

General Terms and Conditions for Computer Software

as amendment to the General Terms and Conditions of Sale of Dücker conveyor systems GmbH ("DÜCKER")
Update 5 April 2012

Types of Software

1. For purposes of these additional terms and conditions Software comprises the following types of software:
 - 1.1 Computer Software means the software contained in the deliverables, consisting of the Software Provided by DÜCKER and/or the Sub-Licensed Software.
 - 1.2 The Software Provided by DÜCKER means software for which DÜCKER possesses the intellectual property rights.
 - 1.3 Sub-Licensed Software means software for which a third party possesses the intellectual property rights and for which DÜCKER in accordance with the permission received from the owner of the intellectual property rights grants a license.

The Customer's License to the Computer Software

2. Unless agreed otherwise in writing, the following applies for the customer's right to use the Computer Software:
 - 2.1 *Software Provided by DÜCKER*
The customer acquires a non-exclusive license to use the Software Provided by DÜCKER only in accordance with the intended use of the deliverables. The customer may assign the license to parties purchasing or leasing the deliverables. DÜCKER reserves the intellectual property rights in the software even if this software has been produced exclusively for the customer. The customer may, only for the customer's own internal purposes and at his own risk, modify DÜCKER's software within the intended area of use of the product and the applicable safety regulations. DÜCKER is not obliged to hand over the source code of the Software Provided by DÜCKER.
 - 2.2 *Sub-Licensed Software*
Subject to any agreements concerning restrictions between DÜCKER and the party possessing the intellectual property rights, the customer acquires the non-exclusive license to use the Sub-Licensed software only in accordance with the intended use of the deliverables; furthermore he is entitled to assign the license to parties purchasing or leasing the deliverables. DÜCKER is obliged to inform the customer in writing about any restrictions regarding the deliverables before the contract is concluded. DÜCKER is not obliged to hand over the source code of the Sub-Licensed Software.

Computer-Software Updates

3. Unless agreed otherwise in writing, DÜCKER is not obliged to provide to the customer updated versions of the Computer Software.

Infringement of Property Rights

4. In accordance with **clauses 4.1 – 4.4** DÜCKER is obliged to indemnify the customer against any third party claims regarding the use of the Computer Software by the customer, provided that the claims arise from copyright or other intellectual property right infringements existing at the time of the delivery.
 - 4.1 The obligations of DÜCKER in this clause 4 do not apply with respect to Computer Software, (i) not supplied by DÜCKER or not used and installed at all times in accordance with the documentation, (ii) made in whole or in part in accordance to customer specifications where the alleged infringement relates to such specifications, (iii) which are modified after the delivery date if the alleged infringement relates to such modification, (iv) combined by customer with other products, processes or materials where the alleged infringement relates to such combination, or (v) where customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement.
 - 4.2 DÜCKER shall bear the costs for the defense against claims set forth in this **clause 4** arising from infringements of intellectual property rights. DÜCKER shall reimburse the customer for the amounts the customer is obliged to pay due to a settlement approved by DÜCKER or due to a final court decision. However, DÜCKER is only liable if the customer promptly informs DÜCKER in writing about any claims made against him and if DÜCKER is given sole control and authority over the defense and settlement of such claim.
 - 4.3 In case of an infringement, DÜCKER, at its option within a reasonable time, shall:
 - procure the right to continue using the Computer Software,
 - modify the Computer Software to make it non-infringing, or
 - replace the Computer Software by a program which has similar functions, and the use of which does not infringe intellectual property rights of third parties.
 - 4.4 Further claims in case of an infringement of copyrights and other intellectual property rights do not exist.