

Special Conditions for the Supply of "smart CONTROL"

§ 1 Scope of the Special Conditions

1. EWIKON Heißkanalsysteme GmbH (hereinafter referred to as "EWIKON") has developed an assistance system for supporting production monitoring of the injection moulding process. This system is sold under the name "smart CONTROL". An essential component of smart CONTROL is a modular software consisting of a basic module and various optional additional modules.
2. The Special Conditions shall apply to all deliveries of smart CONTROL by EWIKON and supplement EWIKON's General Terms and Conditions of Sale and Payment. In the event of contradictions between the Special Conditions and the General Terms and Conditions of Sale and Payment, the Special Conditions shall prevail.
3. Deviating or conflicting terms and conditions of the Customer shall only become part of the contract if and insofar as EWIKON has expressly agreed to their validity in writing. The Special Conditions shall apply even if EWIKON unconditionally carries out the delivery to the Customer in the knowledge that the Customer's terms and conditions contradict or deviate from the Special Conditions.

§ 2 Delivery of smart CONTROL

1. The delivery of smart CONTROL (including the installed software) shall take place on the basis of an individual contract (offer and acceptance) to be concluded between EWIKON and the Customer. The software modules to be delivered to the Customer as well as the number of licences to be granted shall be specified in the individual contract.
2. The scope of delivery shall also include the user documentation for the software. The documentation shall be made available to the Customer either in paper or electronic form, at EWIKON's discretion.
3. If agreed in the individual contract, EWIKON shall modify the software modules to the Customer's requirements.
4. The software modules acquired by the Customer and modified for him (if agreed), including the user documentation, are hereinafter collectively referred to as "**Contractual Software**".

§ 3 Granting of Rights of Use to the Contractual Software

1. The Contractual Software is protected by copyright. Copyright notices on the Contractual Software may neither be removed nor changed.
2. Upon full payment of the remuneration agreed in the individual contract for the delivery of smart CONTROL, EWIKON shall grant the Customer a non-exclusive right, unlimited in terms of time and place, to use the Contractual Software for the intended purpose (§ 1 Para. 1) in accordance with the following conditions:
 - a) Depending on the licence acquired on the basis of the individual contract, the Customer may process a certain number of incoming data simultaneously with the Contractual Software. If

the Customer wishes to process a greater number of incoming data simultaneously than he is permitted to do with the purchased licence, larger processing capacities can be activated by EWIKON, provided that the Customer purchases additional licence(s).

- b) The Customer shall not be granted any right to access, use or disclose the source code of the Contractual Software.
 - c) Copies of the Contractual Software are only permitted to the extent that this is necessary for the intended use of the Contractual Software. The Customer may make a backup copy of the Contractual Software if this is necessary to secure future use. The Customer shall visibly affix the note "Backup copy" as well as a copyright note referring to EWIKON on the created backup copy.
 - d) The Customer shall only be entitled to decompile the Contractual Software if this is necessary to achieve the interoperability of the Contractual Software with other programs. This, however, only under the condition that EWIKON does not make the necessary information available to the Customer within a reasonable period of time upon the Customer's request.
 - e) The Customer is only authorised to modify the Contractual Software insofar as this is necessary to eliminate an error. This, however, only under the condition that the Customer has previously given EWIKON the opportunity to eliminate the error.
 - f) The Customer is entitled to sell smart CONTROL including the Contractual Software to a third party. The Customer shall inform EWIKON in advance of the intended sale. In the event of the sale, the Customer shall completely give up the use of the Contractual Software, remove all installed copies of the program from his computers and delete all copies on other data media. Furthermore, the Customer shall expressly oblige the acquiring third party to comply with the scope of the granting of rights in accordance with the provisions of this § 3.
 - g) The rental or loan of smart CONTROL including the Contractual Software to a third party, e.g. within the framework of a tool loan, is allowed provided that the Customer informs EWIKON in advance of the intended transfer and the Customer expressly obliges the third party to comply with the scope of the granting of rights in accordance with the provisions of this § 3. For the period of temporary transfer to the third party, the Customer shall not be entitled to use the Contractual Software itself.
3. If the Customer uses the Contractual Software to an extent which exceeds the rights of use acquired by him qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of acquired licences), he has to inform EWIKON immediately of the overuse and to acquire the licence(s) necessary for the permitted use from EWIKON. Otherwise, EWIKON shall immediately assert the rights to which it is entitled.
4. The Customer undertakes to secure the Contractual Software as well as the access data (user name and password) against access by unauthorised third parties. He shall take suitable measures for this purpose. The Customer shall immediately change the password provided by EWIKON after the initial registration.
5. In the event that the Contractual Software is provided for test purposes, the use of the Contractual Software shall only be limited to the test period specified by EWIKON. After this period, the use of the contractual software is no longer permitted. Furthermore, the provisions of this § 3 shall apply to the use of the Contractual Software for test purposes.

§ 4 Liability for Defects in Quality and Title

1. EWIKON warrants that smart CONTROL, including the Contractual Software, does not have any defects that significantly impair the intended use of smart CONTROL. Furthermore, EWIKON warrants that the Customer can use smart CONTROL without infringing the rights of third parties.
2. The warranty for defects shall not apply to defects which are based on the fact that the Customer has not used smart CONTROL for the contractually intended purpose or has made changes to it without being entitled to do so by law or these Special Conditions.
3. The limitation period for claims for defects is 12 months and begins with the delivery of smart CONTROL to the Customer.

§ 5 Other Liability

EWIKON shall be liable for damages incurred by the Customer in connection with the delivery and/or use of smart CONTROL as follows:

1. EWIKON shall be liable in accordance with the statutory provisions in the event of
 - intent and gross negligence,
 - for injury to life, body and health,
 - according to the regulations of the product liability law as well as
 - in the case of defects which EWIKON has fraudulently concealed or the absence of which EWIKON has guaranteed.
2. In the event of a breach of an obligation which is essential for the achievement of the purpose of the contract and which EWIKON has breached neither intentionally nor through gross negligence, EWIKON shall be liable for the foreseeable damage typical for the contract. The parties agree that the contract-typical foreseeable damage does not exceed an amount of EUR 20,000.
3. EWIKON shall not be liable for any further damages.

§ 6 Miscellaneous

1. Amendments and supplements to these Special Conditions must be made in text form.
2. These Special Conditions and all legal relationships between the parties shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. The place of jurisdiction shall be the court responsible for EWIKON's registered office. EWIKON shall, however, also be entitled to sue the Customer at the court responsible for the Customer's registered office.

4. Should any provision of these Special Conditions be invalid, this shall not affect the validity of the remaining provisions. In this case, the parties shall replace the invalid provision with a valid provision that comes closest in economic terms to the intended purpose of the invalid provision.

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