

Terms and Conditions for the Delivery of Electronic Control Units for Evaluation and Development Purposes

1. Characteristics and Intended Use of the Electronic Control Unit

- 1.1 The characteristics of the electronic control units (hereinafter "ECU") are stated in the product description and, additionally, in the user documentation.
- 1.2 The ECU serves solely for use in prototype applications for Customer's own evaluation and development purposes but not for serial use in vehicles. Customer and Vector Informatik GmbH (hereinafter "Vector") agree that the ECU need not possess a particular quality required for serial use; nor is it a condition of this contract that the ECU must be fit for such purposes without defects.

2. Customer's Duty to Test

Customer acknowledges that the Customer has a particular duty to test because Vector is unable to test the interoperability of the ECU with the software specifically used by Customer for the ECU. Therefore, Customer shall carefully test the ECU and/or its interoperability with such software, in particular before it is used in areas where a risk of death, bodily harm, or property damage arises or where its use can cause substantial economic losses.

3. Right to Use the Firmware

Vector grants Customer a nonexclusive right to use the firmware (binary) of the ECU as an integral part of the ECU. This license is limited to the use in the ECU for prototype applications for Customer's own evaluation and development purposes. Customer is not entitled to (i) use and/or have used the firmware in electronic control units of other manufacturers; and/or (ii) distribute the firmware for such purposes. Customer may decompile the interface information of the firmware solely within the limits of § 69 e of the German Copyright Act (UrhG) and only on condition that it has requested the necessary interface information from Vector in writing two weeks in advance to no avail. If Vector provides the Customer with the necessary interface information, Customer shall pay Vector's costs for providing such information.

4. Defects of the Firmware

In the case of defects in the firmware which seriously impair the use thereof, Vector - at Customer's request - shall provide a workaround prior to the final remedy of the defect. Vector is not required to remedy other defects until such time as Vector performs the appropriate version maintenance scheduled by Vector. Vector shall, however, also provide workarounds for such other defects to the extent that is reasonable for Vector. Vector is not required to remedy any defects in software components expressly identified as such by previous suppliers except to the extent that Vector has already received corrective measures from the respective supplier.

5. Confidentiality

Customer shall keep confidential, and take all necessary precautions to prevent third parties from obtaining any knowledge of, the ECU (including firmware) and the underlying know-how as well as the associated documentation and data. Third parties also includes Customer's affiliates according to §§15ff. of the German Stock Corporation Act (AktG).

6. Retention of Title

Vector reserves title to the subjects of the contract until the purchase price is paid in full.

7. Liability

- 7.1 The firmware is based on the specifications of OSEK/VDX, ISO, ASAM, LIN and/or AUTOSAR (hereinafter collectively "Specifications"). Vector shall not be liable for infringements of intellectual property rights caused by the implementation of the Specifications unless Vector implemented the Specifications despite knowledge that intellectual property rights would be infringed.
- 7.2 Regardless of the legal reason, Vector shall only be liable for damages and reimbursement of futile expenses (*Ersatz vergeblicher Aufwendungen*) as follows:
- 7.2.1 Vector shall only be liable if a material obligation (cardinal duty) of the contract is culpably (*schuldhaft*) breached. In this case Vector's liability shall be limited to the amount of the foreseeable damages that typically must be expected to arise. Material duties are duties, the performance whereof makes it possible to properly perform the contract, and with respect to which the contractual party may ordinarily rely on compliance.
- 7.2.2 To the extent that Vector is liable under Section 7.2.1, this liability is limited to a total of EUR 100,000 or the net order value, whichever is higher.
- 7.2.3 The liability limitations in Section 7.2.1 and Section 7.2.2 shall not apply to the extent the damages are covered by Vector's business liability insurance, and the insurer has paid Vector.
- 7.2.4 Further, the liability limitations in Section 7.2.1 and Section 7.2.2 shall not apply in case of (i) intentional or grossly negligent conduct by Vector, or (ii) damages arising from bodily injury, or injury to health, or loss of life, or (iii) a guarantee of the quality given by Vector, or (iv) mandatory liability under the German Product Liability Act (Produkthaftungsgesetz).
- 7.2.5 To the extent Vector's liability is excluded or limited under Sections 7.2.1 through 7.2.4, this shall also apply for the benefit of Vector's (vicarious) agents (*Erfüllungsgehilfen*).
- 7.2.6 The provisions under Section 7 shall not result in a modification of the burden of proof to the disadvantage of the Customer.

8. Applicability and Application of the Terms and Conditions

- 8.1 These Terms and Conditions apply in the course of business with entrepreneurs, public law corporations and special funds under public law.
- 8.2 The delivery of ECU for evaluation and development purposes is exclusively governed by these Terms and Conditions. Unless Vector has expressly consented to them in writing, any provisions in the Customer's standard terms and conditions which conflict with, vary from or add to these Terms and Conditions will not become part of the contract between Vector and the Customer.

9. Requirement of Written Form

Amendments and additions to these Terms and Conditions must be made in writing and signed. The same applies in particular with regard to amendments and additions to this written form clause.

10. Governing Law and Jurisdiction

- 10.1 These Terms and Conditions will be interpreted in accordance with and governed by the law of the Federal Republic of Germany to the exclusion of its conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 The courts at the place where Vector has its registered office will have sole jurisdiction for any disputes arising directly or indirectly from this contractual relationship. Vector will nonetheless be entitled to commence legal proceedings against the Customer at the place where the Customer has its registered office.