GENERAL TERMS AND CONDITIONS FOR THE USE OF FREE AND OPEN SOURCE SOFTWARE

of HELLA GmbH & Co. KGaA

AD-01427

Edition date: 06.05.2022   Version: 1.0

These GENERAL TERMS AND CONDITIONS FOR THE USE OF FREE AND OPEN SOURCE SOFTWARE (hereinafter**"GTC-FOSS")**of **HELLA GmbH & Co. KGaA** (Rixbecker Straße 75, 59552 Lippstadt, Germany) and its **affiliated companies (**hereinafter "**HELLA**") shall apply to all deliveries and services to HELLA which contain FOSS in any form, whether permanently or temporarily provided, as separate FOSS or as FOSS combined with software and/or hardware and shall include FOSS of the Supplier itself as well as FOSS for the use of which the Supplier is responsible through subsuppliers.

1. DEFINITIONS

1.1. The term **Free and Open Source Software** ("**FOSS**") includes such software components, parts thereof or individual files that are available as source code and without payment of fees and are licensed under a license that grants the user rights to edit and distribute. This applies in particular when it comes to licenses issued by the OSI (https://opensource.org/licenses) and/or the FSF (https://www.gnu.org/licenses/license-list) as FOSS licenses or are included in the SPDX license list (https://spdx.org/licenses/).

1.2. Software components, parts thereof or individual files that have been marked as **public domain** by the rights holder shall be treated as FOSS within the scope of this contract. The designation as public domain means that the rights holder have expressed that they no longer wish to have any rights to the corresponding software components, parts or files and wish to make them available in the public domain or to license them to anyone without conditions.

1.3. Furthermore, the term FOSS is used, if it is **freeware** which, as commercial software, is made available to the user free of charge for use.

1.4. A **copyleft license** is a form of use and license provision for FOSS which may result in software elements integrated or associated with the respective FOSS also only being distributed under the respective use and license provisions of this copyleft license.

1.5. A **copyleft effect** refers to the use of FOSS that is under a copyleft license, and due to which any work **("any derivative work")** must also be classified as FOSS under a copyleft license.

1.6. **License incompatibility** occurs when different FOSS licenses apply cumulatively to the same files and compliance with the license requirements of one license is a breach of the license requirements of the other license.

1.7. **Affiliated companies** includes the use of FOSS by HELLA, HELLA directly and indirectly dependent companies within the meaning of Sections 15 et seq. German Stock Corporation Act.

2. SUBJECT MATTER OF THE CONTRACT

2.1. Unless expressly agreed otherwise, the following order of precedence shall apply to the use of FOSS as an integral part of the contract (hereinafter also referred to as "**Contractual Elements**"):

1. the order of HELLA,
2. these General Terms and Conditions for the Use of FOSS,
3. the Supplier's offer, and
4. otherwise the statutory provisions.

2.2. All orders for the use of FOSS shall be made in accordance with the GTC-FOSS of HELLA. Terms and conditions for the Use of FOSS of the Supplier deviating in content shall not become the basis of the contract even if HELLA does not expressly object to them in individual cases. Amendments or supplements and other ancillary agreements must be made in writing.

3. PROVISION OF SERVICES

3.1. The Supplier undertakes to use FOSS within the scope of deliveries and services only in compliance with the GTC-FOSS.

3.2. The Supplier may only use FOSS licensed as specified in the separate **attachment HELLA OK List AD-01165**. The use of FOSS under license conditions other than those specified in the separate attachment HELLA OK List AD-01165 requires the express prior written consent of HELLA.

3.3. The Supplier must provide HELLA with the following information and materials at the latest with the provision of the deliveries and services earlier upon request, and update them without being asked to do so as soon as a change occurs with regard to the FOSS used during the performance of the contract. Specifically, the following information must always be available completely and correctly:

– A list of the FOSS used with their name, their version and the corresponding FOSS license names and their unique license number for all files used of the

respective FOSS.

- A list of copyright notices and whether the copyright notices have been modified by or for the Supplier and whether the FOSS has already been disclosed by the Supplier to third parties.

- Download link of the respective license texts as well as the source code.

- The Supplier shall generate a text file (for example in .txt format) listing the FOSS used in the deliveries and services including the license text of the respective FOSS licenses. The text file shall first identify the FOSS, indicate the copyright notice and then list the complete and unmodified license text of the FOSS.

- The Supplier shall hand over to HELLA the FOSS in source code together with all notes and files enclosed with the FOSS, such as "notice" and "readme" files).

- The Supplier must ensure that the deliveries and services do not contain any licence incompatibilities.

- A confirmation by the Supplier that all deliveries and services have been checked with an automated FOSS analysis tool for the FOSS used and the copyright and license details from all FOSS files contained. With the provision of the deliveries and services, the Supplier undertakes to make available the result of the automated analysis carried out.

- An archive containing the materials that must be made available under copyleft licenses, such as the source code of the FOSS including any editing, combined code, and other materials such as scripts or keys, if FOSS is used under appropriate licenses.

3.4. If, due to the use of FOSS, the Supplier's cooperation is required because a recipient of the FOSS asserts a claim for support or technical implementations, the Supplier shall be obliged to provide the corresponding cooperation free of charge and without delay as part of the execution of the contract.

3.5. HELLA shall have the right at any time to request and inspect the source code used by the Supplier in the course of the performance of the contract in order to satisfy itself of compliance with the FOSS licenses and the copyleft effect; this shall apply to the complete source code, not only with

regard to FOSS. HELLA may check the source code with an automated analysis tool or have such a check carried out. If an audit reveals a breach of obligations under these GTC-FOSS or FOSS licences, the Supplier shall be obliged to take all necessary and reasonable measures at its own expense to achieve the agreed services and standards. In this case, the Supplier shall bear the costs of the audit, otherwise HELLA shall bear the costs.

3.6. Use of FOSS without the agreement of these GTC-FOSS, as well as a breach of the GTC-FOSS, constitutes a material breach of the Supplier's contractual obligations.

4. FOSS RESPONSIBLE

After the order by HELLA, the Supplier shall name in writing one person and one deputy who shall be available as contact persons for all questions in connection with the use of FOSS.

5. WARRANTY

5.1. The Supplier shall ensure compliance with the obligations specified in the GTC-FOSS and undertakes to comply with the respective licenses of the FOSS used by the Supplier.

5.2. The Supplier warrants that no further FOSS will be used beyond the reported FOSS and that in no case – except in explicitly stated cases which are feasible with the consent of HELLA – a copyleft effect will be triggered, and that no FOSS licenses will be used which are not named on the separate HELLA OK List attachment and which do not permit commercial use.

5.3. The Supplier warrants that the deliveries and services do not infringe any third-party rights. For this purpose, the Supplier shall carry out research on third party rights to the extent customary in the industry. Should third parties assert an infringement of their rights against HELLA, the Supplier shall indemnify HELLA against all damages and costs resulting therefrom, including court and settlement costs and the costs for legal advice required at HELLA's reasonable discretion. The Supplier shall proactively support HELLA in the judicial and extrajudicial settlement of such disputes with third parties, whereby the sole right of litigation as well as the right to conclude judicial and extrajudicial settlements shall remain with HELLA. Should the exercise of the rights under this Agreement conflict with the rights of third parties, the Supplier shall be obliged, at HELLA's discretion and at its own expense, to acquire the necessary licenses for the benefit of HELLA or to redesign the deliveries and services in such a way that the infringement is eliminated.

5.4. The liability according to clause 5.3 shall not apply if the Supplier prepares the services to be provided according to mandatory specifications of HELLA and is not responsible for an infringement of third party industrial property rights and copyrights.

6. LIABILITY

The parties shall be liable to each other for all damage culpably caused to the other party or third parties by them within the scope of the ordered performance of services or by the breach of obligations existing under this contract, in accordance with the statutory provisions, unless otherwise agreed.

7. OTHER

7.1. These GTC-FOSS together with the separate attachment HELLA OK List AD-01165 contain all agreements and declarations with regard to the use of FOSS by the Supplier. In this respect, these GTC-FOSS replace all previous agreements between the contracting parties and take precedence over any deviating regulations.

7.2. Should any provision of these terms and conditions be or become invalid, this shall not affect the validity of the remainder of the contract. The contracting parties are obliged to replace the invalid provision with a provision that comes as close as possible to the invalid provision in terms of economic success. This regulation also applies to any gaps in the conditions that may arise.

7.3. The law applicable at the registered office of the ordering HELLA company shall apply exclusively, with the exception of the conflict of laws rules. The application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

7.4. The place of jurisdiction for all disputes arising out of or in connection with this Agreement and the deliveries and services performed under it shall be HELLA's registered office or, in the case of actions brought by HELLA, any other competent court.