

# **GENERAL TERMS AND CONDITIONS**

of

**HEITEC Hungary Kft.**

**in relation to engineering services**

**Effective as of 14 May 2021**

These general terms and conditions (hereinafter referred to as “**GTCs**”) are intended by HEITEC Hungary Kft. (hereinafter referred to as the “**Provider**”) to set out the general contractual provisions which shall apply to and be incorporated into each contract, in respect of the provision of engineering services, entered into between the Provider and any customer procuring engineering services from the Provider (hereinafter referred to as the “**Customer**”). For the purpose of these GTCs, engineering services will include without limitation the following activities:

- Software development and testing (product development, single developments, testing activities);
- Development and testing of hardware and electronics (product development, single developments, testing activities);
- Machine design (product development, single developments);
- Implementation of tasks in automation technology;
- Elaboration and implementation of digital solutions;
- Elaboration and implementation of engineering solutions as based on individual purchase orders;
- System integration;
- Engineering / technical advisory.

## 1. Coming into effect and scope of legal relationship:

1.1. A contract in relation to engineering services (hereinafter collectively referred to as “**Individual Agreement**”) will be deemed to have come into effect between the Provider and the Customer (hereinafter jointly referred to as the “**Parties**”)

- a. upon written confirmation by the Provider of Customer’s purchase order placed in writing and pending no further changes,
- b. upon Customer’s acceptance in writing of Provider’s offer submitted in writing and pending no further changes, or
- c. by signature of both Parties of the contract entered into as a deed.

Alternatively, the Individual Contract will be deemed to have come into effect between the Parties in the event that

- a. Provider’s confirmation of order differs in scope from Customer’s purchase order, but such confirmation is agreed to by the Customer in writing, or
- b. The Customer agrees to Provider’s offer with a different scope, but such agreement is confirmed by the Provider in writing.

1.2. The scope of the contractual relationship between the Parties shall be jointly governed by the clauses set forth in the Individual Agreement as well as the provisions of these GTCs (hereinafter referred to as the **Contract**). The Parties agree that for issues not expressly governed by the Individual Agreement, the provisions of the GTCs shall apply.

1.3. The Parties agree that the clauses of the Individual Agreement will prevail over any provision contained or referred to in these GTCs that may be inconsistent or conflicting with the clauses of the Individual Agreement, provided that the inconsistent or conflicting provision is intended to regulate the same matter.

## 2. Purpose of the Contract:

The purpose of this Contract is for the Provider to deliver, for Customer's benefit, engineering services specified under the Individual Agreement (hereinafter referred to as the "Services").

### **3. Credentials and change control relevant to the Services**

3.1. The Customer has a duty to furnish the Provider with all implementation documents that may be necessary for the delivery of Services, furthermore, the Customer must regularly furnish the Provider in writing with information that may be of relevance and significance to fulfilment.

3.2. Unless otherwise agreed by the Parties, the Provider will retain title and copyright to any and all sketches, figures, diagrams, drawings, calculations, design data and other specifications arising out of or in connection with the Services. The foregoing shall apply to documents that qualify as "public". The Customer is not entitled to hand over or otherwise disclose such documents to third parties without Provider's prior written consent.

3.3. The Customer may request the Provider to make changes to the scope of implementation. A written request for change is to be lodged with the Provider, who will give reasonable consideration to such request while fulfilling the Contract.

3.4. For the purposes of the Contract, any work not expressly specified under the scope of the Individual Agreement or any technical specification attached thereto will be regarded as work in addition to rather than in excess of scope, including those representing the Customer's new wishes, those requiring excessive effort to make the solution more complex as opposed to what would be professionally or technically expected of such solution as well as those rendering performance more burdensome to the Provider.

3.5. Should Customer's change request qualify as work in addition to scope, the Provider has no obligation to proceed with such work unless and until the Parties have agreed on the terms of said work, such terms to specify remuneration for the work in addition to scope as well as any change of timeline and relevant dates of performance. Unless agreed upon as per the foregoing, the Provider will not be obliged to carry out any work in addition to scope.

3.6. In view of the current state of technology, the Provider reserves the right to perform its obligations in a manner which may differ, whether by technology or design, from the specifications or data laid down in the catalogues, offers and other documents, as well as to align design, development and choice of material with the current state of technology as appropriate, provided that such variation may be expected on the Customer's part, also bearing in mind Provider's interests. A variation will be deemed as expected on the Customer's part, if the variation clearly serves the purpose intended under the Contract, and performance without such variation is not specifically within Customer's interest.

### **4. Supplying software – rights related to the software and use of the software**

4.1. If the scope of the Services is to cover the development of individual software, the handover of software will be deemed to have been duly performed once the Customer has put into use said software and the software has been in use for the period required for verification. Handover shall be properly protocolled by the Parties.

4.2. The software developed by the Provider under the Contract is protected by copyright.

4.3. Unless otherwise agreed by the Parties, all title, copyright and intellectual property rights to the software are owned by the Provider.

4.4. The Customer must not sell, sublicense, collateralise or surrender the software, or authorise use of the software by third parties, or assign the right of use of the software.

4.5. The Customer is granted, against payment of the agreed fee, a non-exclusive and non-transferable licence to use the software. Unless otherwise agreed, the Customer must not use the software in any countries other than those where the Customer has its registered seat or branch office as specified in the relevant agreement or order.

4.6. The Customer must ensure that it uses the software properly and solely for the intended purpose.

4.7. The Customer must ensure that – while using the software – it meets the requirements provided for by Contract and in the specification or product description relating to the software, including that it must not run the software in IT environments other than those set out in the aforesaid documents (verified devices). The Customer may use the software solely by application of the configuration approved by the Provider. The foregoing provision in relation to IT environment, setup and configuration shall apply mutatis mutandis to any updates and new releases of the software.

4.8. Unless otherwise stipulated, the Customer is permitted to create two safety backups of the software. Safety backups shall only be used to replace the original software when irreparably damaged.

4.9. The Customer may examine, use and test the software by way of downloading, displaying, running and transmitting the latter only if and to the extent that such examination, usage and testing is strictly aimed at exploring the underlying ideas and principles behind the software. The Customer is obliged to designate every copy of the software and the related documentation with a Copyright label.

4.10. Should the Contract grant to the Customer the release of the software's source code, then the Customer will be allowed to reproduce the code and decrypt (reverse) the code format only if the Individual Agreement includes a carve-out clause expressly allowing for it and in the manner specified by the above mentioned clause.

4.11. The relevant clauses of the Individual Agreement apply for the software developed by Provider.

4.12. If the Provider supplies software produced or developed by a third party, then the rules and procedures of the software's manufacturer or developer shall apply to rights and obligations in respect of the software. The Provider is obliged to ensure that the Customer has access to such information as may be necessary for them to fully understand these rights and obligations.

## 5. Supplying equipment and device

5.1. The Provider is free to choose any means of packaging for the equipment and device (hereinafter referred to as "**Equipment**") on the understanding that such packaging must be in line with standard industry practices, always ensuring that it is fit for the Equipment.

5.2. If the shipment is not performed by the Provider itself, the shipment of the equipment to the Customer will be carried out at the Customer's own cost and risk, in which case the risk of loss will pass onto the Customer once the equipment leaves Provider's premises, thus the Provider will not assume liability for any loss or damage possibly incurred during shipment of the equipment.

5.3. Upon relevant request, the Provider is ready to have the consignment insured on Customer's behalf and at Customer's cost.

## **6. Relevant dates for performance, delay, impossibility, guarantees**

6.1. Relevant dates and timelines for the performance of each service are set out in the Individual Agreement. If the Customer is obliged to obtain plans, licences, permits, certificates or other documents necessary for Provider's performance, the due date or day for performance will be automatically modified, thus extending the timeline with the period needed for the submission of all relevant documents.

6.2. The Provider is entitled to perform services in parts as well as to invoice in corresponding parts only if agreed upon with the Customer under the Individual Agreement.

6.3. The due date or day for performance will also be modified in the event of force majeure (as per clause 10), extending the timeline with the period during which the force majeure event prevails.

6.4. If performance becomes impossible for a reason for which the Service Provider is not responsible, the latter will be entitled to a prorated or fully itemised remuneration, as per the relevant sections of the Contract specifying fees and charges, for the services rendered up to the date of the Contract's termination, and conversely, if it did not fulfil the services in consideration of which it had received remuneration, such fees must be refunded to the Customer.

6.5. Should the Provider become aware of circumstances whereby the Customer's financial situation materially deteriorates, or if it suspends payment of its liabilities, or a bankruptcy, liquidation or winding-up procedure has been initiated against it, the Provider may choose to condition its own performance on the provision of advance payment or appropriate guarantees.

## **7. Payment terms**

7.1. Fees owed to the Provider are due within 30 days of invoice date, at the latest. In case of services which may be scheduled into stages, the Provider will be entitled to part payments in accordance with any work duly delivered as per the schedule and in line with the relevant provisions of the Individual Agreement.

7.2. In the event of payment default, the Customer will be obliged to pay default interest at the statutory rate.

7.3. The Customer may only resort to setting off amounts against fees claimed by Provider in respect of those claims that are expressly recognised by the Provider or substantiated in a public or private deed and which occurred prior to Provider's claims.

## **8. Warranty**

8.1. The Customer is obliged to inspect the Services upon performance and the equipment upon handover. Significant defects include, in particular, visible damage to equipment, delivery of wrong (not the agreed upon) equipment or insufficient quantities of equipment, or lack of relevant documentation in case of software.

8.2. The Customer must notify the Provider of a significant defect within three working days of performance, while hidden defects detected at a later point of time shall be notified within three working days of taking note of the defect. The notice shall include reference to usage and

environmental conditions as well. Should the Customer fail to fulfil its duty of inspection and notification, the performance shall be deemed to have been accepted on the Customer's part.

8.3. In the event of malperformance, the Provider may, at its sole discretion, choose to either rectify the defect or to replace the faulty equipment, alternatively to render the service anew (hereinafter referred to as "**Replacement**"). The cost of rectification and replacement will be borne by Provider. In case of a replacement, the Customer will be obliged to return to the Provider the faulty equipment.

8.4. If rectification and/or replacement is not a possibility, or if the Provider fails to carry out, within a reasonable timeline, the rectification/replacement despite the Customer's due and proper notice in the matter, the Customer may demand an appropriate discount on the fees payable.

8.5. The Provider will be released from any warranty obligation if the defect occurred due to any of the reasons listed below: faulty assembly, connection or handling, improper or unprofessional use, normal wear and tear (whenever applicable for the purpose of a service), application of unauthorised operational material, chemical, electrochemical or electronic impacts, modifications and maintenance conducted in an improper manner.

8.6. In respect of any equipment or software produced by third parties to be used or otherwise relied upon under the Contract, the Customer may exercise its warranty rights in accordance with the terms specified by the manufacturer of equipment or software. The Provider shall commit to supporting the Customer in asserting any warranty claims.

8.7. The Provider represents and warrants that the subject matter of the Contract is not affected by any third-party right (such as patent, design protection, copyright etc.) which could prevent or otherwise restrict the Customer from using it in the fashion and to the extent agreed upon in the Contract (warranty). Notwithstanding the foregoing, should a third-party right adversely affect the Customer's right to use the subject matter of the Contract, Provider will be entitled, subject to The Customer's written consent, to modify the subject matter of the Contract in such a manner as to ensure that it will no longer be impacted by said third-party right. Alternatively, in lieu of the Customer's consent, the Provider will be obliged to obtain proper authorisations to ensure that the subject matter of the Contract is available for used free of excess costs burdening the Customer and in line with the Contract.

## **9. Liability for damages**

9.1. Except for damages by wilful conduct, causing loss of life, damage to health or personal injury, the Provider's liability is limited

- a. to foreseeable and typical damages inflicted through gross negligence and is capped at the amount of the total fee payable under the Contract,
- b. and is, in all other cases, capped at an amount corresponding to 10% of the total fee payable under the Contract.

9.2. Only those damages may give rise to or substantiate Provider's damage liability that can be directly linked to the services provided under the Contract, and therefore liability is excluded for indirect and consequential damages.

## 10. Force majeure

10.1. Force majeure means the occurrence of any circumstance or event, the cause of which is beyond the control of the Parties, that are unforeseeable, unavoidable and non-avertable, and which prevents the affected party from the fulfilment of its contractual obligations.

10.2. Neither party shall be liable to the other party for any defect of the Services, for any delay in the performance of the Services or for failing to perform the Services to be provided under the contract, if the defect is due to an event of force majeure.

10.3. Upon occurrence of force majeure, the party invoking force majeure is obliged to notify the other party in writing, while proposing an action plan with a view to averting or mitigating any risk of loss that might arise out of the force majeure event.

## 11. Variations of and additions to the Contract

11.1. No variation of or addition to this Contract shall be effective unless it is in writing.

11.2. The Provider may at any time vary, revoke or update these GTCs on the understanding that the revocation will not affect the performance of Contracts already in place, except in the case stipulated by clause 11.3.

11.3. In case the subject matter of the Contract is (among others) constituted by a software developed by a third party, and the reseller agreement between the licence owner and the Provider is amended by the licence owner in a way that induces a variation to the provisions of these GTCs, the Customer will accept that the Provider is entitled to vary these GTCs at its own discretion in order for these to be adjusted to the reseller agreement. The Provider shall give the Customer 30 (thirty) days written notice of such variations prior to their coming into effect. The variation of the GTCs will be effective from the date referred to in Provider's notice.

## 12. Termination of the Contract

12.1. The Contract shall remain in force – apart from the cases of withdrawal, unilateral termination or termination by mutual agreement – until the Parties have fulfilled all their obligations arising out of the Contract.

12.2. The Customer is entitled to withdraw from the Contract prior to Provider's commencement of activities, and to terminate the Contract following Provider's commencement of activities.

12.3. In the event of Customer's withdrawal from the Contract, the latter will be obliged to reimburse the Provider for any proven costs (such as cost of raw materials, programming, planning, production and administration expenses etc., hereinafter shortly: "**Costs**") incurred by the latter in connection to preparational and other preliminary measures, as well as to pay the Provider liquidated damages amounting to 30 % of the net fee agreed in the Contract.

12.4. In the event of a termination by the Customer, the latter will be obliged to reimburse the Provider for all cost and disbursement along with the prorated or fully itemised remuneration, as per the relevant sections of the Contract specifying fees and charges, for the services rendered up to the date of the Contract's termination, and in any case 50% of the net fee agreed in the Contract, as liquidated damages.

12.5. In case of Customer's withdrawal or termination in accordance with the foregoing provision, the Customer will have an obligation to reimburse the costs, notwithstanding that the Parties might have agreed on a lump-sum (flat) fee in the Contract.

12.6. Should an event or circumstance occur that was not foreseeable at contract date and which is not attributable to Provider, but one that renders Provider's performance disproportionately burdensome, the Provider will be entitled to terminate the Contract without an obligation to pay compensation or indemnification. In such as case the Parties will be required their accounts in line with the provision in clause 6.4.

12.7. Either party may terminate the contract with immediate effect in case of the other party's gross or repeated breach of contract, or if the other party conducts itself in a manner that renders the maintenance of the legal relationship impossible.

12.8. A gross breach of contract can include, among others, when

- a. the Customer has been in arrears with payment for at least 15 days and fails to meet its payment obligation by the due date newly set per Provider's written notice,
- b. the Provider has been in default of its contractual obligations for at least 15 days and fails to remedy the situation by the due date set per Customer's written notice,
- c. either of the Parties breaches their confidentiality obligation,
- d. the Customer is the subject of an order made for administration or dissolution, or the Customer enters into a voluntary winding-up procedure,
- e. the Customer fails to honour Provider's lawful claim for advance payment or guarantees.

12.9. For a termination with immediate effect a reasoned notice must be given.

12.10. In case of a termination with immediate effect, the Contract ceases to exist upon service of the notice to the breaching party.

12.11. In case of a termination with immediate effect by the Customer, the Provider will only be liable to reimburse costs. In case of a termination with immediate effect by the Provider, the provision in clause 12.4. shall apply to the settlement of accounts between the Parties.

### **13. Applicable law, dispute resolution**

13.1. For the rest not expressly governed by this Contract the relevant provisions of the laws of Hungary shall prevail.

13.2. The Parties hereto agree that they shall endeavour to settle any dispute arising out of the Contract in an amicable manner. Should this yield no satisfactory outcome, the Parties agree to submit their dispute to the jurisdiction of the courts with local competence at Provider's registered address.