

HEITEC AG

General Terms and Conditions (T&C)

1 Scope

- 1.1 Our General Terms and Conditions shall be applied to all contracts entered into with our contractual partners in their capacity as entrepreneurs (in brief referred to as "Customer").
- 1.2 Our General Terms and Conditions shall exclusively apply; any conflicting or Terms and Conditions of Customer that are deviating from our General Terms and Conditions will not be acknowledged unless we have expressly agreed to their application in writing. Our Terms and Conditions shall even in such cases apply if delivery has been executed by us under conflicting or deviating terms and conditions of Customer without reservation.

2 Offer

- 2.1 Our quotations are always made without engagement, i.e. they only represent an invitation to the Customer to make an offer. In the event a purchase order made by Customer shall be deemed to be qualified as an offer, we reserve the right to accept it within a fortnight.
- 2.2 Contracts with Customers shall only become effective by our order confirmation in writing; however at the latest upon execution of the order. Any agreements entered into between the Customer and ourselves that pertain to the execution of the contractual relations have been laid down in this contract in writing. Any changes, side agreements and any other agreements, in particular such individual agreements that are deviating from our offer or from our order confirmation require the written form provided the parties do not also verbally conjointly waive the compliance with the requirement of the written form. Any amendment requests of the Customer shall only be agreed if explicitly accepted by us.
- 2.3 Any deviations pertaining to technique or design found in descriptions and details in brochures, offers and documentation in writing as well as any design modification, development and material variation subject to the ongoing technical advancement shall be reserved if and to the extent that the changes carried out under consideration of our interests are reasonable for the Customer. This is regularly deemed to be the case, if the performance associated with the object of the agreement has not been impaired, provided that Customer would not have a special interest in the provision of the unchanged performance.
- 2.4 We are entitled to delegate contractual performances in whole or in part to Third Parties (vicarious agents); in particular, if performances are subject to the scope of experts.

3 Documents and Changes in the Execution

- 3.1 The Customer shall be obliged to provide us with any relevant execution documents and to update us on all necessary and useful information in writing that are required for the execution of the order and to approve any requested partial performances.
- 3.2 The Customer reserves the right to changes in the execution. These must be reported to us in writing and shall be considered to the extent possible for the future execution of the contract. In the event that additional performances arise in connection with Customers' changes these shall be reimbursed separately on the basis of comparable positions. In the event such comparable positions are missing, the cost for the additional performances shall be reimbursed adequately according to habitualness.
- 3.3 We reserve our rights of ownership and copyrights in any sketches, illustrations, diagrams, drawings, calculations, design details and in any other documents. This shall also be applied for any written documents that have been classified as "confidential". Customer is obliged to request our express consent in writing prior to the transmission of the above referenced documents to Third Parties.

4 Prices and Terms of Payment

- 4.1 Except when otherwise stipulated our prices are fixed on the basis FCA Erlangen (INCOTERMS 2000). The value-added tax is not included in the prices. If and to the extent that goods and services shall be subject to value-added tax it shall additionally be paid by Customer in the statutory rate. The deduction of cash discount requires a special agreement. In the event a delivery has been agreed to be executed within four months the price agreed on the day of the conclusion of the contract shall become payable. We are entitled and obliged to make price adjustments if more than four months have passed from the date of conclusion of the contract to the delivery date and, in addition, if cost reductions or cost increases have come into effect following the date of conclusion of the contract, especially if price adjustments are based on collective wage agreements or changes in the cost of materials. We will inform the Customer thereof without delay. We will provide evidence of the relevant cost factors and cost reductions or increases having caused the price reduction or price increase upon Customer's request. Moreover, price increases must be reasonable and may not alter the scope of the ratio from performance to consideration. Price increases shall only be permissible under the condition that a profit squeeze may be avoided thereby but no additional profit realized. In the event the price increase exceeds 5.0% of the delivery value the Customer shall be entitled to withdraw from the contract with effect from the first day of the price increase within two weeks following the receipt of the announcement of the price increase. If the Customer withdraws from the contract he is nevertheless obliged to settle payment for all work performed.
- 4.2 In the event that advance payment has been agreed, our goods and services are payable strictly net (without deduction) in EURO currency on the agreed date of payment, apart from that, upon delivery/performance. Payments by bill of exchange and by cheque will not be accepted to fulfil Customer's obligation to pay. A payment shall only be deemed to have been made, if the amount has been credited to our account and is at our full disposal.

- 4.3 Deliveries abroad will solely be affected against advance payment or against an irrevocable and transferable documentary letter of credit (L/C) that has been confirmed by a German first-class bank which must be opened by purchaser upon receipt of the order confirmation but at the latest 20 work days prior to the delivery date. Such L/C must be in conformity with the Uniform Customs and Practice for Documentary Credits (UCP 600) of the International Chamber of Commerce (ICC), Paris, and must be opened in our favor. The application of Sec. 32 UCP 600 shall be excluded. The documentary letter of credit must be referred to as sight payment letter of credit and must indicate a sufficiently assessed expiry date. The letter of credit must be constituted in such fashion that allow for partial deliveries and payment by instalments. The amount of the credit shall be payable on the basis delivery versus payment against presentation of the commercial invoice (Sec. 18 UCP 600) and transport documents (Sec. 19 et seq. UCP 600). With the exception of a documentary registration commission any other fees and expenses, in particular for the opening and confirmation of the documentary letter of credit, shall be borne by Customer. In the event of a delay in delivery/default in performance for reasons that are beyond our control, Customer shall be obliged to arrange the prolongation of the letter of credit upon our first request or as the case may be arrange the reissuing of the letter of credit after its termination. We will report any delays to the Customer immediately. This shall also apply if a delay in delivery/default in performance has been caused by missing documents, information or collaboration acts of the Customer.
- 4.4 For delays in payment the legal regulations shall be applied. Default interest shall be fixed at a higher or lower rate than the legal interest rates, if we can furnish proof of an encumbrance with higher interest rates or, if Customer can furnish proof of a lower encumbrance. In the event of a stoppage of payment, delay in payment, impairment of the economic situation of Customer or upon filing for insolvency proceedings we are entitled to demand any undue outstanding claims from the business relationship immediately. The Customer shall be entitled to prevent the enforcement of such rights by furnishing a collateral security by way of a directly enforceable guarantee in the amount of our payment claim along with any interest rates and costs.
- 4.5 Customer's right to set-off shall be limited to such counterclaims that have been recognized by legally binding judgment, are undisputed or have been acknowledged by us. Customer shall be entitled to exercise his right of retention only as far as his counterclaim is based on the same legal relationship

5 Deliveries and Partial Deliveries, Delay in Delivery

- 5.1 The delivery times indicated in our offers are subject to change. Delivery dates are binding only if expressly confirmed. They only commence upon receipt of our order confirmation in writing and an advance payment, respectively a payment of the agreed instalments or, the duly opening of a documentary letter of credit. In the event the Customer shall be obliged to submit permissions, release certificates, installation plans, advance payments, certificates or any other documents, the delivery time shall only commence upon submission of the full documentation and the fulfilment of Customer's obligation to cooperate, irrespective of the receipt of the order confirmation.

- 5.2 Our delivery times are fixed under the condition of correct and timely self-supply and unforeseen events during the production process or any other impediments caused by force majeure, interruption of operations, delay in transit, labor disputes, scarcity of material or import and export restrictions that subsequently impede or frustrate the supply of performance by us or our suppliers. The delivery dates shall be prolonged by such period in time as the impediment lasted plus a reasonable period in time needed for the restart. The delivery dates shall be deemed not to have been exceeded if the contract goods have been transferred to the forwarding agent, the carrier or to any other person in charge of delivery or if we have issued our readiness for delivery prior to expiry of the delivery date. The delivery dates shall also be deemed to have been complied with if the contract goods cannot be transferred to the forwarding agent, the carrier or to any other person in charge of delivery within the prescribed delivery time without our fault. In this case, it is sufficient to give notice of our readiness for delivery.
- 5.3 In the event an undue and untimely self-supply and unforeseen events shall have caused a subsequent impossibility of performance or may result in considerable impediments or cause undue hardship for us we shall be entitled to withdraw from the contract; we shall not be obliged to pay damages. We will notify Customer of the impossibility of performance without delay and we will repay any consideration received without delay. In the event that we should have failed to issue a declaration as requested by Customer, Customer shall be entitled to withdraw from the contract.
- 5.4 If Customer fails to notify us at least 14 working days prior to delivery FCA Erlangen of the forwarding agent and of the destination (delivery address) and if the destination cannot be derived from the order form, we shall be entitled but shall not be obliged to effect delivery otherwise at general terms and at Customer's expense and risk to Customer's registered office. Any costs incurred by late notification or late delivery to the carrier shall be borne by Customer.
- 5.5 We shall be entitled to affect partial deliveries and to issue partial statements for our services, if partial deliveries are reasonable for Customer.
- 5.6 We shall be liable for any damages caused by intention or gross negligence in accordance with the statutory provisions. We shall also be liable in cases of default on behalf of our representatives and vicarious agents. In case of gross negligence our liability shall be limited to the foreseeable damage that typically occurs. In addition, we shall be liable under the statutory provisions to the extent that the delay in delivery relates to a culpable infringement of a material contractual duty. This is always the case, if a breach of duty relates to a duty that is needed to enable the proper execution of the Contract in the first place and upon which as a matter of fact Customer must always be able to rely. In this case our liability shall be limited to the foreseeable damage that typically occurs, too. Apart from this, we shall be liable for delay in delivery in the flat rate of 0.5% for each completed week of default, but at maximum in the amount of 5% of the net value of the respective item for delayed delivery. Customer shall be entitled to furnish proof of damages caused by default in excess. Any claims and rights of Customer exceeding the aforementioned stipulations shall be excluded. The aforementioned limitations to liability shall not be applied in cases of a liability for injury to life, body or health.

6 Packaging and Dispatch, Passing of Risk

- 6.1 Unless otherwise derived from the order confirmation, delivery shall be effected FCA Erlangen, Germany (INCOTERMS 2000) according to which cost of delivery and passing of risk shall be borne by Customer. The object of the agreement will be packed as customary in trade. The choice of the mode of dispatch to be used shall be in our discretion if we enter into a contract of carriage at Customer's risk and expense. Insurance coverage for the goods in transit will be provided upon Customer's request and expense. We shall not be liable in the case of loss, accidental loss or impairment of the shipped merchandise.
- 6.2 The risk shall pass to the Customer from the point in time the object of the agreement has been handed over to the forwarding agent, carrier or any other person in charge of delivery. The risk may already pass to the Customer prior to that point in time if the object of the agreement have been accepted by Customer, if Customer is in default of acceptance or has not complied with his obligation to cooperate, if Customer has been notified of the readiness for delivery of the object of the agreement or if delivery has been deferred upon Customer's request.
- 6.3 Any damage claims against liable Third Parties and/or insurance companies shall herewith be assigned to Customer. Customer accepts the assignment. Any claims in excess against us shall be excluded.

7 Retention of Title

- 7.1 We reserve ownership rights in the delivered merchandise until full receipt of payment of the purchase price, if and to the extent that such retention of title is permissible under the applicable law. This shall also be applied for single or any claims resulting from an existing current account relationship (business relationship) with the Customer. The reservation refers to the acknowledged balance. In the event Customer commits a breach of duty, in particular a default in payment we shall be entitled to demand the handing over of the merchandise with reasonable time and/or to withdraw from the contract. The Customer shall be obliged to retribute the goods. The Customer is obliged to treat the merchandise duly and carefully.
- 7.2 If and to the extent that the goods sold are subject to retention of title and if the goods should be outside of the Federal Republic of Germany, the Customer shall upon first request be obliged to support us extensively in our endeavor to protect our ownership rights in the delivered goods. Alternatively, to the extent that such retention of title is not effective according to the laws of the country of destination in the above referenced form Customer shall be obliged to protect any other right superseding the retention of title in the respective country and to take the required steps (e.g. registration) in accordance with any other suitable law of the respective country in lieu of the non-executable law. The provisions pertaining to the passing of risk shall not be affected from the retention of title.

8 Warranty

- 8.1 We shall be liable for defects of the object of the agreement in line with the following provisions if the Customer is in proper compliance with his examination and notification duties in accordance with Sec. 377 HGB (German Commercial Code).
- 8.2 The Customer shall be obliged to inspect the object of the agreement in respect of any obvious defects that any average Customer would be able to detect. Missing manuals as well as easily visible damages of the object of the agreement and the delivery of another or a smaller quantity are being referred to as obvious defects. We shall be notified of any obvious defects within a term of two weeks post-delivery in writing. We shall be notified of any defects which are only visible at later time within a term of two weeks following identification in writing accompanied by an error report and some details pertaining to on-site and environmental conditions as well as the last entries. In the event Customer is in breach of the examination or notification duties the object of the agreement shall be deemed to have been approved.
- 8.3 To the extent that a defect has been identified it shall be subject to item 8.5 in our discretion to provide subsequent performance either by way of removal of defects or by delivery of a substitute that is free from defects (replacement). Any costs incurred in connection with the subsequent performance shall be borne by Seller, as far as they are not increased by the fact that the respective goods or services being shipped to a place other than Erlangen and the shipment is not their intended use. Defective objects of the agreement shall be returned to us against reimbursement of costs. In the event this should be impossible or economically unreasonable we shall be given the opportunity to inspect the claimed defects. The defective objects of the agreement shall be made available and in case of replacement returned to us. In the event that one or both of the two types of subsequent performance should be impossible or unreasonable, we shall be entitled to refuse the subsequent performance. We are entitled to refuse subsequent performance if and to the extent that Customer has not fulfilled his obligation to pay against us to such extent that would correspond to the portion of the work performed that is free from defects. Warranty shall be excluded for unimportant defects.
- 8.4 In the event that subsequent performance as specified in Sec. 8.3. is impossible or has failed it shall be in the Customer's discretion to either reduce the purchase price at the appropriate extent or to withdraw from the contract according to the statutory provisions. In particular, this shall be the case in the event of culpable delay or refusal to perform subsequent performance. This provision shall also be applied in the event that subsequent performance has failed for the second time, unless the natures of the object of agreement, the defects or any other circumstances lead to a different conclusion. The above referenced provisions shall also be applicable in the event of delivery of another object of the agreement or of a minor quantity.

- 8.5 If we are obliged to create individual software and in the event that the software has a defect, it shall be in our discretion to perform subsequent performance either by way of removal of the defect or by replacement. We are entitled to refuse subsequent performance if the subsequent performance should be impossible or, if an unreasonable effort would have to be taken, or if Customer has not fulfilled his obligation to pay against us to such extent that would correspond to the portion of the work performed that is free from defects. We shall be given the opportunity to inspect the defect. In the event of the delivery of a software that is free from defects the defective software shall returned to us. The Customer shall be entitled to refuse the type of subsequent performance that we chose in our discretion, if the subsequent performance is unreasonable for him. The Customer shall be entitled to the rectification of defects and to a compensation of the expenses incurred in this respect only if we have been unable to remedy the defects within a reasonably fixed term in writing, unless the statutory provisions waive the requirement of fixing a period. Self-remedy of defects and the compensation of expenses shall be excluded, if we are entitled to refuse subsequent performance. In the event that subsequent performance shall be impossible or has failed it shall be at Customer's discretion to either reduce the purchase price correspondingly or to withdraw from the contract pursuant to the statutory provisions; this shall in particular be applied in the event of a culpable delay or a refusal of subsequent performance. Warranty shall be excluded for insignificant defects. Apart from that, the liability for defects is governed by the statutory provisions on contract for work and services.
- 8.6 No warranty will be assumed for the following reasons: Incorrect installation, connection and operation, unsuitable or inappropriate use, faulty or negligent treatment, usual wear and tear, unsuitable equipment, chemical, electrochemical or electrical influences, inappropriate changes or repairs.
- 8.7 Any claims and rights pertaining to defects in the delivery/performance shall become statute-barred in accordance with Sec. 13.1.
- 8.8 Any liability for damages and/or reimbursement of expenses for defects shall be governed in accordance with Section 10. Any claims of the Customer in excess thereof shall be excluded.

9 Acceptance

If and to the extent that we shall be obliged to create individual software the acceptance shall be deemed to have been given, if a contractually owed user manual has been handed over to Customer, the Customer puts the software into operation and runs scans of the software for a reasonable length in time to check the software.

10 Liability

- 10.1 We shall be liable for culpable infringement of life, bodily harm and health in accordance with the statutory provisions. The same shall be applied in all cases of liability in accordance with the German Product Liability Act.
- 10.2 We shall further be liable in cases of any damages caused by intent or gross negligence including liability in cases of any damages caused by intent or gross negligence committed by our representatives or vicarious agents in accordance with the statutory provisions. In cases of gross negligence our liability shall be limited to the foreseeable damage that typically occurs.

- 10.3 In addition, we shall be liable in accordance with the statutory provisions, if we have culpably infringed a material contractual obligation. This is usually the case, if the infringement of the obligation relates to an obligation that enables the proper execution of this agreement in the first place and upon which as a matter of fact the Customer must always be able to rely. In this case, our liability shall be limited to the foreseeable damage that typically occurs, too.
- 10.4 In addition, any liability in excess of the aforementioned shall be excluded regardless of the legal basis. In particular, damage claims for fault upon conclusion of a contract, infringement of secondary contractual obligations and any other infringement of obligations, tort as well as any tort liability, and any other liability having no connection to the contract goods, for indirect and consequential damages, in particular loss of production and loss of Customer's data as well as any compensation for loss of profit shall be excluded.
- 10.5 To the extent that liability has been limited in accordance with the aforementioned provisions this shall also be applied in respect of the personal liability of our legal representatives, employees and vicarious agents.
- 10.6 The aforementioned provisions for compensation shall also be applied to any claims for the reimbursement of expenses.

11 Withdrawal from Contract

- 11.1 As prescribed in the statutory provisions Customer may withdraw from the contract only, if we are responsible for an infringement of obligations; but in the event that any defects have to be remedied, the legal requirements shall be applied. In case of an infringement of obligations by us, Customer shall declare upon our request within reasonable time, if he wishes to withdraw from the contract or if he insists on delivery/performance.
- 11.2 In the event the contract is being annulled by withdrawal for whatever reason, the Customer shall be obliged to make payment of a reasonable compensation for the term of the leaving during which the object of the agreement has been in use.

12 Winding-up of a Contract and Compensation for Non-Acceptance

- 12.1 In the event the Contract Parties agree in unison to terminate the contract prior to maturity and performance of our obligations despite an effective contractual relationship being in place, Customer shall be obliged to pay a compensation for non-acceptance.
- 12.2 The compensation for non-acceptance shall comprise any of our expenses incurred in relation with the winding-up of the contract, e.g. the procurement of raw materials, programming costs, design costs, production cost, administration costs and lost profit. The amount of the lump-sum compensation for non-acceptance shall be fixed at 10% of the delivery value. The compensation for non-acceptance shall either be increased if we may furnish proof of higher expenses or reduced if Customer may furnish proof of reduced expenses.

13 Statute of Limitation

- 13.1 The limitation period shall be one year for any rights and claims with respect to defects in goods and services irrespective of the legal basis. The commencement of the limitation period is in accordance with the legal regulations. However, the above shall not apply in cases of: Section 438 sub-section 1 item 2 BGB [German Civil Code] (Structures and Other Objects); Section 634 lit a sub-section 1 item 2 BGB (Structures) and Sections 478, 479 BGB (Recourse of the Entrepreneur). Therefore statutory limitation period shall be applied.
- 13.2 The limitation period in accordance with Section 13.1. shall also be applied in any damage claims that relate to a defect. To the extent that damage claims have been raised that have no connection to a defect, the limitation period shall be 18 months. As far as damage claims are concerned, the limitation period shall commence with the coming into existence of the claims and the knowledge respectively the gross negligence of the ignorance with respect to the legally justified circumstances of the claim and of the debtor in person.
- 13.3 The limitation periods shall in accordance with Section 13.1. and 13.2. be applied as follows: The limitation periods shall not be applied in the event of intent or fraudulent intent. In addition, they shall not be applied in damage claims for personal injury, bodily harm or damage to health or in any claims in accordance with the German Product Liability Act. Furthermore, the limitation periods shall not be applied in the event of grossly negligent breach of duty or of an infringement of a material obligation. In such cases the statutory limitation periods shall be applied.

14 Termination

- 14.1 In the event Customer terminates the contract in accordance with Section 649 BGB [German Civil Code] we shall be entitled to demand the agreed payment under consideration of the value of the saved expenses and derived benefits resulting from the termination. The value for saved expenses shall be assessed at a lump-sum of 30% of the payment claim for the outstanding performance. Both Seller and Customer shall be entitled to furnish proof of either increased or reduced saved expenses.
- 14.2 The contract parties shall be entitled to terminate contracts for work and services for good cause. As good cause for our exceptional dismissal shall in particular be deemed Customer defaults in payment with two due instalments; if Customer's economic situation has seriously deteriorated, in particular if insolvency proceedings have been initiated or judicial execution measures have been ordered or if Customer repeatedly fails to comply with his contractual cooperation duties despite our written warning notice.

15 Intellectual Property Rights

- 15.1 We warrant that our contract goods and services are free from any intellectual property rights of Third Parties (patents, utility models, design patents, trademarks and copyrights) that may restrict or exclude the use of the corresponding contractually agreed scope, if these have been registered and published in the Federal Republic of Germany.
- 15.2 In the event the contractually agreed use is being limited by intellectual property rights of Third Parties we shall to a reasonable extent for Customer be entitled to change the object of the agreement in such fashion that it would thus slip the scope of protection. Alternatively, we might obtain the consent to make unlimited use of the object of the agreement as contractually agreed and at no additional cost for the Customer. Optionally, we shall be entitled to take back the contract goods against reimbursement of the compensation under deduction of a compensation for use by the Customer.

16 Software

- 16.1 Any programs that Customer has purchased from us are protected by copyright laws; Customer may only purchase and use the programs following the signing of a software license agreement in writing. Insofar as the scope of delivery contains software the Customer will be granted a non-exclusive ordinary right of use of the software (use license). The awarding of sub-licenses shall be excluded. The software shall be deemed to run on the specified object of the agreement.
- 16.2 The Customer shall be entitled to use the software as intended and contractually agreed as well as the error correction. The creation of a backup copy shall only be permissible to the extent that it is essential for future uses. The monitoring, inspecting and testing of the program by loading, displaying, running and transmission shall be permissible only with respect to the determination of the ideas and principles that form the basis of the program. Any copies of our programs and documentation must be marked "copyrighted material".
- 16.3 A separate written agreement is required prior to permitting the allocation of the source code. We may only grant the allocation of the source program to the extent that we are able and entitled thereto. The copying of the code or the translation of the code form (de-compilation) is only permissible in accordance with the legal requirements in Sec. 69 lit. e UrhG [German Copyright Act].

17 Proof of Exportation

In the event that Customer's registered office is not within the territory of the Federal Republic of Germany or, if a Customer having his registered office within the territory of the Federal Republic of Germany shall deliver or ship the contract goods abroad, Customer shall be required to furnish proof of exportation and of any other tax relevant certificates with no delay. Customer shall indicate his value added tax identification number when making intra-Community trades. Otherwise, Customer shall be obliged to make payment of the sales tax that is valid for the goods and services within the Federal Republic of Germany.

18 Export Control

Customer acknowledges that goods and services, in particular the software and technical information related thereto may be subject to American and/or European or any other export control laws; hence, delivery to certain countries might be prohibited. The fulfilment of our obligations in accordance with this agreement shall be under the condition that the possible required export licenses may be obtained and no other impediments would arise in connection with American, European or any other export control laws. We shall not be obliged to affect delivery/performance, if and to the extent that delivery/performance is impossible due to missing export licenses. Sections 5.2. and 5.3. shall be applied correspondingly. Customer commits himself to us to comply with any applicable export regulations

19 Place of Performance, Choice of Law Clause, Legal Venue

- 19.1 The place of performance shall be Erlangen, Germany.
- 19.2 This Agreement shall exclusively be governed and construed in accordance with the laws of the Federal Republic of Germany. The application of German International Conflict Law and the UN Sales Convention (CISG) shall be excluded.
- 19.3 With the exception of the second sentence - the exclusive jurisdiction for any disputes arising out of or in connection with this contract shall be Nürnberg, Germany. We shall, however, be entitled to start proceedings at Customer's registered office or before any other competent court in Germany.

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