

Warranty and Licence Terms and Conditions

applicable from 1 May 2013

A) Validity of the Terms and Conditions

1. These Warranty and Licence Terms and Conditions (WLTC) shall apply to each shipment and repairs by SofCon, spol. s r.o (hereinafter the **Seller**). The Licence Terms and Conditions according to Chapter D shall apply to the lending of HW or SW Products accordingly.
2. The **Product** means a HW (hardware) or SW (software) article, which are produced by the Seller. **Goods** mean articles from other manufacturers.
3. The **Vendor** means a person who buys the Seller's articles for resale. The **User** means a person using the Seller's Products or Goods. The **Buyer** means the Vendor or the User who enters into a direct business relationship with the Seller. The **Supplier** means the Seller or the Vendor who enters into a direct business relationship with the User.
4. The original version of the Warranty and Licence Terms and Conditions is written in the Czech language. In case of any discrepancy in the text of the Czech and English versions of these terms and conditions or their supplements, the Czech version shall prevail.
5. These Warranty and Licence Terms and Conditions shall apply to all deals made as of the date of the applicability of the WLTC until further notice unless stated otherwise in the quotation, order confirmation or the contract.

B) Warranty Terms and Conditions

6. The Seller gives a warranty of the full operation of his own Products applicable for 24 months after the date of their sale to the Buyer. Upon agreement, the warranty period can be extended by the period of time needed by the Vendor for sale of the Product to the final User; however, the period shall not be extended by more than 6 months, unless the Product was operated in real or in test mode. A different warranty period may be stated in technical conditions for a specific Product, quotation, confirmed order or contract. The warranty is given only if the Buyer has paid all outstanding amounts due for delivery of the Products. For repairs or modifications of the Products repaired beyond the warranty, the Seller provides a warranty for the full operation of the repaired, modified or replaced components for 6 months following such repair or modification.
7. The Seller gives a warranty for sold Goods from third-party manufacturers and suppliers as provided by such manufacturers and suppliers (both as regards the duration and conditions thereof) and provided that the Buyer has paid all outstanding amounts due for delivery of the Goods.
8. Warranty claims concerning any malfunctioning or incompleteness of the Products after their purchase may be submitted without undue delay to the Supplier.
9. Warranty claims concerning the functionality of Products may be submitted to the Supplier, or in the case of Users in the Czech Republic directly at the Seller's address: SofCon, spol. s r.o., Křenova 11, 162 00 Prague 6. All shipping costs connected with a warranty repair shall be borne by the User.
10. The Seller does not issue Warranty Certificates for his Products. All Products, their structure and date of sale to the first Buyer are recorded in a database. As regards warranty claims filed by the User, who bought the Product in a way other than directly from the Seller, the User has to submit the purchase document indicating the Vendor, the date of sale and the Product ID, including its serial number.
11. The Seller shall carry out a warranty repair without undue delay.
12. The warranty does not apply to:
 - damage caused at transport not arranged by the Seller, as well as by incorrect storage, natural elements, incorrect external connection, the environment, particularly the effects of inadmissible mechanical stress (e.g. shipping in unsuitable packaging), the effects of inadmissible electric quantities (unacceptable power input, unacceptable input signals, overvoltage, lightning, etc.),

- damage caused by incorrect installation,
- unauthorized use of the Product, unqualified assembly, incorrect adjustment or operations,
- normal wear and tear during normal use, defects caused by insufficient maintenance,
- Products or Goods where the firmware or other software was changed without the Seller's approval,
- Products, the serial number of which cannot be determined.

13. Before handover of the software, the Seller shall check whether the software conforms to all specifications declared by the Seller and the assignment agreed upon by the parties. The Buyer shall accept the SW "as is". Any defect in the SW shall be recognized as being subject to the warranty only when the behaviour of the SW differs from the assignment or declared specification, or if a hidden defect hindering the use of the software for the purpose for which it was made is detected.
14. Any defect in the software supplied as the Goods shall be recognized as being subject to the warranty only in accordance with the warranty terms and conditions provided by the manufacturer.
15. The Seller does not give any warranties for SW supplied according to a special agreement in a source code format. The supply in a source code format includes also the submission of access parameters to electronically stored source formats.
16. The warranty for the software does not apply to defects caused by:
 - unqualified installation of the supplied software or operating system,
 - use of a system version other than that which the software has been supplied for, by setting other parameters of the operating system,
 - any modification of the supplied software without the Seller's approval,
 - use of an old SW version if a new repaired SW version was supplied to the Buyer,
 - use of a software not supplied by the Seller, computer viruses or HW failures.
 - use of a software without its valid license
 Furthermore, the warranty does not apply to minor errors in the software operation provided that they do not prevent the use thereof, or to additional requirements for the software operation specified by the User in the warranty period, unless otherwise agreed.
17. In order to avoid any consequential damage, the User is obligated to test the developed software in full and in all modes before its commissioning.
18. In the event that it is contractually agreed that the warranty repairs shall be performed on the User's or third party's premises, the User shall reimburse the Seller any travel expenses, extrawork and time unnecessarily spent on the User's or third party's premises.
19. In the case of a warranty repair of the SW, upon mutual agreement with the User and with his assistance, the Seller can carry out the repair by remote technical means (Internet, e-mail etc.), if possible.
20. In the event that a repair or extrawork do not qualify for warranty, the User shall pay to the Seller the full price for the work, transport of the Products and the Goods, travel expenses and time unnecessarily spent on the User's or third party's premises.
21. In the case that the SW, which had not been supplied by the Seller, was installed on the Seller's HW, the re-installation of the SW following the repair of the HW shall be arranged by the User.
22. The warranty shall expire if the Product has been taken apart without the Seller's consent and if any of its part(s) have been replaced, if different firmware has been installed, if the identification data have been rendered illegible or if the Product has been repaired by a person other than the Seller or its contractual service partners. The warranty terminates after the lapse of the warranty period. In case of a warranty repair, the warranty period is extended by the period of the warranty repair, unless the Product is in operation during this time.

C) Damages

23. In case of delayed supply of the Work or in case of failure to supply the Work through the fault of the Seller, the Buyer has the right to demand

an agreed contractual penalty, but he is not entitled to demand damages and lost profits.

24. The Buyer is entitled to compensation for damage caused to the Product during the warranty period in the form of putting the Product into faultless state according to conditions specified in part B).
25. The Buyer or any third party is entitled to compensation for damage caused by a defect of the Product. This entitlement does not apply to damage caused when:
 - the damage results from incorrect installation of the Product;
 - the damage results from unauthorized use of the Product, unqualified assembly, incorrect adjustment;
 - the Product was handled by an untrained personnel or contrary to the customer documentation or contrary to generally binding regulations;
 - the damage is a result of normal wear (and tear) during normal use or by a defect caused by insufficient maintenance;
 - the damage results from unauthorized intervention in the Product by the Buyer or third party;
 - the damage has been caused by unsuitable settings of technological or operating parameters;
 - the damage has been caused by insufficient testing of the Product's operation prior to the commissioning of the User's unit;
 - the damage has been caused by the incorrect operation of the software under conditions it has not been tested for;
 - the damage has been caused by the loss of data;
 - the damage results from the operation or idle state of the Product from the detection of a defect until its correction or removal;
 - the damage results from the operation of the Product that was not repaired after a defect had been detected in another unit of the same production lot and the Buyer had been asked to hand over the units of the same production lot for repairing;
 - the damage has been caused by the Product's operation with an older SW version after a new repaired SW version had already been given to the Buyer and the Buyer had been asked for replacement of the older SW by the new one in all the Products;
 - the damage results from the Seller's failure to act when the Buyer is in arrears concerning any amounts payable to the Seller;
 - the damage results from the Buyer's or third-party's inadequate activities or failure to act described in part B), paragraph 16;
 - the damage occurs after the warranty period, unless otherwise provided by the law;
 - the damage occurs outside the EU territory.
26. The Buyer is not entitled to demand any lost profit in cases referred to in paragraphs 24 and 25. The Seller is not responsible for any damage and lost profit caused by a defect in the Goods not produced by the Seller.
27. Both parties have agreed that the maximum amount of damages and lost profit for both parties shall be limited to the value of the Contract. The Contracting Parties understand that this Contract could not be made if it did not contain this provision.

D) Licence Terms and Conditions

28. As of the day of the acceptance of the Product or the Goods, the Buyer undertakes to use the supplied Product(s), Goods and technical documentation exclusively in accordance with these Licence Terms and Conditions and with third-party licence terms and conditions, if any.
29. In the event of a breach of the Licence Terms and Conditions, the Buyer is obligated to pay to the Seller a contractual penalty amounting to ten times the price for each illegal copy or Product reproduction made or for any unauthorized use of the supplied software, unless otherwise agreed in writing or in third-party licence terms and conditions.
30. Neither the Vendor nor the User nor any other third party has the right to reproduce, distribute, modify the design of the Product or the Goods, project documentation or SW supplied, or to do reverse engineering or to provide it to another party or to make any Product reproductions thereof without Seller's express written approval, subject to the exceptions specified below. The Vendor may, however, re-sell or rent or lend the Product or the Goods together with the full documentation to another Vendor or the User, if the Vendor obliges the Vendor or the User to adhere to these WLTC.
31. The User may copy the supplied SW only for his own security purposes and to the necessary extent. The Vendor who is not the User is not authorized to reproduce Seller's documentation or SW.

Use of SofCon HW Products and their Documentation

32. Technical designs of the Products described in the documentation forms the intellectual property of the Seller.
33. The supplied documentation or documentation recorded on the Producer's publicly available CD or website may be used and reproduced exclusively for study or servicing purposes and must not be further distributed separately.
34. The software provided together with the Seller's HW Products may only be used on the Seller's HW supplied.

Use of SofCon System Software

35. **The SofCon System Software** (hereinafter SSWSC) means the software of the Seller used for generating or operating the software created by the User. The SSWSC remains an intellectual property of the Seller unless stated otherwise in writing.
36. The Seller sells licences to use specific parts of the SSWSC for the following purposes:
 - use of a specific part of the SSWSC in the user programme (operating system, system libraries, etc.) by the User on a given number of units;
 - operation of the Seller's development software on a specified number of computers.
37. SSWSC may be delivered to the User on:
 - a medium (diskette, CD) manufactured by the Seller;
 - as a file via e-mail;
 - in any other way, i.e. via the publicly accessible Seller's website.
38. The User of the SSWSC who **has not purchased** the proper SW licence from the Seller for the appropriate part of the software may use that part of the software only if it is available from Seller's website or if it is publicly available on the Seller's CD, for study purposes only and must not use it in his own applications.
39. The User of the SSWSC who **has purchased** the proper SW licence from the Seller for the appropriate part of the software may use this software to generate his own application software to the extent of the licence. Moreover, this User may use a newer data medium or an electronic copy of the SSWSC for free installation of an updated version of the specific part of the SSWSC. Even then the User may use the SSWSC only on the number of units stated in the originally purchased licences.

Use of SofCon Application Software

40. The SofCon Application Software (hereinafter ASWSC) supplied on the basis of the Buyer's order for a particular User (customer) and a specific project remains the intellectual property of the Seller. ASWSC can be installed in the Product or in third-party Goods (e.g. inverter, PLC, PC).
41. The ASWSC is delivered without source codes, usually on some installation medium as an executable application accompanied by a user's documentation in electronic form.
42. ASWSC may be used only on the maximum number of units as agreed in writing during the licence granting process. In the case that an additional HW set is bought, the Seller should be asked to extend the SW licence, unless otherwise agreed with the Seller in writing.
43. The ASWSC can be protected against illegal usage by technical or software means.

Use of SofCon Embedded Systems with XPE

44. These systems are also subject to the "Microsoft Software Licence Terms for Windows XP Embedded Runtime", i.e. especially:
 - The embedded system means the supplied Product including SW.
 - The embedded system can be used only for the specific purpose for which it was designed.
 - It is forbidden to circumvent any technical limitations in the software and to use the unit as a general-purpose computer.
 - It is forbidden to install any other SW onto the embedded system (unless stated otherwise in the contract), but in every case the software to be installed must be distributed by the Producer.
 - It is forbidden to copy, distribute, reverse engineer, decompile or disassemble the Software supplied.
 - It is forbidden to rent, lease or lend the embedded system or to run it for commercial software hosting services.

V1305