



ENGINEERING GROUP

# Terms & Conditions

## 1. Scope of Applicability

- 1.1. The following terms and conditions (the „**T&C**“) shall apply exclusively to any and all legal relationships between HLS Ingenieurbüro GmbH („**HLS**“) and its suppliers or other contractors (hereinafter collectively referred to as „**Contractor**“), to the extent such Contractor is a merchant (*Kaufmann*). These T&C shall also apply even if they are not mentioned in the subsequent legal relationships. Contractor's deviating terms and conditions or any other deviating terms and conditions shall under no circumstance become part of any agreement between HLS and the Contractor.
- 1.2. An order by HLS shall constitute an offer to the Contractor to provide – under the conditions laid down in the respective order – the supplies and/or (engineering-)services, which in particular include planning, design, documentation, simulation and placing into operation, etc. as specified in detail within the order (hereinafter collectively referred to as „**Deliverables**“). Prior to Contractor's acceptance of an order HLS shall be entitled to withdraw such order at any time. Unless agreed otherwise in writing an order shall not constitute an acceptance by HLS of an offer from the Contractor. A reference by HLS to a Contractor's offer (e.g. within an order) shall only be valid to the extent that such Contractor's offer does not contain any provisions deviating from these T&C or from the referencing order.

## 2. Performance of Deliverables

The Contractor assumes the obligation

- 2.1. to appoint for the total duration of the project an experienced project manager, who is qualified for the task; the project manager shall be the main contact for HLS and – on the part of the Contractor – responsible for all aspects of the project and authorised to represent the Contractor and to make decisions on the part of the Contractor;
- 2.2. to request from HLS – without being expressly requested to do so by HLS – all information and documents that are necessary for error-free processing of the order;
- 2.3. to provide the Deliverables for the respective project according to HLS' specifications and in accordance with all applicable statutory provisions of private and public laws and regulations, in particular with those applicable at the final destination;
- 2.4. to examine and 100 % comply with agreed dimensions, functions and documentations;
- 2.5. without being expressly requested and without undue delay to examine feasibility and process reliability, to point out potential doubts and issues as well as to propose necessary improvements; in case of doubt the Contractor shall be responsible for proving that a fully functional process has been provided;
- 2.6. to hand over on delivery a check list specifying which personnel worked on the provided Deliverables;

- 2.7. to examine in the course of a comprehensive quality control before handing over to HLS whether the Deliverables it provides are defect-free; HLS shall not be obligated to (double-)check the solutions developed by the Contractor and the documents handed over by the Contractor; Deliverables and documents handed over by the Contractor will only be checked by HLS with regard to completeness and apparent defects; apparent defects will be notified within a period of two weeks starting with delivery. In the event of defects which could not have been detected during a customary inspection pursuant to the industry standards, HLS shall not be obligated to notify the Contractor about such defects without undue delay should such defects be detected at a later point in time; in such cases the Deliverables shall not be deemed accepted and approved with regard to such defects; the Contractor shall be obligated to remedy reported defects without undue delay;
- 2.8. to meet all agreed deadlines and in particular to present within 5 working days upon acceptance of the respective order a detailed time schedule;
- 2.9. The contractor must obtain from HLS all documents and information required for the contractual services. The contractor will examine these documents and information and point out inaccuracies or incompleteness immediately. The objects and documents provided to the contractor by HLS will only be made available for the purposes of the contractual services under this contract and remain the property of HLS.
- 2.10. Work results or items developed together with HLS or for HLS may only be delivered to HLS, unless otherwise expressly stipulated in the respective negotiation protocol.
- 2.11. The contractor will subject all the results to a final inspection to ensure the accuracy and completeness of the service. It guarantees in the sense of an independent guarantee that the engineered documents can be put into the production, and is liable in the case of design errors for the resulting additional expenses.
- 2.12. The contractor guarantees a punctual and professional work result. It provides the contract services on its own responsibility, at its own risk and, as a rule, unless agreed otherwise, in its business premises. The personnel responsibility, the factual and disciplinary instruction right as well as the design and implementation of the personnel employment lie exclusively with the contractor.
- 2.13. The review of the design documents, other documentation and the approval and implementation of the design is not a legal acceptance.
- 2.14. The parties agree that even in the case of unconditional acceptance all warranty rights of HLS, even for known defects, are retained. The contractor expressly waives the objection of the delayed notice of defects.
- 2.15. Threatened by delivery not in accordance with the specification, not timely services performed Production shutdowns or damage to HLS or its end customers, the contractor must in consultation with HLS by appropriate, to be borne by him immediate measures to remedy. If these are fruitless or cannot be provided by the contractor immediately, HLS is entitled to carry out the immediate measures at the

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- expense of the contractor in order to avert further losses and any associated claims for damages.
- 2.16. The contractor is obligated to notify HLS in writing of a noticeable delay in its performance or a foreseeable possible delay of its performance. The contractor can only rely on causes of delay for which he is not responsible if he has complied with his obligation to notify HLS.
- 2.17. Notification of delays by the contractor and any related updates to agreed deadlines does not release the contractor from the delay with his services. In this respect, despite updating of the agreed deadlines after a delay has been notified by the contractor, HLS is still entitled to all rights under the contract for work or according to the applicable law resulting from or in connection with the delay of the contractor.
- 2.18. The contractor is not entitled to commission a subcontractor without prior written permission by HLS. Prior to approval by HLS, the contractor must provide him with all information requested by HLS about the subcontractor. In addition, the contractor undertakes to give HLS the right to review the operation of the subcontractor. If written permission is granted, the contractor shall oblige the subcontractor in accordance with the provisions of this agreement. The contractor is liable for his vicarious agents as for his own fault and must ensure the fulfillment of his contractual obligations, regardless of the subcontracting.
- 2.19. with regard to design or component related modifications to submit within 5 working days a notification in respect to additional cost; insofar all documentation necessary for an objective examination (old/new comparison) shall be submitted by the Contractor without being explicitly requested and without undue delay; once the aforementioned period has expired or in the event of missing or incomplete documents submitted, HLS shall be entitled to reject Contractor's notification in respect to additional costs; unless agreed otherwise in writing any further additional cost will in general only be acknowledged if HLS will be able to pass on such costs to its customer.
- 3. Commissioning, Necessary Documents, Terms of Delivery**
- 3.1. Any commissioning of the Contractor by HLS must be made in writing.
- 3.2. Supplementary Deliverables or changes that lead to price modifications must in any case be commissioned in writing.
- 3.3. Verbal agreements or any other additional supplements to the order placed must be confirmed in writing to become legally valid.
- 3.4. The Contractor assumes the obligation to enclose to each Deliverable to HLS a delivery note precisely indicating the items delivered. The Contractor shall indicate the HLS' order number and project name on each delivery note, invoice, and any other correspondence.
- 3.5. The sub-contracting of Deliverables or parts thereof to third parties shall only be only permitted with HLS' prior written consent. In the event of a violation HLS shall be entitled to terminate the agreement with immediate effect. In this case the Contractor shall not be entitled to assert any claims against HLS.
- 3.6. Place of performance (*Erfüllungsort*) shall be the point of receipt agreed for the respective Deliverables. The risk shall only pass to HLS after acceptance through HLS at the agreed point of receipt. The Deliverables shall be provided delivery cost free to the agreed point of receipt at Contractor's expenses and risk (Incoterm 2010: DDP). Title and ownership of the Deliverables provided shall transfer to HLS upon delivery at the respective agreed point of receipt. A retention of title by the Contractor or a third party – of whatever nature and form – is excluded.

## 4. Deliver Dates, Changes, Delay

- 4.1. All agreed delivery dates and deadlines are binding. The respective acceptance of the Deliverables at the place of performance shall be decisive.
- 4.2. The Contractor shall without undue delay inform in writing about an identifiable or a foreseeable potential delay of its performance. Nevertheless, the Contractor shall be obligated to undertake any possible and reasonable steps to fulfil its contractual obligations. The Contractor shall not be entitled to refer to reasons for which it is not responsible for, if the Contractor has not fulfilled the aforementioned information obligation.
- 4.3. In the event of a delay the Contractor shall undertake any and all possible and reasonable steps to prevent or cure such delay and to limit the impact of such delay as much as possible as well as to take measures to restore its performance capability. The Contractor shall submit to HLS an emergency plan which inter alia provides for competent persons including contact details with regard to disposition, warehouse, shipment, quality and technical support. The emergency plan shall be continuously adjusted to the changed circumstances and shall be continuously updated by the Contractor.
- 4.4. In the event of a default in delivery (*Lieferverzug*) the Contractor assumes the obligation to pay to HLS a conventional penalty in the amount of 1 % of the net order value for each full calendar day, however, in total maximum 10 % of the net order value. In the event of multiple or repeated defaults in delivery there shall be no aggregation of conventional penalty, so that the maximum amount shall only be paid once.
- 4.5. Any further claims to which HLS is entitled to, in particular any claims and rights resulting from the applicable statutory law, shall explicitly not be excluded by the agreement regarding conventional penalty or by enforcing conventional penalty. However, the respective conventional penalty shall be deducted from any further damage or compensation claims.

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## 5. Insurance

The Contractor assumes the obligation to provide for a public liability insurance (*Betriebshaftpflichtversicherung*) with a minimum coverage of EUR 5 million per claim for personal injury, property damage and financial loss. Upon HLS' request the Contractor shall submit a respective insurance certificate. Insofar the Contractor hereby – in advance – assigns all his future payment claims against the insurer arising from or in connection with Contractor's provision of Deliverables. HLS – in advance – accepts Contractor's assignment. Contractor's liability shall not be limited by provision of the aforementioned insurance coverage and by the aforementioned assignment of the corresponding claims.

## 6. Prices, Invoice, Payments

- 6.1. The Contractor confirms that all documents and information necessary for preparation of an offer preceding the commissioning of the Contractor were available to it. The Contractor furthermore confirms that it assessed all work necessary for a comprehensive fulfilment of Deliverables commissioned by HLS, including an appropriate risk premium.
- 6.2. Unless agreed otherwise in writing all agreed prices are fixed prices, so that all costs and expenses of the Contractor that are necessary for a comprehensive fulfilment of the commissioned scope of Deliverables shall be deemed to be fully and definitely covered.
- 6.3. Unless agreed otherwise invoicing by the Contractor shall only be permitted after the complete hand-over of the contractually agreed Deliverables and after approval by HLS.
- 6.4. The Contractor assumes the obligation to submit invoices in a duplicate to HLS' accounting department and broken down into each individual position. Precondition for further processing of an invoice of the Contractor is inter alia the fulfilment of Section 3.4 of these T&C.
- 6.5. Unless agreed otherwise in writing payment of an invoice shall be effected within 30 days upon receipt of the respective invoice.
- 6.6. The payment of the service takes place after receipt of payment by the client of HLS. Changes to this require the written form in the contract.
- 6.7. If HLS effects payment prior to passing over of the risk, the transfer of the title and ownership shall be deemed agreed, unless HLS has requested and received collateral in the amount of the respective payment.

## 7. Right of Retention, Set-Off, Assignment

A right of retention (*Zurückbehaltungsrecht*) of the Contractor in respect to its own claims against HLS shall be generally excluded, unless undisputed claims or claims that have been determined by a final, non-appealable court decision are concerned. The Contractor shall only be entitled to offset (*aufrechnen*) undisputed claims or claims that have been determined by a final, non-appealable court decision, unless counterclaims that are reciprocally (*synallagmatisch*) connected to the main claim are concerned. An assignment of claims or assignment of the right to collect receivables requires a prior written consent of HLS; § 354a HGB shall remain unaffected.

## 8. Non-Disclosure Obligation

- 8.1. The Contractor assumes the obligation to treat any and all information it has received from HLS – in whatever form – secret and strictly confidential. The non-disclosure obligation shall in particular apply to all matters which are suitable to cause economic damage to HLS or to harm HLS' reputation and remain valid and in force also after completion and acceptance of the respective order. All Contractor's and its subcontractors' personnel that have been entrusted with the order shall be obligated accordingly.
- 8.2. The Contractor assumes the obligation not to contact any end-customers of HLS without explicit prior written consent of HLS' managing directors.

## 9. Force Majeure

In the event of force majeure, such as strikes, lockouts, riots, public authority measures and other unforeseeable, unavoidable and severe events, for which HLS is not responsible, (hereinafter collectively referred to as "**Force Majeure**") HLS shall not be liable for the duration of the respective Force Majeure event for any failure to perform or for any delay of the performance of the contractual obligations.

## 10. Warranty and Liability

- 10.1. The Contractor shall be fully liable according to statutory provisions for any defects in the Deliverables provided, unless stipulated otherwise herein below. The warranty period (*Gewährleistungsfrist*) shall be 36 months beginning upon delivery. The Contractor assumes the obligation to remedy defects without undue delay upon the respective notice of the defect.
- 10.2. In the event third parties assert claims against HLS due to defective Deliverables provided by the Contractor for dismantling and new installation of Deliverables, new production or re-performance or costs of dismantling and new installation of Deliverables (also disposal and transport costs) and/or costs of new production or re-performance, the Contractor assumes the obligation to fully indemnify and keep

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HLS harmless of any costs resulting from the aforementioned. Contractor's right to prove that the alleged defect did not exist at the time of the risk transfer to HLS remains unaffected. Any further HLS' statutory rights and claims, in particular claims for indemnification for indirect and consequential damages, remain in any case unaffected. Contractor's right and obligation to supplementary performance shall also remain unaffected. In the event HLS is in default within a legal relationship to third parties due to defective Deliverables provided by the Contractor, the Contractor assumes the obligation to fully indemnify and keep HLS harmless from any costs resulting thereof.

- 10.3. In all other regards the Contractor shall be fully liable according to the applicable statutory provisions. In particular the Contractor shall be liable for any property damage, financial loss and personal injury, *inter alia* also for any indirect and consequential damages, which are for example caused by defective or incorrect software and/or documentation.
- 10.4. The Contractor assigns any and all defect, warranty, guaranty and damage claims against his (sub-)contractors on account of performance (*erfüllungshalber*) to HLS. HLS accepts and agrees with the assignment upon formation of the relevant contract. The Contractor remains authorised to assert the aforementioned claims against his (sub-)contractors until HLS revokes such authorisation.

## 11. Termination

- 11.1. HLS shall be entitled to terminate an order entirely or partially in writing giving a two weeks notice. In the event of such termination by HLS, HLS shall pay the agreed remuneration for the Deliverables verifiably provided by the Contractor up to the time the Contractor has received the termination notice, so long the work are useable for HLS. Any further claims shall be excluded. HLS shall be entitled to terminate an order entirely or partially giving a 5 days notice, if the respective HLS customer has on his part terminated the commissioning of HLS entirely or partially.
- 11.2. If the termination was due to Contractor's conduct or omission, the Contractor shall only be entitled to remuneration for Deliverables provided up to the time the reason for termination arose.
- 11.3. If the Contractor stops payment or if insolvency proceedings over Contractor's assets or extrajudicial settlement proceedings are filed, HLS shall be entitled to immediately terminate the respective contract with the Contractor. In such case Section 11.2 of these T&C shall apply accordingly.
- 11.4. Any and all rights in the results created up to the termination shall be deemed transferred to HLS.

## 12. Property Rights, Rights of Use

- 12.1. HLS shall remain the owner of and have the exclusive rights of use with regard to all data transmitted to the Contractor. The Contractor shall have for purpose of order processing a non-exclusive, limited to contract time and content and non-transferrable right of use. To the extent the provided data has over the course of order been changed, supplemented or processed in any other form HLS shall be deemed to become the exclusive owner of the changed data.
- 12.2. All knowledge and results gained in the course of a project, including all relevant documents and data, shall be fully disclosed to HLS. The aforementioned knowledge and results etc. shall be handed over without undue delay and shall be deemed to become HLS' ownership and property from the time of its existence together with the right to the exclusive and unlimited use and exploitation. The Contractor assumes the obligation to protect the data made available to it, including the changed, supplemented or in any other form processed data, against any access that has not explicitly been authorised by HLS and to demonstrate and prove such protective measures at the request of HLS.
- 12.3. The use and exploitation of Contractor's rights existing at the time of conclusion of the respective contract shall not be limited by these T&C. To the extent the use of such Contractor's rights is necessary for the subsequent exploitation of the results gained in the course of the respective project, the Contractor shall grant HLS a cost-free, non-exclusive, without restrictions regarding place or time, irrevocable and freely transferrable licence, for which sub-licences can be granted at liberty of HLS.
- 12.4. To the extent patentable results are generated in course of a project such results shall be reported to HLS. HLS shall have the sole right to decide about the exploitation of such results. HLS shall be entitled to demand that the reported patentable results be transferred and handed over to HLS within 4 (four) weeks after the corresponding report. The Contractor assumes the obligation to transfer his rights to HLS without undue delay.
- 12.5. The Contractor assumes the obligation to fully and without limitations claim protectable inventions that its employees may create in the course of the project according to the employees' inventions laws (*Arbeitnehmererfindungsgesetz*) by declaration towards the respective inventor. Following this it has to be proceeded in accordance with Section 12.4 of these T&C.

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### 13. Ethical Standards/Code of Conduct

13.1. In all its business activities HLS is aware of its social responsibility and feels committed towards the principles of the United Nations Global Compact Initiative ([www.unglobalcompact.org](http://www.unglobalcompact.org)) as well as towards ILO Declaration on Fundamental Principles and Rights at Work ([www.ilo.org/declaration](http://www.ilo.org/declaration)). HLS furthermore expects from its Contractors impeccable law-abiding, social, ethical and sustainable conduct that meets the minimum standards set in the aforementioned declarations of principles. The Contractor shall in particular meet and comply with the following standards:

- Showing no tolerance towards child and forced labour, illegal employment and clandestine workforce;
- Fighting corruption and bribery inside its own company and prohibited agreements restricting competition;
- Providing socially adequate work conditions for all employees, ensuring a fair and non-discriminatory conduct with each other as well as respecting and complying the fundamental rights of all employees with regard to health protection, work safety requirements and personality rights;
- Remunerating all employees fair salaries according to the laws of the respective country.
- Sustainable use of energy and greenhouse gas emissions
- Supplied materials or products do not contain conflict minerals. This is done on the basis of the United Nations Global Compact ([www.unglobalcompact.org](http://www.unglobalcompact.org)) and the established principles of the US Congress (Dodd-Frank Act).
- Sustainable and responsible use of natural resources, as well as the prevention and reduction of environmental pollution (air, water, soil, waste, emissions, chemicals)
- In addition to these requirements our corporate policy are binding (<http://http://www.hls-group.com/en/content/who-we-are-1>

13.2. The Contractor shall furthermore ensure that all his subcontractors, suppliers, and any other contractual partners will contractually commit to and comply with the aforementioned minimum standards.

### 14. Miscellaneous

- 14.1. Any amendments or supplements to these T&C must be made in writing. Oral (side-)agreements shall only be valid if they have been confirmed in writing.
- 14.2. In the event that any provision of this T&C is, or becomes, entirely or partly invalid or unenforceable, the remainder of the T&C shall remain valid and enforceable. In such event HLS and the Contractor commit themselves to replace the invalid or unenforceable provision by a valid and enforceable provision which shall come as close as possible to the economic purpose of the invalid or unenforceable provision; the same shall apply mutatis mutandis to any omissions or gaps in these T&C.
- 14.3. Exclusive venue for all disputes arising from or in connection with these T&C shall be Augsburg. The laws of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980 (CISG) shall exclusively apply.
- 14.4. Irrespective of the English terms – which may not be identical with the original German terms – contained in this English translation of the T&C, these T&C as well as any and all agreements between HLS and the respective Contractor shall be governed and interpreted exclusively in accordance with German law, including in particular the German legal concepts and terms.

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