	Terms for Delivery — Hardware/Software	
port	**Happy Clients in Realtime Communication and Control**	TÜV SÜD ISO 9001

port GmbH $ Status: Released

Terms and Conditions
for the Delivery of Hardware and Driver Software

I. Delivery of Hardware and Driver Software

§1   Scope of Deliveries

1.1   The hardware and driver software shall operate as described in their product description and more detailed in their user documentation.

In respect of such hardware or softwares defined in the contract as third party products, *port* only warrants and represents that they fulfil these requirements, so that the entire system can be used productively. *port* does not warrant nor represent that these third party products comply with the product description of their manufacturers, nor that they are free of other errors.

The products shall embody all legal and other provisions related to their use.

1.2   The programs shall be delivered in a machine-readable format (object code). If *port*'s programs have interfaces for interoperability with other programs, *port* shall, at Client's request, provide required information to use such interfaces, subject to reimbursement of expenses. Client may disclose such information to other contractors as necessary.

1.3   The user documentation for the corresponding programs shall be delivered by electronic media like storage media, email or user download. The user documentation for hardware and system software, if not delivered by the respective manufacturer, shall only be delivered at Client's request, subject to additional payment. The format will be determined by the respective manufacturer (stored on machine-readable media or printed).

1.4   Until payment has been made in full, the hardware and the media containing the programs shall remain *port*'s property and shall not be pledged nor assigned as a collateral security.

§2   Right to Use the Programs

2.1   *port* grants to Client the right to use the acquired programs to the extent agreed on in the contract. Client may use the programs for its own purposes and for the purposes of Client's group of companies.

2.2   Client agrees to use the corresponding software only on IT-equipment that *port* has declared to be compatible with these programs.

2.3   Client may transfer the right to use the programs in machine-readable format (object code, not source code) to another user, if Client confirms to discontinue the use of the programs and the new user, before receiving the media, accepts in writing towards *port* to take over all obligations to protect the programs and to comply with the agreed restrictions of the right to use.

§3   Performance

3.1   At Client's request, *port* shall install all products at Client´s premises. In this case, Client shall timely establish the conditions for the installation of the products, in particular install the local network as needed. In case it is agreed in the contract that *port* shall install the programs, Client shall ensure that its personnel is capable of handling the programs at the moment of installation at the latest. *port* recommends that Client's personnel shall have received extended training before the installation of the programs.

port shall check, before starting the installation of the products, whether or not the network works properly. Client shall confirm the successful installation of the programs in writing.

Client shall follow the instructions for installation of the hardware as defined by the manufacturer. At Client's request, *port* shall consult Client how to prepare the conditions for installation.

3.2   Client shall be responsible for the implementation of the programs, Client shall also be responsible for testing the programs under the conditions they shall be used under productively, before using them productively. At Client's request, *port* shall provide support (i.e. consultancy, installation support, demonstration of proper installation, brief or extended training) on the basis of time consumed.

port GmbH $ Status: Released

3.3   Client shall test *port*'s deliveries for defects without delay in the ordinary course of business.

3.4   All support (including specifically installation, consultancy, brief or extended training, acceptance test support) shall be reimbursed separately on the basis of time consumed, unless otherwise agreed.

3.5   *port* shall name a consultant, Client shall name a representative. Both shall have the authority to make the necessary decisions or shall obtain authorization for them in a timely manner. *port*´s consultant shall put decisions in writing. Client's representative shall provide all required information. *port*'s consultant shall contact Client's representative as is required to ensure the proper performance of the mutual obligations.

§4   Client's Responsibilities for Software Protection

4.1   Client acknowledges that the programs and the related documentation including future versions are copyrighted, and represent confidential information and trade secrets, proprietary to *port* or to *port*'s supplier. Client shall take all necessary steps to prevent the misuse of the programs and their related documentation.

If programs are delivered in source-code, Client shall make them available to any third party only with *port*'s prior written permission. Client's obligation shall be permanent. The permission may not be unreasonably withheld, but it need not be given to enable Client to obtain maintenance from a third party.

4.2   Client may copy the programs only for back-up purposes, for replacement or if source-code has been delivered in order to search for defects. Client shall attach to every media containing a copy of a program the same copyright and proprietary notices as are attached to the media delivered by *port*.

Client may make copies of the user documentation for internal purposes only and only to the extent which is admissible in accordance with Client´s right of use.

II. General Terms and Conditions

§5   Charges and Payments

5.1   Prices for hardware are ex factory. Accessories, such as media, signal amplifier, data cables or power supply cables, are only included in the price, if so stated in the contract. If *port* installs and implements such equipment, this work shall be charged on the basis of time consumed.

5.2   If one of *port*'s suppliers increases or decreases his list price with effect to *port*, *port* is entitled to pass such change on to Client. Increases are not allowed for deliveries, which shall take place within four months after the conclusion of the contract. If the increase exceeds 10 %, Client is entitled to rescind the contract within thirty days after the receipt of the demand for the increase.

5.3   In as far as it is agreed to remunerate *port* on the basis of time consumed, hourly rates, travel expenses and incidental expenses shall be paid in accordance with *port*'s current standard rates (price list), unless other rates are agreed on.

5.4   Payments for the products shall be billed after the installation, if carried out by *port*, otherwise after delivery.

5.5   Payments shall be effected without deductions within thirty (20) days after invoicing.

Client is entitled to question invoices on the basis of costs incurred only within one (1) month after receipt. *port* shall remind Client thereof in the

5.6   Duties, taxes and levies including VAT if applicable shall be paid by Client on all charges.

5.7   Client has no right of retention, in particular no right to withhold payment. Client may set off only those sums owed by Contractor which are unappealable or uncontested against sums owed by Client.

§6   *port*'s Claims, *port*'s Delay

6.1   In the event of any circumstances for which *port* is not responsible, and which adversely affect the performance of the contractual obligations, including strike and lock-out, *port* is entitled to an appropriate adaptation of the terms of the contract, in particular to an appropriate extension of the delivery date. If the cause is attributable to Client and results in additional efforts to *port*, *port* is also entitled to additional compensation.

6.2   If *port*'s delay exceeds 30 days, Client is entitled, for every subsequent week, to a penalty of 0,5 % of the value of such part(s) of the works that cannot be used according to the purposes of the contract, but the penalty shall be limited to 5 % of the total contract value.

§7   Removal of Defects

7.1   If Client finds, in the course of correct use of the programs, what Client believes to be a defect in a product, Client shall provide *port* with reasonably specific information as to the nature of the defect and the conditions under which it occurs, in writing, if so requested by *port*.

Client is only entitled to raise claims if Client can reproduce the defect or demonstrate it by using computer output.

Upon request, Client shall give all necessary support to *port*, and in particular provide a copy of the relevant program being used when the defect appeared. Client shall provide testing time on Client's IT-system and install corrections delivered by *port*.

7.2   *port* shall, within a reasonable period of time and at no cost to Client, remove the defect, at *port*´s choice, either by replacing the defective product or by correction of defects (subsequent performance). If a defect substantially restricts the use of an application program, *port* shall provide a workaround (temporary solution), if needed, so that the defect is not substantial any longer.

port may deliver the correction of other defects by delivering a new version as soon as is adequate subject to a reasonable policy of further development. *port* shall develop workarounds insofar as these are technically and at acceptable costs to *port* feasible. With respect to programs, which are defined as third party programs, *port* can only use its best endeavors to obtain and transfer corrective measures and, if appropriate, provide workarounds.

7.3   All claims against *port* shall be expressly excluded for those products, which Client modifies or manipulates in any other way, unless Client proves, when reporting a defect, that the defect did not result from any such modification or manipulation.

7.4   *port* is entitled to reimbursement of costs if Client reports what Client believes to be a defect without being able to prove it to be so.

§8   *port*'s Liability

8.1   The legal provisions shall apply with the following amendments:

8.2   Defects shall be removed in accordance with § 7.

8.3   *port* including any person engaged in performing any obligation under this contract shall be liable for damages under any claim based on normal negligence only if *port* breaches a basic obligation under this contract. In this event, *port*'s liability shall be restricted to the higher of the following amounts:

- EUR 100.000,00,
- the contract value, or
- the characteristic and foreseeable damages.

Client is entitled to claim for a higher maximum, but *port* may then require a surcharge for the aggravated risk.

The restrictions shall not apply to the extent the damages are covered under *port*'s business liability insurance and provided the insurance company has effected payment to *port*. *port* agrees to maintain the coverage of the business liability insurance as provided at the time of the execution of the contract.

Claims for personal injury and claims based on the German Product Liability Act shall remain untouched.

§9 Confidentiality

9.1 *port* shall keep confidential Client's trade and business secrets, and all other information designated in writing as confidential by Client, obtained under or in connection with this contract. *port* shall have no obligation with respect to any information that is already in its possession, is independently developed or becomes publicly known through no wrongful act of *port*. This obligation shall survive the contract in the case of its rescission.

9.2 *port* is not obligated to keep confidential any ideas, concepts, know-how or techniques related to the development of software.

9.3 *port* shall require its employees to adhere to the obligations stipulated in § 9.1.

9.4 *port* may enter Client's name into its list of customers together with a short description of the *port*'s performance. All other references that Client is *port*'s customer are subject to Client's prior approval.

§10 Miscellaneous

10.1 The contract shall constitute the entire agreement between the parties and shall not be altered, amended or cancelled, except in writing and with the consent and signature of all parties concerned.

10.2 Exclusive venue shall be *port*'s main place of business.

10.3 The contract shall conform with and be governed by the laws of the Federal Republic of Germany without regard to its choice of law rules and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods.