§ 1 General Information

1. MOTORTECH GmbH, Hogrevestr. 21-23, D-29223 Celle (hereinafter referred to as "Licensor") is a company specialized in the development and manufacturing of system components for gas engines and offers its worldwide customers a complete product line for all standard gas engines and the associated services. The Licensor's own developements also include systems for the control and adjustment of various gas engine functions, including the associated software for the configuration and diagnosis of these systems (hereinafter referred to as "control devices").

2. The Licensee acquired a control device with the associated software from the Licensor (hereinafter referred to as "Purchase Agreement"). The transfer of the software is made supplementarily to the provisions of the Purchase Agreement in accordance with these License Terms.

§ 2 Object of the Agreement

1. The Licensor shall transfer the software described in more detail the Purchase Agreement together with documentation or product description (hereinafter jointly referred to as "software") exclusively on the terms of these License Terms permanently and in return for payment of the purchase price agreed for the control device and software.

2. The software shall be transferred to the Licensee on the agreed data-carriers and/or provided to the Licensee for download.

3. The source code of the software shall not be included in the scope of delivery.

4. The Licensee itself must ensure the technical minimum requirements of its hardware for the purpose of the installation of the software.

5. Services in the area of support, maintenance, adjustment/change as well as the supply of improvements or modifications of the software to changed system conditions shall not be the subject of these License Terms. If necessary, the Parties shall conclude a separate maintenance agreement for this purpose.

§ 3 Scope of Use

1. The Licensor shall grant the Licensee – subject to payment of the remuneration specified in the Purchase Agreement – a non-exclusive, permanent and spatially unrestricted right to use the software exclusively for its own purposes on the terms of these License Terms (hereinafter referred to as "contractual use").

2. Duplications of the software shall only be permissible insofar as this is necessary for the contractual use. The Licensee may make backup copies of the software in accordance with technical usage to the extent necessary.

3. The Licensee shall only be authorized to make changes, extensions and other revisions of the software in the meaning of § 69 c no. 2 UrhG [Copyright Act] to the extent the law permits this as essential. Before the Licensee itself or through third parties eliminates errors, it shall permit the Licensor two attempts to eliminate the error. This shall not affect § 69 e UrhG.

4. Should the Licensor transfer to the Licensee in the context of subsequent improvements or maintenance supplements (e.g. patches) or a new version of the software (e.g. update, upgrade), which replaces the software transferred earlier ("old software"), these shall be subject to the provisions of these License Terms.

5. Should the Licensor provide a new version of the software, the power of the Licensee with regard to the old software according to these License Terms shall cease even without an express request for return from the Licensor as soon as the Licensee makes productive use of the new software.

6. Duplication and/or revision of the documentation or specifications by the Licensee is not permitted.

§ 4 Protection of the Software

1. Unless rights were expressly granted to the Licensee according to these License Terms, the Licensor shall be exclusively entitled to all rights to the software (and all copies made by the Licensee) – especially copyright, the rights to inventions and technical property rights. This shall also apply to editing of the software by the Licensor. The title of the Licensee to the particular data-carriers containing such copies shall remain unaffected.

2. The Licensee shall preserve the transferred software carefully to rule out abuse. It shall make the software (irrespective of whether unaltered or revised) available to third parties only after prior written approval from the Licensor. Employees of the Licensee and other persons present at the Licensee for the contractual use of the software shall not be regarded as third parties. This shall not affect § 5 of the License Terms.

3. The Licensee shall not be permitted to change or remove copyright marks, labels and/or control numbers or – marks of the Licensor. Should the Licensee change or edit the software, these notes and marks must be adopted in the altered version of the software.

4. Should the Licensee transfer data-carriers, memory or other hardware on which the software (in whole or in part, unaltered or revised) was stored (i) to third parties without a transfer according to § 5 of the License Terms existing, or (ii) relinquishes direct ownership thereof, it shall ensure that the stored software was completely and permanently deleted beforehand.

5. The Licensor shall be entitled to check whether the software is being used in compliance with the provisions of the License Terms. For this purpose it may demand information from the Licensee, especially regarding the period and scope of the use of the software as well as inspect the books and documents as well as the hard- and software of the Licensee. The Licensor must be granted access to the business premises of the Licensee during normal business hours for this purpose.

§ 5 Transfer of the Software to third Parties

1. The Licensor may transfer the software to a third party only as a unit and subject to complete and final cessation of its own use of the software. The temporary or partially paid transfer of the use to third parties shall be prohibited, irrespective of whether the software is transferred in tangible or intangible form. The same shall apply in the event of transfer free of charge.

2. Transfer of the software shall require the written approval of the Licensor. The Licensor shall issue the approval if (i) the Licensee assures the Licensor in writing that it has transferred all original copies of the software to the third party and deleted all copies it had made itself and (ii) the third party declares in writing its agreement to the Licensor to the terms of use and transfer agreed here.

§ 6 Material and Legal Defects, Guarantee, Liability

1. The Licensor shall guarantee the contractually agreed quality of the software pursuant to § 6 (2) of these License Terms according to the regulations of commercial law and that no rights of third parties arise through the use of the software in the contractual scope by the Licensee.

2. The contractually agreed quality of the software is definitively described in the documentation or specifications. Public statements regarding the software shall only become part of the contractually agreed quality if they are expressly confirmed by the Licensor in writing. The information and specifications included in the documentation or specifications shall not be regarded as a guarantee of the quality of the software or as another guarantee unless it was expressly termed such by the Licensor in writing.

3. The Licensor shall first meet the guarantee in the event of material defects of the software through subsequent specific performance. For this purpose it shall at its own discretion either transfer to the Licensee a new software version free of defects or eliminate the defect; it shall also be regarded as defect elimination if the Licensor shows the Licensee reasonable ways of avoiding the effects of the defect. The Licensee shall grant the Licensor access to the software for troubleshooting and defect elimination.

4. The Licensee shall be obliged to accept a new software version if the contractual functional scope is preserved and the acceptance does not lead to considerable disadvantages.

5. Should third parties raise claims hindering the Licensee from observing the contractually granted powers of use, the Licensee shall inform the Licensor immediately in writing and in full. It shall hereby authorize the Licensor to bring actions against third parties and out of court alone. Should the Licensee be sued, it shall coordinate with the Licensor and take procedural actions, especially acknowledgements and settlements, only with the latter's agreement.

6. The Licensor shall ward off claims of third parties at its own expense and exempt the Licensee from any costs and damages associated with warding off the claims in the context of the contractually determined liability limits unless these are based on conduct of the Licensee in breach of its duty.

7. Otherwise the regulations of the Purchase Agreement or the General Terms and Conditions of Business of the Licensor underlying the Purchase Agreement shall apply in the event of material and legal defects of the software and to the liability of the Licensor.

§ 7 Confidentiality

1. The Licensee must – without limitation in time – treat all confidential information, which the Licensor states or communicates, confidentially and only for the purpose of the conduct of these License Terms. The Licensee shall protect confidential information against unauthorized access and with the same care that it applies to its own equally confidential information, at least, however, with the care of a prudent businessperson.

2. "Confidential information" shall be all information and documents that are either identified as confidential or whose confidentiality arises from the circumstances or their nature. Confidential information shall in particular be technical, business and other information, for example information relating to technologies, research and development products, services, prices of products and services, customers, employees, subcontractors, marketing plans and financial affairs of the Licensor. The contractual software shall also form part of the confidential information. Information shall not be regarded as confidential that

   a) was known to the Licensee before it received it from the Licensor under these License Terms or
   b) the Licensee developed independently without recourse to the confidential information of the Licensor or
   c) the Licensee obtained from a third party, which is not bound by restrictions in relation to the use and transfer of this information or
   d) is or becomes generally known without the fault or action of the Licensee or
   e) the Licensor stated was not confidential by written declaration vis-à-vis the Licensee.

3. Confidential information may not be disclosed by the Licensee to third parties without prior written approval of the Licensor unless

   a) this is necessary on account of mandatory applicable legal conditions or court or supervisory body order and the Licensee informed the Licensor immediately in writing of the particular obligation or
   b) the confidential information is made available to the advisors of the Licensee in connection with the interpretation or implementation of the contractual documents or a dispute arising out of this and the advisor committed himself in advance in writing vis-à-vis the Licensee to confidentiality or is professionally committed to confidentiality.

4. The Licensee shall commit the staff deployed and any third parties brought in for fulfillment of the Agreement correspondingly to confidentiality.

§ 8 End of the Right of Use to the Software

In all cases of the termination of its authorization to use (e.g. by rescission, subsequent delivery), the Licensee shall immediately surrender all supplies of the software and delete all copies unless it is legally committed to longer preservation. This shall not affect § 3 (4) of the License Terms. It shall confirm completion of these duties vis-à-vis the Licensor in writing.

§ 9 Final Provisions

1. These License Terms shall be subject to the relevant law of the Federal Republic of Germany for legal relationships between nationals.

2. The exclusive legal venue for all disputes arising out of or in connection with these License Terms if legally permissible shall be the registered office of the Licensor.

3. Amendments to and supplements of these License Terms must be in writing provided no stricter, in particular no tarized, form is legally prescribed. This shall also apply to waiver of the above written form requirement. No oral ancillary arrangements were made.

4. Should a provision of these License Terms be or become ineffective or should the License Terms include a regulatory gap, this shall not otherwise affect the effectiveness of the Agreement. § 139 BGB [German Commercial Code] shall be contractually excluded as a whole. The legally permissible regulation that comes closest to what the contractual partners intended upon conclusion of the Agreement shall take the place of the ineffective provision. A provision corresponding to what the contractual partners would have agreed according to the meaning and purpose of the Agreement, taking all circumstances into account, if they had been aware of the existence of the gap, shall take the place of the regulatory gap.