

## 1. General provisions

1.1. The following general terms and conditions of sale ("General Terms and Conditions of Sale") apply to merchants [*Kaufleute*] within the meaning of the German Commercial Code, legal entities under public law and special funds under public law ("Purchaser") for all deliveries and/or goods and/or services (hereinafter also referred to as "Deliveries" respectively) supplied by HENSOLDT Optronics GmbH ("HENSOLDT").

1.2. General terms and conditions of the Purchaser are not accepted and any term or condition in any printed or electronic form of Purchaser, including but not limited to, any order, confirmation or other document, which is in any way inconsistent with these General Terms and Conditions of Sale is hereby expressly rejected and HENSOLDT's acceptance of any offer or order of Purchaser is made in reliance on Purchaser's assent to all terms and conditions hereof.

1.3. Partial deliveries by HENSOLDT are permissible insofar as they are reasonable for the Purchaser.

1.4. It is expressly understood and agreed that HENSOLDT may use subcontractors and/or suppliers for the performance of its obligations under the contract at its own discretion.

## 2. Formation of contract

2.1. Offers made by HENSOLDT are non-binding and constitute an invitation to the Purchaser to place an order with HENSOLDT.

2.2. An order placed by the Purchaser constitutes a binding offer which HENSOLDT is free to accept within four weeks of receipt thereof by way of written order confirmation. The agreement takes effect upon receipt by the Purchaser of such order confirmation.

2.3. Nature and scope of the Deliveries to be provided by HENSOLDT, e.g. the works to be produced and/or the goods to be delivered and/or the services to be provided shall be as per the order confirmation and any related technical specifications.

2.4. In case of an offer explicitly marked by HENSOLDT as binding, the contract shall come into force upon receipt by HENSOLDT of the Purchaser's written acceptance of the binding offer. Under no circumstances shall any conflicting or additional, disclaiming terms in Purchaser's written acceptance be binding on HENSOLDT.

2.5. Unless provided otherwise, the INCOTERMS 2010 – including any amendments that are effective at the time of the formation of the contract – shall apply with regard to the interpretation of customary trade terms. Purchaser knows and is in possession of the current valid version of the INCOTERMS 2010 and therefore the parties do not consider it necessary to attach the INCOTERMS to these General Terms and Conditions of Sale.

## 3. Scope

3.1. The scope, quantities, specifications, delivery period and price of the Deliveries are set forth in HENSOLDT's order confirmation or binding offer. In absence of any specific requirement, the Deliveries shall adhere to the specifications generally applicable to similar goods or services provided by HENSOLDT.

3.2. Any documentation provided or made available by HENSOLDT to the Purchaser prior to the formation of the contract, such as drawings, sketches, indications of weight or dimensions, calculations, etc. shall not become part of the contract unless expressly included in the contract by HENSOLDT in the order confirmation/the binding offer.

3.3. HENSOLDT reserves the right to change the technical concept on which the Deliveries are based even after contract formation, provided that the contractually agreed quality and specification of the Deliveries are not negatively affected thereby, there is a valid reason for such change and the change is not essential.

## 4. Prices

4.1. The prices of HENSOLDT are set forth in the order confirmation pursuant to clause 2.2 or in the binding offer pursuant to clause 2.4 and are ex factory. All price indications are net of applicable statutory VAT. Costs for packaging, loading and shipment, including insurance costs, are charged separately. Unless otherwise agreed, the Purchaser shall, in addition to the agreed remuneration, bear all incidental costs, e.g. travel and subsistence expenses, at cost. This shall apply in particular if HENSOLDT has assumed responsibility for installation or assembly.

4.2. Unless otherwise agreed, clause 4.1 shall also apply in relation to international deliveries. Any charges incurred for unloading, lighterage and landing, port dues and wharfage shall be borne by the Purchaser.

4.3. Tariffs, consular fees and other taxes, charges, fees, etc. charged under foreign regulations, as well as costs in connection with the aforementioned, shall be borne by the Purchaser.

4.4. HENSOLDT ensures compliance with foreign regulations on packaging, weighing and tariffs, provided that the Purchaser provides exact written information in this regard without undue delay. Any additional costs that accrue due to delayed information shall be borne by the Purchaser.

4.5. If there is a period of more than three months between the formation of the contract and the supply of the Deliveries and if, during this time, the cost factors for manufacturing and/or supplying the Deliveries increase (in particular as a result of collective bargaining agreements, wage increases and increases of prices for materials), HENSOLDT is entitled to charge the Purchaser the thus increased prices. If the prices are changed by more than ten (10) percent and Purchaser does not accept the proposed price change, Purchaser has the right to terminate the contract within thirty (30) days of the date of notice of the price change and in the meantime, the prices in force at that time shall apply.

## 5. Terms of payment

**5.1.** All payments are to be made by the Purchaser in accordance with the individually agreed payment terms in Euros without any deductions.

**5.2.** Unless otherwise agreed, all payments are due as follows:

**5.2.1.** In relation to services:

- a) For recurring services such as hotline, preventive maintenance, etc.:  
14 days after invoicing;
- b) For one-off services such as training, error-related inspection, etc.:  
30 days after provision of the service and invoicing;

**5.2.2.** In relation to deliveries/goods:

- a) In relation to transactions with an order value of up to 50,000 euros:  
net cash upon delivery and receipt of the invoice;
- b) In relation to transactions with an order value in excess of 50,000 euros and a delivery term of up to three months:  
one-third of the order value upon formation of the contract, the rest upon delivery;
- c) In relation to transactions with an order value in excess of 50,000 euros and a delivery term of more than three months:  
30 % of the order value upon formation of the contract,  
30 % of the order value upon expiry of the first third of the agreed delivery term,  
30 % of the order value upon expiry of the second third of the agreed delivery term,  
10 % of the order value upon delivery;
- d) Insofar as the Deliveries include the installation or assembly of a work as well as its acceptance, the aforementioned provisions a) to c) shall apply with the proviso that delivery shall be replaced by acceptance.

**5.2.3.** In the event that the delivery is delayed for reasons for which the Purchaser is responsible, the delivery is deemed made upon notice by HENSOLDT of it being prepared for shipment.

**5.3.** If, on the due date, a transfer of payments is not possible from a country out of which the payment is to be effected, the Purchaser shall be obliged to deposit the amount owed, for the benefit of HENSOLDT, at a bank in that country which is acceptable to HENSOLDT. If the Purchaser has deposited the amount in a currency other than euros and if the exchange rate changes to the disadvantage of HENSOLDT by the time the payments are transferred, the Purchaser shall be obliged to pay the respective exchange loss to HENSOLDT.

**5.4.** Payment terms are deemed met if the purchase price has been received by HENSOLDT within the agreed time period into the account designated by HENSOLDT in the respective invoice.

**5.5.** If the Purchaser is in default of payment, HENSOLDT is entitled to claim default interest at a rate of 9 % p.a. above the base interest rate as amended from time to time. In addition, HENSOLDT is entitled to claim higher interest payments on a different legal basis and/or to make a claim for any other loss.

**5.6.** The Purchaser shall not be entitled to declare any set-offs with counterclaims, unless such counterclaims are undisputed or have been upheld and declared unappealable by a court of law.

**5.7.** If, following formation of the contract, the economic status of the Purchaser significantly deteriorates or circumstances become known to HENSOLDT as a result of which HENSOLDT has valid reason to believe that the claim for remuneration is endangered, HENSOLDT is entitled to reject the performance of its own contractual obligations until such time as the Purchaser has either fulfilled its obligations under such contract or has provided appropriate security for such obligations.

**5.8.** Without prejudice to clause 5.5, a delay or failure to pay shall also entitle HENSOLDT to, all rights and actions reserved, set a reasonable grace period within which the Purchaser must, reciprocally and simultaneously in exchange for performance by HENSOLDT, at the Purchaser's discretion either fulfil its obligations under the contract or provide security. Following an unsuccessful expiry of such grace period HENSOLDT may withdraw from the contract.

## 6. Delivery times and terms of delivery

**6.1.** Time limits and dates for the supply of Deliveries (hereinafter referred to as the "Delivery Times") are set out in the order confirmation/binding offer of HENSOLDT and shall commence no earlier than upon receipt by the Purchaser of the order confirmation/receipt by HENSOLDT of the written acceptance of the Purchaser. Delivery Times are deemed complied with if, within the agreed delivery period or the agreed time, the goods are ready for shipment, if the work to be accepted is ready for acceptance or if the service is ready to be performed and a notice to that effect has been issued to the Purchaser.

**6.2.** Unless otherwise contractually agreed, all deliveries are made EXW (INCOTERMS 2010). If goods are to be shipped, any freight or packaging costs are charged separately. In these cases HENSOLDT will enter into transport insurance at the expense and for the benefit of the Purchaser. Any transport damage must be notified by the Purchaser to HENSOLDT and the shipment company in writing immediately upon receipt of the Deliveries.

**6.3.** Cases of force majeure entitle HENSOLDT to postpone the Delivery Time for a time equivalent to the duration of the event. If HENSOLDT is unable to comply with the Delivery Time as a result of such event of force majeure either at all or for a period lasting no less than six months, HENSOLDT is discharged from its obligation to supply the Deliveries in question. An event of force majeure shall include all circumstances for which HENSOLDT is not responsible and which render supply of the Delivery by HENSOLDT commercially or legally impossible or impose upon HENSOLDT an unreasonable hardship, such as labour disputes (in particular strike, lawful lockout), civil war, acts of terrorism, civil unrest, hostilities between nations, natural disasters, acts of Government (e.g. import or export sanctions), shortages of energy or raw materials and delays in supplies to HENSOLDT for which HENSOLDT is not responsible. In the case of delays in supplies to HENSOLDT, HENSOLDT shall immediately notify the Purchaser and immediately and adequately reimburse the Purchaser for any consideration already provided by it. If HENSOLDT is discharged from its obligation to supply the Deliveries that

are affected by the event of force majeure, the Purchaser shall be entitled to withdraw from the contract to this extent. In such a case, any claim for damages, reimbursement of costs or other indemnification shall be excluded, subject to the provisions of clause 13. HENSOLDT shall be paid by the Purchaser for Deliveries already performed/delivered in accordance with the agreed contract prices.

**6.4.** HENSOLDT's obligation to comply with the agreed Delivery Times requires the timely and proper performance of all contractual cooperation obligations by the Purchaser at the Purchaser's expense, i.e. in particular the provision of all required documentation, permits, authorizations, licenses and clearances in relation to the Deliveries (and their installation) as well as the provision of the facilities, construction materials, raw materials and ancillary materials, tools, skilled staff and support staff, energy, water, light and heating supply, other connections as well as protective garments and protective devices required for supplying the Deliveries. In the event that there is a delay in the performance by the Purchaser of its obligations to cooperate, the Delivery Times for HENSOLDT are deferred by a reasonable period of time which shall be not less than the duration of the delay. The Purchaser shall reimburse HENSOLDT for any damages, costs and expenses that HENSOLDT incurred due to the Purchaser's delayed or improper performance of its contractual obligations.

**6.5.** If, upon request by the Purchaser, the Delivery Time is deferred beyond the agreed delivery date, HENSOLDT will charge the Purchaser for the storage costs incurred beginning with the expiry of the original Delivery Time; in the event of storage in HENSOLDT's factory, this shall be an amount equal to 0.5 % of the total invoice amount for each week of storage or part thereof. The Purchaser is free to prove that HENSOLDT has incurred fewer or no costs as a result of the storage.

**6.6.** In the event a delay in the Deliveries is attributable to HENSOLDT, the Purchaser shall be entitled to claim damages in an amount equal to 0.5 % (point five percent) of the remuneration owed for the delayed delivery/performance for each complete week of such delay, however no more than a total aggregate maximum of 5 % (five percent) of the remuneration owed for the delayed delivery/performance, unless HENSOLDT proves that the Purchaser has suffered less or no damage. Any further liability of HENSOLDT for delay is excluded, subject to the provisions of clause 13.

**6.7.** The Purchaser may not refuse to take or accept Deliveries due to minor defects.

## **7. Passing of risk**

**7.1.** The risk shall pass to the Purchaser once the Deliveries have left HENSOLDT's factory; this shall apply even if partial deliveries are made – in which case the risk shall pass to the Purchaser for the part in question – or if HENSOLDT has taken on other commitments, e.g. the delivery, installation, assembly or payment of the shipping costs.

**7.2.** If the shipping of the Deliveries is delayed for reasons that HENSOLDT is not responsible for, or if the Purchaser is in default of acceptance for any other reason, then the risk passes to the Purchaser as soon as the delay commences. HENSOLDT is entitled to store the items to

be delivered and take out insurance against storage risks at the expense of the Purchaser.

**7.3.** The foregoing provisions shall not apply if pricing terms have been agreed in relation to which the INCOTERMS 2010, including any amendments that are effective at the time of the formation of the contract, provide for a different rule on the passing of risk.

**7.4.** If the Purchaser is in default with accepting Deliveries or if the Purchaser returns the items delivered without being entitled to do so, HENSOLDT may claim damages.

## **8. Installation and assembly**

Unless otherwise agreed in writing, the following shall apply in relation to installation and assembly:

**8.1.** The Purchaser shall, at its expense, take on and provide the following in good time:

- a) In addition to its obligations pursuant to clause 6.4, at the assembly site adequately sized, suitable, dry and lockable rooms for the storage of equipment, materials, tools, etc. and suitable work and break rooms including sanitary facilities appropriate in the circumstances for the assembly staff; apart from that, in order to protect the possessions of HENSOLDT and the assembly staff at the assembly site, the Purchaser shall take the same measures it would take to protect its own possessions;
- b) Protective clothing and protective devices that are necessary due to the prevailing circumstances at the assembly site.
- c) Prior to commencement of the assembly work, the Purchaser shall make available, of its own accord, the necessary information regarding the location of electric power lines, gas and water pipes or similar installations, even of those that are concealed, as well as the necessary structural data.
- d) Prior to commencement of the installation or assembly, the provisions and equipment necessary for the commencement of the work must be available at the assembly site and all preparatory work must have advanced to such a degree as to allow the assembly to commence as agreed and be carried out without interruption. Access roads and the assembly site must have been levelled and cleared.

**8.2.** If assembly and commissioning are delayed due to reasons attributable to Purchaser, Purchaser shall bear the reasonable costs for any waiting times and necessary additional journeys by staff of HENSOLDT and HENSOLDT's vicarious agents.

**8.3.** The Purchaser shall, without delay, notify HENSOLDT on a weekly basis of the hours worked by the assembly staff and of the completion of assembly or commissioning.

**8.4.** If, upon completion, HENSOLDT requests acceptance of the Deliveries, the Purchaser shall undertake this within two weeks. If the Purchaser allows a period of two weeks to elapse or if the Deliveries have been put to use – if applicable, after an agreed test phase has expired – acceptance shall be deemed to have occurred.

**8.5.** In case of non passing an acceptance test, only the failed test cases shall be repeated.

**8.6.** The Purchaser shall not be entitled to withhold acceptance for (a) minor deviation or deficiencies which do not materially affect the functioning of the Deliveries; or (b) defective installation not carried out by HENSOLDT and/or its subcontractors.

### **9. Equipment provided by the Purchaser**

The Purchaser shall provide HENSOLDT with all equipment, items, information, etc. necessary for the performance of the contract and at its own expense in a timely manner and free of any faults.

### **10. Retention of title**

**10.1.** HENSOLDT reserves the following securities until such time when all claims to which HENSOLDT is entitled from the entire business relationship with the Purchaser are fully settled. These securities shall be released on a pro-rata basis, at the choice of HENSOLDT, once their realisable value exceeds HENSOLDT's claim against the Purchaser by more than 20 % for more than a transitional period. In the event of running accounts the securities serve to secure the net claim of such running accounts.

**10.2.** Unless otherwise agreed, the Deliveries remain the property of HENSOLDT until the complete fulfilment of all payment obligations. The Purchaser is not entitled to pledge the Deliveries or transfer title therein for the purpose of security. If a third party nevertheless acquires any rights in the Deliveries, the Purchaser hereby assigns in advance any and all rights resulting therefrom to HENSOLDT. HENSOLDT hereby accepts such assignment. The Purchaser shall immediately notify HENSOLDT, in relation to the Deliveries, there has been a pledge, an attachment or any other disposition on the part of a third party.

**10.3.** The Purchaser shall exercise due care in handling the Deliveries that are subject to retention of title and shall properly maintain them. In particular, the Purchaser shall insure them at its own expense against fire and water damage, other damage, theft and destruction in an amount equal to their replacement value. The Purchaser hereby assigns in advance any and all claims under the insurance contract to HENSOLDT. HENSOLDT hereby accepts such assignment. HENSOLDT is entitled to request that the Purchaser provide appropriate documentation evidencing the existence of the insurance coverage.

**10.4.** The Purchaser is entitled to resell the Deliveries supplied by HENSOLDT in the ordinary course of business. Any claims arising from such resale of Deliveries are hereby assigned by the Purchaser in advance to HENSOLDT. HENSOLDT hereby accepts such assignment. However, the assignment shall only apply up to an amount equal to the value of the resold Deliveries as invoiced by HENSOLDT. The part of the claim assigned to HENSOLDT has priority over and above the remainder of the claim.

**10.5.** As long as the Purchaser complies with its contractual obligations vis-à-vis HENSOLDT in the proper form, the Purchaser shall be entitled to collect the claims that have been assigned to HENSOLDT for the purpose of security. Upon request of HENSOLDT, the Purchaser shall disclose the retention of title to the third-party buyer and to hand over any documentation necessary for HENSOLDT to assert its claims and to provide any necessary

information. All costs related to the collection of the claims by HENSOLDT and to possible interventions shall be borne by the Purchaser.

**10.6.** In the event that the Purchaser is in default with all or part of its payment obligations for more than fourteen (14) days and has been notified thereof inclusive HENSOLDT's potential right to withdraw from the contract, or if an application for insolvency proceedings has been made or should have been made, HENSOLDT is entitled to withdraw from the contract and to claim that all Deliveries still subject to retention of title be returned and to immediately take possession of such Deliveries. HENSOLDT may also immediately assert its further rights under the retention of title; the same applies in the event of any other material deterioration of the economic circumstances of the Purchaser. The Purchaser shall grant access to all of its business premises to HENSOLDT or its appointees during normal business hours. HENSOLDT is entitled to remove the Deliveries.

**10.7.** In the event that the Purchaser processes the Deliveries or transforms or combines these with other items, such processing, transformation or combination shall occur for the benefit of HENSOLDT. HENSOLDT shall become the direct owner of the items resulting from such processing, transformation or combination. Should this be impossible for legal reasons, HENSOLDT and the Purchaser agree that HENSOLDT shall at all times of the processing, transformation or combination become the owner of the new item. The Purchaser shall store the new item for HENSOLDT while exercising the diligence of a prudent businessman. The item created by way of processing, transformation or combination shall be subject to retention of title.

**10.8.** If the retention of title in the aforementioned form is not valid according to the laws of the country of destination, the Purchaser shall cooperate to ensure the establishment of an equivalent security interest according to the provisions of said country in favour of HENSOLDT.

### **11. Purchaser's remedies in case of defective Deliveries**

**11.1.** HENSOLDT warrants that it will perform services where required with reasonable care and skill and that deliveries and/or goods shall correspond with their contractually agreed specification at the time of delivery and will be free from defects in material and workmanship under normal use and service. All other warranties, conditions or terms implied by statute or law are excluded. HENSOLDT specifically disclaims any implied warranties of merchantability or fitness for a particular purpose. HENSOLDT does not make any guarantees [*keine Garantie i.S.v. §443 BGB / keine zugesicherte Eigenschaft*]

**11.2.** In order to determine any defects, the Purchaser shall examine the Deliveries immediately upon delivery and, if an obvious defect is present, shall notify HENSOLDT thereof in writing within two weeks. Any non-obvious defects of the Deliveries shall be immediately upon discovery notified in writing by the Purchaser to HENSOLDT, and in any event no later than ten days following discovery. If the Purchaser fails to comply with the aforementioned preclusive periods, the Deliveries are deemed accepted with the result that the Purchaser loses its rights based on defects as per clauses 11.3 and 11.5.

**11.3.** If Deliveries prove to be defective due to circumstances present prior to the passing of risk, the Purchaser shall be entitled to claim supplementary performance, i.e. at HENSOLDT's discretion either rectification of the defect or delivery of an item free from defects. HENSOLDT shall be granted a reasonable period of time to effect this.

**11.4.** HENSOLDT may make the supplementary performance dependent upon payment by the Purchaser of a reasonable part of the remuneration taking into account the nature of the defect. HENSOLDT is entitled to reject supplementary performance if this can only be accomplished at an unreasonable expense.

**11.5.** If supplementary performance undertaken by HENSOLDT has failed twice, if HENSOLDT rejects to undertake such supplementary performance due to unreasonable expenses, or if HENSOLDT fails to provide such supplementary performance within a reasonable cure period set by the Purchaser, the Purchaser shall be entitled to reduce the purchase price or to withdraw from the contract and to claim compensation for futile expenses or damages in lieu of performance. The Purchaser shall not be entitled to withdraw from the contract or to claim damages in lieu of performance if the defect of the Deliveries is merely unsubstantial.

**11.6.** The Purchaser shall have no rights in relation to such defects that are, for example, (a) arising from any drawing, design or specification supplied by Purchaser; or (b) caused by fair wear and tear; or (c) caused by improper storage, operation, maintenance or excessive use of the Deliveries, or as a result of the use of unsuitable means of operation, construction work and building ground, or from improper modifications or repair works or from the damaging of seals of the Deliveries; or (d) caused by the failure to follow HENSOLDT's instructions (whether oral or in writing); or (e) occurred otherwise as a result of a violation of contractual provisions and product specifications by the Purchaser or by a third party; or (f) where the Deliveries consist of software: non-reproducible software errors.

**11.7.** Any warranty claims of the Purchaser for defects of the deliveries and/or goods shall become time-barred one year after the delivery of the item. This period shall not apply if longer periods of time are required by law with respect to defects in buildings and construction defects or in the event of intent, fraudulent concealment or failure to comply with a quality guarantee.

**11.8.** The warranty rights of the Purchaser for defective services shall become time-barred six months after performance of such services.

**11.9.** Replacement or repair of Deliveries due to defects shall not result in an extension of the statute of limitation, except in cases of §§ 203 ff BGB (German Civil Code).

**11.10.** Unless otherwise agreed, HENSOLDT's obligation to supply the Deliveries free from any industrial property rights and third-party copyrights (hereinafter referred to as "Intellectual Property Rights") shall be limited to the country of delivery. If a third party asserts any legitimate claims against the Purchaser for the infringement of Intellectual Property Rights by the Deliveries, HENSOLDT shall be obliged within the time limit set out in clause 11.7, at its expense, to remedy this defect in title by creating a condition which no longer infringes the Intellectual

Property Rights. HENSOLDT shall be granted a reasonable period of time to effect this. If this is impossible for HENSOLDT under reasonable conditions, the Purchaser shall have the statutory rights of withdrawal or payment reduction.

The liability pursuant to clause 11.10 only applies, however, if the Purchaser immediately notifies HENSOLDT of such claims in writing, if it does not acknowledge them and if HENSOLDT retains the right to carry out all defensive measures and negotiations.

Claims of the Purchaser shall be excluded if it is responsible for the infringement of Intellectual Property Rights or has caused such infringement by giving specific instructions or by using the Deliveries in a way that had not been agreed or that lies outside the intended use, or if it has caused such infringement by modifying the Deliveries or using them together with products that have not been supplied by HENSOLDT.

To the extent that a third party makes a claim of infringement against HENSOLDT based on the exceptions specified above, the Purchaser shall indemnify HENSOLDT in respect of any costs, losses or damages arising out of such action, subject to immediate information in writing of the Purchaser by HENSOLDT of such claim and the Purchaser's right to remedy this defect in title by creating a condition which no longer infringes the Intellectual Property Rights.

**11.11.** In the event of other defects in title the provisions in clause 11 shall apply mutatis mutandis.

**11.12.** In the event that software that is included in the Deliveries contains third party components which HENSOLDT has licensed under generally used "open source" license terms, the terms of the contract shall apply to those components to the extent that they do not conflict with the "open source" license terms. If necessary, the Purchaser agrees to sign a license agreement with the licensor of such software.

**11.13.** Any more extensive or different claims than those under this clause 11, which may be brought by the Purchaser against HENSOLDT or HENSOLDT's vicarious agents and which may be based on a defect, shall be excluded. Clause 13 applies.

## **12. Intellectual Property**

**12.1.** Notwithstanding the Purchaser's rights under this contract, all rights, titles and interests in and to all "Intellectual Property Rights" (which means (a) patents, utility models and industrial designs, and all applications and registrations thereof, (b) all copyrights including software in object and source code, (c) all trade secrets, inventions, know-how and technical data) of whatever nature arising out of or related to the Deliveries vest in, and shall be the sole and exclusive property of HENSOLDT or its third party licensor, whether or not specifically recognized, registered or finalised under the applicable law.

**12.2.** HENSOLDT shall grant the Purchaser a limited, non-exclusive, non-transferable, royalty-free right to use such Intellectual Property Rights to the extent required for complying with the purpose of the contract as well as for the maintenance of the Deliveries. Unauthorized copying shall be strictly prohibited, however, subject to permission, reasonable back-up copies of each user-loadable program

and any related update or revision in order to replace an authorised existing copy may be made. The Purchaser will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any Deliveries, unless otherwise ruled by the mandatory provisions of law.

**12.3.** For COTS (“**Commercial-Off-The-Shelf**”) items the licensing conditions of the COTS licensors shall prevail.

### 13. Liability

**13.1.** HENSOLDT is liable without limitation in the event of wilful misconduct [*Vorsatz*] and gross negligence.

**13.2.** Hensoldt is liable for ordinary negligence – except in the case of injury to life, limb or health – only if material contractual obligations are breached with liability being limited to damage that is foreseeable and typical for the contract in question at the time of performance. Material contractual obligations are deemed to be such obligations whose fulfilment is crucial for the proper performance of the contract and on the fulfilment of which the Purchaser will and may rely on as a matter of course.

**13.3.** Liability under clause 13.2 is limited to an amount not exceeding 20 % of the net contract price for all events of damage in the aggregate arising out of or related to the contract. In case of Deliveries where the contract price is calculated on an annual basis, the liability shall not exceed 10% (ten percent) of the net contract price for the preceding twelve calendar months calculated from the date of the relevant event.

**13.4.** Subject to clause 13.6, any liability for business interruption, production downtime, substitute procurement, removal and reinstallation costs, loss of use, loss of good will, loss of revenue or profit, loss of savings, regardless of whether or not such damages are considered direct or indirect, and for any indirect, consequential and/or unforeseeable damage is excluded.

**13.5.** Any further liability other than that provided in these General Terms and Conditions of Sale is excluded, regardless of the legal basis of such claim.

**13.6.** The limitations and exclusions of liability pursuant to clauses 13.2, 13.3, 13.4 and 13.5 shall not apply to any mandatory liability prescribed by statute (such as the German Product Liability Act [*Produkthaftungsgesetz*], willful misconduct [*Vorsatz*] or to any liability under a guarantee given irrespective of the party at fault.

**13.7.** If the liability of HENSOLDT is excluded or limited pursuant to clauses 13.2, 13.3, 13.4 and 13.5, this also applies to the personal liability of HENSOLDT’s employees, staff members, representatives or vicarious agents.

### 14. Reservation of performance, right to withdraw

**14.1.** The performance of the contract shall be subject to the reservation that there are no impediments as a result of German, US or other applicable national, EU or international provisions under foreign trade legislation and no embargoes or other sanctions.

**14.2.** The Purchaser shall procure all information and documents necessary for the export, shipment and/or import of the Deliveries.

**14.3.** Furthermore, the Purchaser agrees not to export or re-export, as the case may be, any Deliveries (including any hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision and including any kind of technical support) to any other country without obtaining the necessary licenses and permits that may be required under any applicable legislation. HENSOLDT shall be entitled to withdraw from the contract if the Purchaser is in violation of applicable rules and regulations.

### 15. Confidentiality

**15.1** Each party shall keep in confidence all material and information (including the documentation as per Clause 3.2) received from the other party, and marked as confidential or which should be understood to be confidential, and shall not disclose it to third parties or use it for any other purposes than those set out in the offer or the ensuing contract, without the prior written permission of the disclosing party. Each party will use the confidential information at its own risk.

**15.2.** The foregoing confidentiality obligation shall not apply to confidential information which. (i) is, or subsequently becomes, legally and publicly available without any breach by it of this contract; or (ii) was rightfully in possession of, or known to, the receiving party, which can be demonstrated by the receiving party’s internal documents; or (iii) is rightfully obtained by the receiving party from a third party, without any obligation of confidentiality; or (iv) is independently developed by the receiving party without access to or use of the confidential information; (v) is disclosed by the receiving party without written approval of the disclosing party; (vi) is required to be disclosed pursuant to applicable law or the decision of a competent court or government agency, whereupon the receiving party shall promptly inform the disclosing party of this requirement in any case before any confidential information is disclosed, so that a protective order or other appropriate remedy may be sought. Any disclosure needs to be limited to such confidential information to which the mandatory disclosure requirement applies.

**15.3.** Each party may disclose confidential information to its “**Affiliates**” (affiliated companies as per Art. 15 ff of the German Stock Companies Act [*Aktiengesetz*]) engaged in the performance of the contract but only to the extent that such affiliate has a need to know for carrying out the contract.

**15.4.** Each party shall limit disclosure of confidential information to individuals within its own organization, including its Affiliates, to external counsels, service providers or to advisors on a “need to know” basis only and provided that such recipient has taken any necessary measures to ensure compliance with the undertakings of this contract. Disclosure to external service providers shall be limited to the extent necessary to enable them to provide their services. The receiving party shall in no event use a lower degree of care in safeguarding the disclosing party’s information than it uses for its own information of like sensitivity and importance and in any case not less than reasonable care.

**15.5.** The obligations set forth in this Clause 15 shall bind the parties for a period of five years from the date of disclosure of confidential information and such obligation shall survive the termination or expiration of the offer or the ensuing contract.

## **16. Applicable law and place of jurisdiction**

**16.1.** The business relations between HENSOLDT and the Purchaser shall be governed and construed exclusively in accordance with the law of the Federal Republic of Germany. The application of the provisions of the UN Convention on the International Sale of Goods (CISG) shall be excluded.

**16.2.** The exclusive legal venue for all disputes arising from the business relationship shall be Munich, Germany

## **17. Miscellaneous**

**17.1.** Any amendments to or modifications of the contract or any ancillary agreements must be made in the written

form and signed by duly authorized representatives of the parties in order to be legally effective. The same shall apply to a waiver of this written form requirement.

**17.2.** Should any of the above provisions be or become invalid, the validity of the remaining provisions shall not be affected. The parties shall immediately replace the invalid provision by such valid provision which, in factual, legal and economic terms, most closely reflects the General Terms and Conditions of Sale in their entirety and the contractual arrangements. When a German term is appended in italics to an English term, the German term shall govern and prevail.