

Dunkermotoren Taicang Co., Ltd. (Dunkermotoren) Standard Terms and Conditions of Sale

For sales to buyers located outside the People's Republic of China
Version September 2014

1. Applicable Terms. These terms govern the sale of Products by Dunkermotoren. Whether these terms are included in a quote or an order acknowledgement by Dunkermotoren, such quote or order acknowledgement shall be on condition of the Buyer's assent to these terms. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or any other written or oral communication from Buyer shall not be binding in any way on Dunkermotoren unless expressly accepted by Dunkermotoren in writing. Dunkermotoren failure to object to any such additional, different or conflicting terms shall not operate as a waiver of these terms.

Orders placed shall be deemed accepted only when confirmed in writing by Dunkermotoren or upon delivery of the Products.

2. Pricing & Payment. The prices shall be: (a.) as stated in Dunkermotoren proposal or if none are stated, (b.) Dunkermotoren' standard prices in effect at the time of release for shipment. Discounts, if any, are as specified on the latest discount sheets issued from time to time. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to Dunkermotoren' invoices or to discountable items if there are undisputed past due items on the account. Cash discounts shall only be allowed on that portion of the invoice paid within the normal discount period.

(a) Payment - Unless otherwise stated, all payments shall be net 30 days from invoice date payable in the currency indicated in Dunkermotoren's offer and / or order confirmation or if amicably and accordingly agreed in writing.

(b) Credit Approval - All orders are subject to credit approval by Dunkermotoren. The amount of credit or terms of payment may be changed or credit withdrawn by Dunkermotoren at any time for any reason without advance notice. Dunkermotoren may, in its discretion, withhold further manufacture or shipment; require immediate cash payments for past and future shipments; or require satisfactory security, in the form of a letter of credit or otherwise satisfactory to Dunkermotoren before further manufacture or shipment is made; and may, if shipment has been made, recover the Products from the carrier, pending receipt of such assurances. If the combined value of Dunkermotoren's security interests exceeds the value of all secured claims by 20 %, Dunkermotoren shall release a corresponding part of the security interest if so requested by the Buyer; Dunkermotoren shall be entitled to choose which security interest it wishes to release.

All letters of credit shall:

- (1) be in favor of and acceptable to Dunkermotoren;
- (2) be maintained in sufficient amounts and for the period necessary to meet all payment obligations;
- (3) be irrevocable;
- (4) be issued or confirmed by a reputable bank satisfactory to Dunkermotoren within fifteen (15) days after acceptance of any order;
- (5) permit partial deliveries;
- (6) provide for pro-rata payments upon the presentation of Dunkermotoren's invoices and Dunkermotoren's certificate of delivery; and
- (7) provide for the payment of any cancellation charges or interim amounts due under the provisions of an Acknowledgement.

In default of such cash payment or satisfactory security, in addition to Dunkermotoren's other rights and remedies, deliveries may be discontinued at the option of Dunkermotoren, and Dunkermotoren shall receive from Buyer reasonable cancellation charges to cover the value of any completed or partially finished Products that are manufactured on the order.

(c) Installment Shipment - If more than one delivery is made, each shall be deemed a separate transaction and shall be invoiced separately. Neither failure of, nor delay in any delivery, nor shortage in quantity or other defect in any delivery, shall in any way affect the obligations of both the Buyer and Dunkermotoren as to any other delivery. Buyer shall pay for each shipment in accordance with the terms hereof. Payment shall be made for the Products without regard to whether Buyer has made or may make any inspection of the Products. Products held for Buyer are at Buyer's sole risk and expense.

The Buyer shall accept delivery of any part or all of the Products on every specific shipping or delivery date as notified by Dunkermotoren through notices of readiness for shipment. In case that the Buyer refuses, or is unable to accept any delivery covered by an order, or the Buyer fails to furnish Dunkermotoren with proper shipping instructions, the Buyer shall be held liable for freight, express delivery, storage, extra cost of handling and other expenses that may be incurred thereby. Such liability of the Buyer is in addition to, and shall in no way alter, the terms of payment of Dunkermotoren's invoice for the Products offered for delivery and invoice shall be rendered and payment shall be made as if delivery had been consummated.

(d) Taxes, Shipping, Packing, Handling - Except to the extent expressly stated in these terms, Dunkermotoren prices do not include any freight, storage, packaging, insurance, taxes, excises, fees, duties or other government charges related to the Product, and Buyer shall pay such amounts or reimburse Dunkermotoren for any amounts Dunkermotoren pays. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Dunkermotoren with a valid exemption certificate or permit and indemnify, defend and hold Dunkermotoren harmless from any taxes, costs and penalties arising out of same. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates

or classification included as part of these terms, shall be for the Buyers account.

(e) Time of payment is of the essence and in addition and without prejudice to Dunkermotoren's other rights and remedies hereunder if payment is not made when due the Buyer shall pay Dunkermotoren interest thereon at a rate of 10 % p.a. (INTEREST).

(f) Disputed Invoice - In the event Buyer disputes any portion or all of an invoice, it shall notify Dunkermotoren in writing of the amount in dispute and the reason for its disagreement within 14 days of receipt of the invoice. The undisputed portion shall be paid when due.

(g) Collection. Upon Buyers default of these terms, Dunkermotoren may, in addition to any other rights or remedies at contract or law, subject to any cure right of Buyer, declare the entire balance of Buyers account immediately due and payable or foreclose any security interest in Products delivered. If any unpaid balance is referred for collection, Buyer agrees to pay Dunkermotoren, to the extent permitted by law, reasonable attorney fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, plus any court costs or expenses incurred by Dunkermotoren, and any INTEREST accrued on any unpaid balance owed by Buyer.

(h) Retention of Title.

(1) The items pertaining to the Products ("Retained Goods") shall remain Dunkermotoren's property until each and every claim Dunkermotoren has against the Buyer on account of the business relationship has been fulfilled. If the combined value of Dunkermotoren's security interests exceeds the value of all secured claims by 20 %, Dunkermotoren shall release a corresponding part of the security interest if so requested by the Buyer; Dunkermotoren shall be entitled to choose which security interest it wishes to release.

(2) For the duration of retention of title, the Buyer may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

(3) Should the Buyer resell Retained Goods, it assigns to Dunkermotoren, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, the Buyer shall assign to Dunkermotoren such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Dunkermotoren.

(4) The Buyer may process, amalgamate or combine Retained Goods with other items. Processing is made for Dunkermotoren. The Buyer shall store the new item thus created for Dunkermotoren, exercising the due care of a diligent business person. The new items are considered as Retained Goods.

Already today, Dunkermotoren and the Buyer agree that if Retained Goods are combined or amalgamated with other items that are not the property of Dunkermotoren, Dunkermotoren shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of the combination or amalgamation. In this respect, the new items are considered as Retained Goods.

The provisions on the assignment of claims according to No. (3) above shall also apply to the new item. The assignment, however, shall only apply on the amount corresponding to the value invoiced by Dunkermotoren for the Retained Goods that have been processed, combined or amalgamated.

Where the Buyer combines Retained Goods with real estate or movable goods, the Buyer shall, without any further declaration of the Buyer being necessary to this effect, also assign to Dunkermotoren as security its claim to consideration for the combination, including all collateral rights for the pro-rata amount of the value the combined Retained Goods have on the other combined items at the time of the combination.

(5) Until further notice, the Buyer may collect assigned claims relating to the resale. Dunkermotoren is entitled to withdraw the Buyer's permission to collect funds for good reason, including but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of the Buyer. In addition, Dunkermotoren may, upon expiry of an adequate period of notice, disclose the assignment, realize the claims assigned and demand that the Buyer informs its customer of the assignment.

(6) The Buyer shall inform Dunkermotoren without delay of any seizure, confiscation or any other act of intervention by third parties. If a reasonable interest can be proven, the Buyer shall, without undue delay, provide Dunkermotoren with the information and/or documents necessary to assert the claims it has against its customers.

(7) Where the Buyer fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations, Dunkermotoren shall be entitled to terminate the respective agreement and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by Dunkermotoren; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Buyer shall be obliged to return the Retained Goods. The fact that the Dunkermotoren takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized shall not be construed to constitute a rescission of the respective agreement, unless Dunkermotoren expressly declares so.

3. Delivery; Title; Risk of Loss; Same Day Shipment. Product shall be delivered EXW (Incoterms 2010) Dunkermotoren point of shipment with risk of loss or damage for the Product passing to Buyer at that point. Buyer shall be responsible for all transportation, insurance and related expenses including any associated taxes, duties or documentation. Dunkermotoren may make partial shipments. Shipping dates are not binding and approximate only and Dunkermotoren shall not be liable for any loss or expense (conse-

quential or otherwise) incurred by Buyer or Buyer's customers if Dunkermotoren fails to meet the specified delivery schedule. Compliance with agreed delivery dates shall be depend on (i) timely receipt at the factory of all details pertaining to the order and essential to its proper execution; required approvals, releases and clearances to be provided by the Buyer and (ii) Buyer's compliance with the payment terms and timely submission of such evidence as Dunkermotoren may request that any required Export or Import License has been issued and is in effect or other obligations to be met by the Buyer.

4. Deferment and Cancellation. Buyer shall have no deferment rights and Buyer shall be liable for cancellation charges, which shall include without limitation

- a) payment of the full product price for any finished Product or works in progress;
- b) payment for raw materials ordered pursuant to a firm purchase order; and
- c) such other direct costs incurred by Dunkermotoren as a result of such cancellation.

5. Force Majeure / Delays. If Dunkermotoren suffers delay in performance due to

- (a) any cause beyond its reasonable control, including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, failure of normal sources of supply, or acts of government including but not limited to hindrances attributable to Chinese, EU, German, US or otherwise applicable national or international rules of foreign trade law; or
 - (b) to other circumstances for which are unavoidable or beyond Dunkermotoren's control; or
 - (c) inability of Dunkermotoren to timely obtain either necessary or proper labor, materials, components, facilities, energy, fuel, transportation, governmental authorization or instruction, or material or information required from Buyer, ,
- Dunkermotoren will give to Buyer notice within a reasonable time after Dunkermotoren becomes aware of any such delay
Upon the occurrence of any of the foregoing events, Dunkermotoren shall be entitled to cancel the order and/or terminate the respective agreement without liability.

6. Buyer's Requirements. Timely performance by Dunkermotoren is contingent upon Buyer's supplying to Dunkermotoren all required technical information and data, including drawing approvals, and all required commercial documentation.

7. Defects as to Quality

(a) Dunkermotoren shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

- (1) Defective Products, defective parts or defective services, if any, shall be at Dunkermotoren's discretion, either repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed. All exchanged Products or parts thereof will become the property of Dunkermotoren.
- (2) Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in case of rescission or reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("Bürgerliches Gesetzbuch", hereinafter referred to as "BGB"), as well as in case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics ("Beschaffenheitsgarantie"). The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung", "Hemmung") and recommencement of limitation periods shall be unaffected.
- (3) Notifications of Defect by the Buyer shall be given in written form without undue delay. If Dunkermotoren is notified later than 8 days after receipt of the Products, any claims against Dunkermotoren shall be excluded unless the Defect could not be identified even if the Products were carefully inspected. Notices for Defects which could not be identified even if the Products were carefully inspected upon receipt shall be notified to Dunkermotoren not later than 8 days after discovery, however, at the latest 12 months after receipt of the Products; otherwise any claims against Dunkermotoren shall be excluded.
- (4) In case of notification of a Defect, the Buyer may withhold payments to an amount that is in a reasonable proportion to the Defect. The Buyer, however, may withhold payments only if the subject-matter of the notification of the Defect is justified and incontestable. The Buyer has no right to withhold payment to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle Dunkermotoren to demand reimbursement of its expenses from the Buyer.
- (5) Dunkermotoren shall be given the opportunity to repair or to replace the defective Product ("Nacherfuellung") within a reasonable period of time.
- (6) If repair or replacement is unsuccessful, the Buyer is entitled to rescind the respective agreement or reduce the remuneration; any claims for damages the Buyer may have according to No. 10 shall be unaffected.
- (7) There shall be no claims based on Defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk, from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the agreement, or from non-reproducible software errors. Claims based on defects

attributable to improper modifications or repair work carried out by the Buyer or third parties and the consequences thereof are likewise excluded.

- (8) The Buyer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject matter of the Products has subsequently been brought to another location than the Buyer's branch office, unless doing so complies with normal use of the Products.
- (9) The Buyer's right of recourse against Dunkermotoren pursuant to Sec. 478 BGB is limited to cases where the Buyer has not concluded an agreement with its customer exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Buyer has against Dunkermotoren pursuant to Sec. 478 para. 2 BGB.
- (10) The Buyer shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of Dunkermotoren. The above stipulations do not imply a change in the burden of proof to the detriment of the Buyer. Any other or additional claims of the Buyer exceeding the claims provided for in this Article 7, based on a defect are excluded.

(b) The Buyer shall immediately inform Dunkermotoren about any risks that may occur during the use of any Products, and any product defects it may become aware of. If Dunkermotoren conducts a recall or public warning concerning the Products by itself which becomes necessary due to non-conformities of the Products delivered by the Buyer, the Buyer shall provide any and all assistance required by Dunkermotoren and bear any and all costs connected with such recall / public warning, and shall assume the liability for any and all losses incurred by Dunkermotoren.

(c) Transferability. The Buyer's rights for Defects set forth in this section are subject to the limitations of liability set forth in Article 7 (a) (10) above and Article 8 below. Dunkermotoren makes no other warranties, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose, course of dealing and usage of trade.

8. Limitation of Liability.

(a) Unless otherwise provided for in these terms, neither Dunkermotoren nor its suppliers shall be liable for any damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.

(b) This does not apply if the liability is based on:

- (1) the German Product Liability Act ("Produkthaftungsgesetz");
- (2) intent;
- (3) gross negligence on the part of the owners, legal representatives or executives of Dunkermotoren;
- (4) fraud;
- (5) failure to comply with a guarantee granted;
- (6) negligent injury to life, limb or health; or
- (7) negligent breach of a fundamental condition of contract ("wesentliche Vertragspflichten").

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided no other of the above cases applies.

(c) The above stipulations do not imply a change of the burden of proof to the detriment of the Buyer.

9. Patent and Copyright Infringement. Dunkermotoren will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any Chinese patent or copyright, if Dunkermotoren is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Dunkermotoren will pay the damages and costs awarded in any suit or proceeding so defended. Dunkermotoren will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Dunkermotoren will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes non-infringing. Dunkermotoren will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Dunkermotoren to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Dunkermotoren, Buyer shall protect Dunkermotoren in the same manner and to the same extent that Dunkermotoren has agreed to protect Buyer under the provisions of the Section above. This article is an exclusive statement of all the duties of the parties relating to patents and copyrights, and direct or contributory patent or copyright and of all the remedies of buyer relating to any claims, suits, or proceedings involving patents and copyrights.

10. Compliance with Laws. Buyer agrees to comply with all applicable laws and regulations relating to the purchase, resale, exportation, transfer, assignment, disposal or use of the Products. Buyer agrees that it will not export, re-export, or otherwise distribute the Products or any technical data related thereto, in violation of any export control laws or regulations of China and / or the European Union or the United States of America.

11. Changes in Work and Product Changes. Dunkermotoren shall not implement any changes in the scope of work unless Buyer and Dunkermotoren agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Dunkermotoren to an equitable adjustment in the prices and any time of performance. Dunkermotoren may, at any time and without notice, make changes (whether in design, material, improvements or otherwise) in any Products, and may discontinue the manufacture of any Products, without incurring any obligations of any kind as a result thereof.

12. Non-waiver of Default. Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Dunkermotoren may decline to make further shipments. If Dunkermotoren elects to continue to make shipments, Dunkermotoren actions shall not constitute a waiver of any default by Buyer or in any way affect Dunkermotoren legal remedies for any such default. Any waiver of Dunkermotoren to require strict compliance with the provisions of these terms shall be in writing and any failure of Dunkermotoren to require such strict compliance shall not be deemed a waiver of Dunkermotoren's - right to insist upon strict compliance thereafter.

13. Final Written Agreement; Modification of Terms. These terms, together with any quotation, frame agreement, purchase order or acknowledgement issued or signed by Dunkermotoren, comprise the complete and exclusive agreement between the parties (the Agreement) and supersede any terms contained in Buyer's documents, unless otherwise agreed expressly and in writing by Dunkermotoren. These terms may only be modified by a written instrument signed by authorized representatives of both parties.

14. Assignment. Neither party may assign the Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other; provided however that Dunkermotoren may assign its rights and obligations under these terms to its affiliates and Dunkermotoren may grant a security interest in the Agreement and/or assign proceeds of the Agreement without Buyer's consent.

15. Applicable Law and Jurisdiction. These terms are governed and construed in accordance with the laws of the Federal Republic of Germany without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as the application of the Hague Convention on Contracts for the International Sale of Goods is expressly excluded.

Any dispute arising out of or in connection with these terms or over their validity shall be settled through friendly consultations between the Parties. If no agreement can be reached between the Parties within 30 days after the dispute has arisen, the dispute shall be finally submitted to an arbitration tribunal of the Singapore International Arbitration Centre (hereinafter referred to as "SIAC") for arbitration according to the Rules of Arbitration of the said arbitration commission effective on the date of request for arbitration. The place of arbitration shall be Singapore. The arbitration proceedings shall be conducted in English language.

The arbitration tribunal shall consist of 3 arbitrators. Each Party shall appoint one arbitrator. The two first mentioned arbitrators shall select the third arbitrator who shall act as chairman of the arbitration tribunal. If a Party fails to appoint its arbitrator within one month after receipt of the notice of arbitration from the arbitration commission or if the two first mentioned arbitrators cannot come to an agreement on the chairman of the arbitration tribunal within one month after they have been appointed, the respective arbitrator or the chairman of the arbitration tribunal shall be appointed by the Chairman of SIAC.

The arbitration award shall be final and binding on the Parties. The arbitration fee and the reasonable expenses of winning Party, including lawyer's fees shall be borne by the losing Party except as otherwise awarded by the arbitration tribunal.

Unless otherwise provided in the order documents, the place of performance shall be the domicile of Dunkermotoren.

16. Severability. If any provision of these terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

Dunkermotoren Taicang Co.,Ltd. (Dunkermotoren) Software License/Warranty Addendum Version September 2014

This Article 1 Addendum supplements Dunkermotoren's Standard Terms and Conditions of Sale and in particular but not limited to Article 7 ("Limited Warranty") and applies to software furnished by Dunkermotoren. All other Articles contained in Dunkermotoren's Standard Terms and Conditions of Sale are incorporated herein by reference.

1. Software License SOFTWARE, Warranty, Fees. (a) Dunkermotoren hereby grants to Buyer: a non-exclusive, non-transferable right to use the computer software program licensed under this Agreement in machine-readable, object code form and any modifications made by Dunkermotoren thereto ("Software"), but only in connection with the configuration of the Products and operating system for which the Software is ordered and for the end-use purpose stated in the related Dunkermotoren operating documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, without Dunkermotoren's prior written consent, except for making a single copy for backup or archival purposes in accordance with the related Dunkermotoren operating documentation, and provided that Dunkermotoren's confidential and proprietary legend is included. Except to the extent that the parties otherwise agree in writing, Buyer's license to use the copy of such Software shall terminate upon breach of this license or the Agreement by Buyer, including, without limitation, breach of payment or confidentiality obligations. All copies of the Software are the property of Dunkermotoren, and all copies for which the license is terminated shall be returned to Dunkermotoren promptly after termination.

(b) Dunkermotoren may authorize Buyer (such as a Dunkermotoren distributor or original equipment manufacturer) to transfer this software license and warranty to a third party ("Dunkermotoren-authorized transferee"). Such authorization to transfer shall be in writing and signed by a Dunkermotoren authorized representative. Dunkermotoren-authorized transferee shall have the same rights and obligations as Buyer, except it shall not have the right to transfer such license.

(c) Dunkermotoren warrants that on the date of shipment of the Software only to Buyer or Buyer's Dunkermotoren-authorized transferee hereunder that: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Dunkermotoren has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Dunkermotoren operating documentation. Dunkermotoren disclaims any warranty that the operation of the Software will be uninterrupted or error free. This warranty does not apply to software delivered by Dunkermotoren but produced by others. The warranty for software produced by others shall be the warranty as stated by the software producer.

(d) If within one (1) year from date of initial installation (but not more than eighteen (18) months from date of shipment by Dunkermotoren to Buyer) of Software, Buyer or its Dunkermotoren-authorized transferee hereunder discovers that the Software is not as warranted above and promptly notifies Dunkermotoren in writing, within this period of time, of the nonconformity, and if Dunkermotoren cannot correct the nonconformity or deems correction to be commercially impracticable or prohibitively expensive, Buyer's and Buyer's Dunkermotoren-authorized transferee's exclusive remedies, at Dunkermotoren's option and expense, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of an equitable, pro rata share of the Contract price or license fee paid.

(e) This warranty will apply for the period specified in (d) above, provided that: (1) the Software is not modified, changed, or altered by anyone other than Dunkermotoren or its suppliers, unless authorized by Dunkermotoren in writing; (2) there is no change by anyone other than Dunkermotoren to the Products for which the Software is ordered; (3) the Products are in good operating order and are installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer, Buyer's Dunkermotoren-authorized transferee, or any of their agents, servants, employees, or contractors, or any third party; (5) Buyer or Buyer's Dunkermotoren-authorized transferee promptly notifies Dunkermotoren in writing, within the period of time set forth in (d) above, of the nonconformity after it is discovered; and (6) all fees for the Software due to Dunkermotoren have been paid. Dunkermotoren hereby disclaims all other warranties, express or implied, with regard to the software, including but not limited to implied warranties of merchantability, fitness for a particular purpose, course of dealing and usage of trade.

(f) Buyer and successors of Buyer are limited to the remedies specified in this Article 1 and shall have no others for a nonconformity in the Software. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, operating documentation, installations, or non-conformities from any cause.

(g) Unless otherwise provided in this Agreement, the fees for this Software license are included in the purchase price of the Products. Any subsequent modifications or enhancements to the Software made by Dunkermotoren are, at Dunkermotoren's option, subject to a fee.