

# General Conditions for Sale and Supply from

## Hitex Development Tools GmbH

All deliveries and services ("Supplies") of HITEX rendered to another businessperson ("Unternehmer") in the sense of § 14 BGB (German Civil Code), including but not limited to any body corporate or special fund under public law, (hereinafter: "Purchaser") are subject to the following General Business Terms, unless agreed on otherwise.

### I. General

1. The scope of deliveries and/or services (Supplies) shall be determined by the written declarations of both Parties. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by HITEX in writing.
2. HITEX herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (Documents). The Documents shall not be made accessible to third parties without the prior written consent of HITEX and shall, upon request, be returned without undue delay if the contract is not awarded to HITEX. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; these may, however, be made accessible to third parties to whom HITEX may rightfully transfer Supplies.
3. Partial Supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.

### II. Prices and Terms of Payment

1. Prices shall be ex works and exclude packaging; value added tax shall be added at the then applicable rate.
2. If HITEX is also responsible for any additional services, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport etc.
3. Payments shall be made free of HITEX paying office.
4. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.

### III. Retention of Title

1. Items pertaining to the Supplies („Retained Goods“) shall remain the property of HITEX until each and every claim HITEX has against the Purchaser on account of the business connection has been fulfilled. If the combined value of the security interests of HITEX exceeds the value of all secured claims by more than 20 %, HITEX shall release a corresponding part of the security interest if so requested by the Purchaser.
2. In the event the Purchaser resells the Retained Goods prior to the transfer of ownership of such goods, the Purchaser hereby assigns its right to the purchase price (arising out of the resale) to HITEX in advance. Prior to the transfer of ownership the Purchaser may not pledge the Retained Goods or use them as security.
3. The Purchaser shall inform HITEX forthwith of any seizure or other act of intervention by third parties.
4. Where the Purchaser fails to fulfil its duties, including failure to make payments due, HITEX shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by HITEX; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

#### **IV. Time for Supplies; Delay**

1. Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where HITEX is responsible for the delay.
2. If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly.
3. If HITEX is responsible for the delay (hereinafter referred to as „Delay“) and the Purchaser demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the Delay could not be put to the intended use.
4. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to HITEX to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Purchaser based on statute shall be limited to cases where HITEX is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
5. Upon request of HITEX the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.
6. If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

#### **V. Transfer of Risk**

The risk shall pass to the Purchaser if dispatch, shipping, the taking over in the own works or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

#### **VI. Software**

Unless otherwise agreed in writing, the supply of software shall be subject to the following provisions:

1. HITEX shall grant to the Purchaser the non-exclusive, non transferable, non sub-licensable right to use the supplied software as well as any including material.
2. Notwithstanding whether the Purchaser modifies the supplied software or parts thereof or combines the supplied Software with other Software owned by the Purchaser or third parties, HITEX shall remain Owner of any rights to the supplied, modified or combined Software as well as any including material. Therefore the Purchaser shall mark the modified or combined Software as well as any copy with a respective HITEX copyright notice.
3. For any further license a special license agreement has to be concluded by HITEX and the Purchaser.
4. Non-licensed software may not be copied or transmitted to third parties.

## **VII. Receiving of Supplies**

The Purchaser shall not refuse to receive Supplies due to minor defects.

## **VIII. Defects as to Quality**

HITEX shall be liable for defects as to quality („Sachmängel“, hereinafter referred to as „Defects“,) as follows:

1. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of HITEX, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law as well as in cases of injury of life, body or health, or where HITEX intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration („Ablaufhemmung“), suspension („Hemmung“) and recommencement of limitation periods remain unaffected.
3. The Purchaser shall notify Defects to HITEX in writing and without undue delay.
4. In the case of notification of a Defect, the Purchaser may withhold payments to a reasonable extent taking into account the Defect occurred. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle HITEX to have its expenses reimbursed by the Purchaser.
5. HITEX shall be given the opportunity to supplement its performance („Nacherfüllung“) within a reasonable period of time. However, if the supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. XI.
6. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or other work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
7. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Supplies.
8. The Purchaser's right of recourse against HITEX pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against HITEX pursuant to Sec. 478 para. 2 BGB.
9. Furthermore, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against HITEX or its agents or any such claims exceeding the claims provided for in this Art. VIII, based on a Defect, shall be excluded.

## **IX. Industrial Property Rights and Copyright; Defects in Title**

1. Unless otherwise agreed, HITEX shall provide the Supplies free from third parties' industrial property rights and copyrights („IPR“) with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect

to the Supplies made by HITEX and then used in conformity with the contract, HITEX shall be liable to the Purchaser within the time period stipulated in Art. VIII No. 2 as follows:

a) HITEX shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from HITEX, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.

b) Any liability of HITEX to pay damages shall be governed by Art. XI.

c) The above obligations of HITEX shall only apply if the Purchaser (i) immediately notifies HITEX of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of HITEX. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2. Claims of the Purchaser shall be excluded if Purchaser is responsible for the infringement of an IPR.

3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by HITEX or to the Supplies being modified by the Purchaser or being used together with products not provided by HITEX.

4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Art. VIII Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.

5. Where other defects in title occur, Art. VIII shall apply mutatis mutandis.

6. Any other claims of the Purchaser against HITEX or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a defect in title, shall be excluded.

## **X. Impossibility of Performance; Adaptation of Contract**

1. To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless HITEX is not responsible for the impossibility. However, the Purchaser's claim for damages shall be limited in any case to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to cancel the contract shall remain unaffected.

2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the business of HITEX, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, HITEX shall have the right to cancel the contract. If HITEX intends to exercise its right to cancel the contract, it shall notify the Purchaser thereof without undue delay after having realised the repercussions of the event. This shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

## **XI. Other Claims for Damages**

1. Any claims for damages and reimbursement of expenses the Purchaser may have („Claims for Damages“), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.

2. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act („Produkthaftungsgesetz“), in the case of intent, gross negligence, injury of life, body or health, or

breach of a condition which goes to the root of the contract („wesentliche Vertragspflichten“). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

3. To the extent that the Purchaser has a valid Claim for Damages according to this Art. XI, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. VIII No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

## **XI. Venue and Applicable Law**

1. If the Purchaser is a businessperson (“Kaufmann”, with the meaning as ascribed to such term in Sec. 1 ff. HGB), sole venue for all disputes arising directly or indirectly out of the contract shall be Karlsruhe, Germany. However, HITEX is also entitled to bring an action at the Purchaser’s place of business.

2. Legal relations existing in connection with this contract shall be governed by substantive law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **XII. Severability Clause**

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions.