shall make use of inventions of its employees, whereby dSPACE shall bear the costs in accordance with the German Employee Invention Act.

#### **14.11**

This section 14 also applies to corrections, patches, updates, upgrades, additions, new versions and similar provided by the Contractor to dSPACE in connection with the goods and services.

### **15. Delivery of Standard Software**

#### **15.1**

Unless otherwise agreed in the order or the specifications, dSPACE acquires from the Contractor a non-exclusive, irrevocable, transferable, sub-licensable, perpetual right of use, without any territorial restrictions, that includes all known and unknown types of use and is covered by the agreed payment, including but not limited to the right to save and load, execute, duplicate, distribute, present, publish and replay, edit, modify, further develop, adapt and exploit the software.

#### **15.2**

Insofar as it has been agreed with the Contractor that the Contractor's licensing conditions shall apply, only the conditions governing the type and scope of rights of use for the Contractor's standard software shall apply. Any additional provisions, in particular regarding warranty claims and liability issues, shall not apply.

#### **15.3**

The rights of use for the standard software are independent of the underlying hardware so that when the underlying hardware is replaced by new hardware, no additional payment becomes due.

#### **15.4**

dSPACE is entitled to make backup copies of the standard software.

#### **15.5**

Insofar as an individual contractual agreement states that for proper contractual use, the standard software must be used only on specific hardware or its functionality can be used only in connection with specific hardware supplied to dSPACE by the Contractor, the rights of use defined in sections 15.1 and 15.2 shall apply only in connection with the Contractor's specific hardware.

#### **15.6**

If it is agreed that the source code of the standard software shall not be made available to dSPACE, the Contractor undertakes to enter into a source code escrow agreement at dSPACE's request and to place the source code with an escrow agent to be specified by dSPACE for the benefit and at the expense of dSPACE.

#### **15.7**

This section 15 also applies to corrections, patches, updates, upgrades, additions, new versions and similar provided by the Contractor to dSPACE in connection with the goods and services.

## **16. Third-Party Licenses and Previous Proprietary Rights**

### **16.1**

Insofar as the Contractor provides dSPACE with third-party software in connection with the Contractor's goods and services, for which compliance with third-party license terms is required, the Contractor shall immediately inform dSPACE of this circumstance. The third-party license terms shall apply only to the extent that the Contractor explicitly refers to such third-party license terms either before conclusion of contract and/or conclusion of the individual contract, and that the Contractor provides dSPACE with the complete license terms on a permanent data medium.

### **16.2**

The Contractor grants dSPACE a non-exclusive, irrevocable, transferable, sub-licensable, perpetual right of use, without any territorial restrictions, for works already developed or used by the Contractor before the start of the contract, any other intellectual property rights or other unprotected knowledge (know-how) belonging to the Contractor, and for know-how acquired by the Contractor or its agents and employees during performance of contract with standard software and development tools, insofar as this is necessary to use the customer-specific software and/or work results created for dSPACE by the Contractor. This includes but is not limited to duplication, editing and modification by dSPACE or third parties, where this is necessary in order to use the software.

## **17. Supplementary Conditions for Open Source Components and Open Content**

### **17.1**

The conditions set out below in this section 17 shall apply if the goods and services provided by the Contractor contain free and open source software or open source software (both "OSS"), i.e., software that can regularly be obtained free of charge and with an open source.

### **17.2**

The Contractor is allowed to include OSS in goods and services if dSPACE expressly agrees to this in advance. dSPACE does not agree to the inclusion of OSS under copyleft terms in general; any exceptions to this must be agreed in individual cases.

### **17.3**

The Contractor undertakes to request dSPACE to give consent as set out in section 17.2 by (i) requesting the use of an OSS with dSPACE, (ii) giving dSPACE all the information that dSPACE needs in order to assess whether to give a declaration of consent and (iii) specifically informs dSPACE of any license conditions and conditions of use that contain copyleft terms. dSPACE shall tell the Contractor on request what information is required in order to assess for consent unless this has already been agreed between the parties.

### **17.4**

Using OSS without dSPACE's prior consent shall be deemed a material breach of the Contractor's contractual obligations. If goods and/or services provided by the Contractor contain OSS that have not been approved by dSPACE, the goods and services are deemed to be defective.

### **17.5**

The terms contained in sections 17.1 to 17.4 apply accordingly if goods and services provided by the Contractor contain further free contents (e.g., images, texts, data) ("open content").

## **18. Maintenance and Support Services**

### **18.1**

The Contractor has a duty to maintain the hardware and/or software named in the contract and its documentation (called "maintenance item" below). The Contractor has a duty to ensure that the maintenance item remains fully operational and to remedy any defects, errors and malfunctions that may occur. To achieve this, and unless otherwise agreed, the Contractor undertakes to perform, on its own responsibility, comprehensive support, and maintenance for the maintenance item, including all the functions used and all the settings employed. Agreed service levels shall apply for this purpose.

### **18.2**

The Contractor is entitled to perform maintenance services remotely, i.e., by using remote telecommunications, insofar as this is possible. If this form of service is not possible, the Contractor has a duty to perform the services on site at dSPACE's facility.

### **18.3**

dSPACE is entitled to the provision of new versions of the maintenance items concerning software as soon as these become available on the market. The Contractor has also a duty to continuously further develop the

customer-specific software supplied and to keep it up-to-date, including but not limited to statutory and regulatory requirements. The Contractor shall therefore provide dSPACE with new versions with new functionalities on a regular basis. If further developments are necessary due to changes in the legal or regulatory framework or due to industry standards, the Contractor shall make these available to dSPACE before the changes become applicable.

### **18.4**

In addition to services as defined in sections 18.1 and 18.3, the Contractor also undertakes to provide further new versions that contain features such as bug fixes, minor adjustments or optimizations. Such versions are released irregularly. If an adjustment is urgent, e.g., in the case of emergencies or serious errors, the Contractor shall provide hotfixes immediately.

### **18.5**

The conditions of use contained in these General Terms and Conditions of Purchase also apply unrestrictedly to corrections, patches, updates, upgrades, supplements, new versions and similar that the Contractor provides to dSPACE in connection with maintenance services.

### **18.6**

Corrections, patches, updates, upgrades, supplements, new versions and similar must not have essentially different system requirements compared with the previous versions.

### **18.7**

The Contractor shall remedy errors and/or failures within the time periods agreed in the service levels, but in any case within a reasonable period of time in relation to the scope of the errors/failure. The error correction is successfully completed when dSPACE can once more make full use of the maintenance item.

### **18.8**

The Contractor warrants that all software deliveries and software-related goods and services (in particular all individual settings, adjustments, and modifications, as well as extensions, interfaces and additional programming of the standard software) are unrestrictedly compatible with new software versions (such as updates including patches, upgrades and releases and other further developments of the software) are maintenance-ready and release-ready without further expenses for dSPACE. Neither the performance nor the functionalities of the maintenance item may be reduced or discontinued without the prior express consent of dSPACE.

### **18.9**

The Contractor has a duty to notify dSPACE for a reasonable period in advance of any modifications and adjustments made to the maintenance item.