

## GENERAL CONDITIONS OF PURCHASE HES-TEC B.V.

Address:       Bosscheweg 39 A  
                  5151 BA Drunen  
                  The Netherlands

Registered with the Chamber of Commerce, registration number 68683804.

### 1. Definitions

In this document:

(a) "Affiliate(s)": all companies, firms and legal entities with respect to which now or hereafter HES-tec or Supplier respectively, directly or indirectly holds fifty per cent (50%) or more of the nominal value of the issued share capital or fifty per cent (50%) or more of the voting power at general meetings or has the power to appoint a majority of directors or otherwise to direct the activities of such company, firm or legal entity.

(b) "Agreement": the binding contract formed as described in clause 2.1 of these General Conditions of Purchase.

(c) "General Conditions of Purchase": these general conditions of purchase of HES-tec.

(d) "Goods": both tangible and intangible goods, including software and related documentation and packaging.

(e) "HES-tec": HES-tec B.V., which purchases the Goods or Services. Where applicable HES-tec includes other Affiliates of HES-tec.

(f) "Intellectual Property Rights" (or "IPRs"): patents, utility certificates, utility models, industrial design rights, copyrights, database rights, trade secrets, any protection offered by law to Information, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing or which otherwise arises or is enforceable under the laws of any jurisdiction or any bi-lateral or multi-lateral treaty regime.

(g) "Open Source Software": (1) any software that requires as a condition of use, modification and/or distribution of such software, that such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) may only be redistributed free from enforceable IPRs; and/or (2) any software that contains, is derived from, or statically or dynamically links to, any software specified under (1).

(h) "Personal Data": any and all information relating to an identified or identifiable individual, including but not limited to HES-tec current or former employees, employee family members, dependents or beneficiaries, customers, consumers, suppliers, business partners or contractors.

(i) "Processing": any operation or set of operations performed or to be performed upon Personal Data, whether or not by automatic means, such as creation, access, collection, recording, organization, storage, loading, employing, adaptation or alteration, retrieval, consultation, displaying, use, disclosure, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (hereinafter also referred to as a verb "Process").

(j) "Services": the services to be performed by Supplier for HES-tec under the Agreement.

(k) "Supplier": each person or entity (including, where relevant, its Affiliates) that enters into the Agreement.

(l) "Work Product": all deliverables (including future deliverables) and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, drafts, prototypes, products and other work product or intermediate versions thereof

produced or acquired by Supplier, its personnel or its agents in the performance of Services under the Agreement.

## **2. Formation of the Agreement**

- 2.1 These General Conditions of Purchase, together with the relevant purchase order issued by HES-tec, set forth the terms under which HES-tec offers to purchase Goods and/or Services from Supplier. When Supplier accepts HES-tec's offer, either by acknowledgement, delivery of any Goods and/or commencement of performance of any Services, a binding contract shall be formed. Such Agreement is limited to these General Conditions of Purchase, the relevant purchase order and any attachments. HES-tec does not agree to any proposed amendment, alteration, or addition by Supplier. The Agreement can be varied only in writing signed by HES-tec. Any other statement or writing of Supplier shall not alter, add to, or otherwise affect the Agreement.
- 2.2 HES-tec is not bound by and hereby expressly rejects Supplier's general conditions of sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Supplier. Course of performance, course of dealing, and usage of trade shall not be applied to modify these General Conditions of Purchase.
- 2.3 All costs incurred by Supplier in preparing and submitting any acceptance of HES-tec's offer shall be for the account of Supplier.

## **3. Time of the essence**

Time is of the essence and all dates referred to in the Agreement shall be firm. In the event that Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under the Agreement, Supplier shall promptly notify HES-tec in writing.

## **4. Delivery of Goods**

- 4.1 Unless expressly agreed otherwise in writing, all Goods shall be delivered FCA (named port or place of departure) except that maritime transport shall be delivered FOB (named port of shipment) (as defined in the Incoterms 2010), final destination determined by HES-tec.
- 4.2 Delivery shall be completed as per the applicable Incoterm, but this shall not constitute acceptance of the Goods.
- 4.3 Supplier shall, concurrently with the delivery of the Goods, provide HES-tec with copies of all applicable licenses. Each delivery of Goods to HES-tec shall include a packing list which contains at least (i) the applicable order number, (ii) the quantity shipped, and (iii) the date of shipment.
- 4.4 Supplier shall make no partial delivery or delivery before the agreed delivery date(s). HES-tec reserves the right to refuse delivery of Goods and return same at Supplier's risk and expense if Supplier defaults in the manner and time of delivery or in the rate of shipment. HES-tec shall not be liable for any costs incurred by Supplier related to production, installation, assembly or any other work related to the Goods, prior to delivery in accordance with the Agreement.
- 4.5 Any design, manufacturing, installation or other work to be performed by or on behalf of Supplier under the Agreement shall be executed with good workmanship and using proper materials.
- 4.6 Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and HES-tec's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for HES-tec. Notwithstanding the provisions of the applicable Incoterms, Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package,

handle (before delivery as per the applicable Incoterm) or pack the Goods. HES-tec shall not be required to assert any claims for such loss or damage against the common carrier involved.

## **5. Changes to Goods**

Supplier shall not, without prior written consent of HES-tec, make any changes affecting Goods, including process or design changes, changes to manufacturing processes (including geographic location) changes affecting electrical performance, mechanical form or fit, function, environmental compatibility, chemical characteristics, life, reliability or quality of Goods or changes that could have significant impact upon Supplier's quality system.

## **6. Inspection, testing, rejection of Goods**

- 6.1 Inspection, testing of or payment for the Goods by HES-tec shall not constitute acceptance. Inspection or acceptance of or payment for the Goods by HES-tec shall not release Supplier from any of its obligations, representations or warranties under the Agreement.
- 6.2 HES-tec may, at any time, inspect the Goods or the manufacturing process for the Goods. If any inspection or test by HES-tec is made on the premises of Supplier, Supplier shall provide reasonable facilities and assistance for the safety and convenience of HES-tec's inspection personnel.
- 6.3 If HES-tec does not accept any of the Goods, HES-tec shall promptly notify Supplier of such rejection, and clause 11 of these General Conditions of Purchase shall apply. Within two (2) weeks from such notification, Supplier shall collect the Goods from HES-tec at its own expense. If Supplier does not collect the Goods within said two (2) week period, HES-tec may have the Goods delivered to Supplier at Supplier's cost, or with the Supplier's prior consent destroy the Goods, without prejudice to any other right or remedy HES-tec may have under the Agreement or at law. Goods not accepted but already paid by HES-tec shall be reimbursed by Supplier to HES-tec and HES-tec shall have no payment obligation for any Good not accepted by HES-tec.
- 6.4 If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to conform to the Agreement, HES-tec may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Supplier the cost of such inspection.

## **7. Performance of Services**

- 7.1 Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.
- 7.2 Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Services.
- 7.3 Only written confirmation by HES-tec shall constitute acceptance of the Services performed. If HES-tec does not accept the Service and/or Work Product(s), clause 11 of these General Conditions of Purchase shall apply. HES-tec shall promptly notify Supplier of such rejection, and Supplier will, at its own expense, carry out the necessary corrections, additions and modifications reasonably requested by HES-tec in writing within thirty (30) days of such notification.

## **8. Prices and payment**

- 8.1 Unless provided otherwise in the Agreement, title in the Goods shall pass to HES-tec at the time risk is transferred to HES-tec pursuant to the applicable Incoterm.

- 8.2 All prices quoted in the Agreement shall be fixed prices. Supplier warrants that such prices are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar quantities of Goods or Services of like kind and quality.
- 8.3 All prices are gross amounts but exclusive of any value added tax (VAT) or any other similar tax only. If the transactions as described in the Agreement are subject to any applicable VAT or any other similar tax, Supplier may charge VAT or any other similar tax to HES-tec, which shall be paid by HES-tec in addition to the prices quoted. Supplier is responsible for paying any applicable VAT or any other similar tax to the appropriate (tax) authorities. At or after the time delivery has been completed as per clause 4.2 of these General Conditions of Purchase, but ultimately within six (6) months from delivery, Supplier shall issue an invoice meeting all applicable legal and fiscal requirements and which shall contain: (i) the HES-tec purchase order number, and (ii) wording that shall allow HES-tec to take advantage of any applicable "input" tax deduction. In addition, Supplier shall inform HES-tec whether HES-tec is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.
- 8.4 Any license fees shall be included in the price.
- 8.5 Subject to the acceptance of the Goods, Services and/or Work Product by HES-tec, and unless provided otherwise in the Agreement, payment shall be made as follows: within sixty (60) days from receipt of the correct invoice.
- 8.6 If Supplier fails to fulfil any of its obligations under the Agreement, HES-tec may suspend payment to Supplier upon notice to Supplier.
- 8.7 Supplier hereby unconditionally accepts that HES-tec and any of its Affiliates shall at all times have the right to set-off any amounts that any HES-tec Affiliate owes to Supplier or its Affiliates under this Agreement with any amounts that Supplier or its Affiliates owes to any Affiliate of HES-tec under the Agreement or any other agreement.
- 8.8 Supplier acknowledges and agrees that any amount to be paid by HES-tec to Supplier may be paid on HES-tec's behalf by another Affiliate of HES-tec and/or a third party designated by HES-tec. Supplier shall treat such payment as if it were made by HES-tec itself and HES-tec's obligation to pay to Supplier shall automatically be satisfied and discharged in the amount paid by such entity or third party.

## **9. Warranty**

- 9.1 Supplier represents and warrants to HES-tec that all Goods and/or Work Product(s): (a) are suitable for the intended purpose and shall be new, merchantable, of good quality and free from all defects in design, materials, construction and workmanship; (b) strictly comply with the specifications, approved samples and all other requirements under the Agreement; (c) are delivered with all required licenses which shall remain valid and in place, and with the scope to properly cover the intended use. Furthermore, all such licenses shall include the right to transfer and the right to grant sublicenses; (d) shall be free from any and all liens and encumbrances; (e) have been designed, manufactured and delivered in compliance with all applicable laws (including labour laws); (f) are provided with and accompanied by all information and instructions necessary for proper and safe use. Supplier shall furnish to HES-tec any information required to enable HES-tec to comply with such laws, rules, and regulations in its use of the Goods and Services; and (g) will be accompanied by written and detailed specifications of the composition and characteristics, to enable HES-tec to transport, store, process, use and dispose of such Goods and/or Work Product safely and in compliance with law.
- 9.2 These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Supplier's standard warranties or other rights or warranties which HES-tec may be entitled to. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the Goods, and shall extend to HES-tec and its customers.

- 9.3 Without prejudice to any other rights accruing under the Agreement or law, the warranties set forth in clause 9.1 of these General Conditions of Purchase will subsist for a period of thirty-six (36) months from the date of delivery as per clause 4.2 of these General Conditions of Purchase, or such other period as agreed in the Agreement (the "Warranty Term"). Goods repaired or replaced within the Warranty Term are warranted for the remainder of the original Warranty Term of said Goods, or twelve (12) months following the delivery date of such repaired or replaced Goods, whichever is longer.

## **10. Open Source Software Warranty**

Unless the inclusion of Open Source Software is specifically authorized in writing by duly authorized officers of HES-tec and unless otherwise stated in the Agreement, Supplier represents and warrants that the Goods do not include any portion of any Open Source Software.

## **11. Non-conformity**

- 11.1 If any Goods, Services or Work Products are defective, latent or otherwise do not conform to the requirements of the Agreement, HES-tec shall notify Supplier and may, without prejudice to any other right or remedy available to it under the Agreement or at law, at its sole discretion: (a) require performance by Supplier; (b) require delivery of substitute Goods or Work Products; (c) require Supplier to remedy the lack of conformity by repair; (d) declare the contract (partly) terminated; or (e) reduce the price in the same proportion as the value of the Goods or Services actually delivered, even if that results in a full refund of the price paid to Supplier.
- 11.2 Supplier shall bear all cost of repair, replacement and transportation of the nonconforming Goods, and shall reimburse HES-tec in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by HES-tec in connection therewith.
- 11.3 Risk in relation to the nonconforming Goods shall pass to Supplier upon the date of notification thereof.

## **12. Ownership and Intellectual Property**

- 12.1 All machinery, tools, drawings, specifications, raw materials and any other property or materials furnished to Supplier by or for HES-tec, or paid for by HES-tec, for use in the performance of the Agreement, shall be and remain the sole exclusive property of HES-tec and shall not be furnished to any third party without HES-tec's prior written consent, and all information with respect thereto shall be confidential and proprietary information of HES-tec. In addition, any and all of the foregoing shall be used solely for the purpose of fulfilling orders from HES-tec, shall be marked as owned by HES-tec, shall be held at Supplier's risk, shall be kept in good condition and, if necessary, shall be replaced by Supplier at Supplier's expense, shall be subject to periodic inventory check by Supplier as reasonably requested from time to time by HES-tec, and shall be returned promptly upon HES-tec's first request. Except as otherwise expressly agreed in writing, Supplier agrees to furnish at its own expense all machinery, tools, and raw materials necessary to perform its obligations under the Agreement.
- 12.2 Supplier represents and warrants to HES-tec that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any third party (including Supplier's employees and subcontractors) IPRs.
- 12.3 The purchase of the Goods and/or Services shall confer on HES-tec and its Affiliates an irrevocable, world-wide, royalty-free and fully paid up, non-exclusive and perpetual license under all IPRs owned or controlled, directly or indirectly, by Supplier to use, make, have made, build-in, have built-in, market, sell, lease, license, distribute and/or otherwise dispose of the Goods and/or Services, including but not limited to machinery, tools, drawings, designs, software, demos, moulds, specifications or pieces.

- 12.4 HES-tec shall retain all rights in any samples, data, works, materials and intellectual and other property provided by HES-tec to Supplier. All rights in and titles to the Work Product shall become HES-tec's property. Supplier shall execute and deliver any documents and do such things as may be necessary or desirable in order to carry into effect the provisions of this clause 12.4.
- 12.5 Supplier shall not have any right, title or interest in or to any of HES-tec's samples, data, works, materials, trademarks and intellectual and other property nor shall the supply of Goods and/or Services alone or in any combination, or the supply of packaging containing HES-tec's trademarks or trade names give Supplier any right or title to these or similar trademarks or trade names. Supplier shall not use any trademark, trade name or other indication in relation to the Goods or Services alone or in any combination without HES-tec's prior written approval and any use of any trademark, trade name or other indication as authorized by HES-tec shall be strictly in accordance with the instructions of and for the purposes specified by HES-tec.
- 12.6 Supplier shall not, without HES-tec's prior written consent, publicly make any reference to HES-tec, whether in press releases, advertisements, sales literature or otherwise.

### **13. Intellectual Property Indemnification**

- 13.1 Supplier shall indemnify and hold harmless HES-tec, its Affiliates, agents and employees and any person selling or using any of HES-tec's products in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any third party IPRs, or, if so directed by HES-tec, shall defend any such claim at Supplier's own expense.
- 13.2 HES-tec shall give Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. Supplier shall provide all assistance in connection with any such claim as HES-tec may reasonably require.
- 13.3 If any Goods or Services alone or in any combination, supplied under the Agreement are held to constitute an infringement or if their use is enjoined, Supplier shall, as directed by HES-tec, but at its own expense: either (a) procure for HES-tec or customers the right to continue using the Goods or Services alone or in any combination; or (b) replace or modify the Goods or Services alone or in any combination with a functional, non-infringing equivalent.
- 13.4 If Supplier is unable either to procure for HES-tec the right to continue to use the Goods or Services alone or in any combination or to replace or modify the Goods or Services alone or in any combination in accordance with the above, HES-tec may terminate the Agreement and upon such termination, Supplier shall reimburse to HES-tec the price paid, without prejudice to Supplier's obligation to indemnify HES-tec as set forth herein.

### **14. Indemnification**

Supplier shall indemnify and hold harmless HES-tec, its Affiliates, agents and employees and anyone selling or using any of HES-tec's products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Goods, Services or any other information furnished by Supplier to HES-tec under the Agreement.

### **15. Compliance with Laws**

Supplier shall at all times comply with all laws, rules, regulations, and ordinances applicable to the Agreement, including, but not limited to, all fair labour, equal opportunity, and environmental compliance laws, rules, regulations, and ordinances. Supplier shall furnish to HES-tec any information required to enable HES-tec to comply with any applicable laws, rules, and regulations in its use of the Goods and Services.

## **16. Personal Data**

- 16.1 In case Supplier Processes Personal Data in fulfilling the Agreement, Supplier undertakes and warrants that it shall: (a) Process all Personal Data in accordance with all laws and regulations applicable to privacy and protection of Personal Data; (b) Process the Personal Data only (i) in the name and on behalf of HES-tec, (ii) in accordance with HES-tec's instructions, (iii) for the by this Agreement or otherwise by HES-tec authorized purposes, and (iv) as far as needed for the Services provided to HES-tec and as permitted or mandatory according to law; (c) maintain and save the safety, confidentiality, integrity and availability of the Personal Data; (d) implement and maintain appropriate technical, physical, organisational and administrative security measures, security procedures and security practices and other guarantees to protect the Personal Data against (i) foreseeable threats or dangers for its safety and integrity, and (ii) lost, unauthorized access, accession or use or illegitimate Processing; and (e) inform HES-tec without undue delay of any actual or suspected security incident whereas Personal Data are involved.
- 16.2 Insofar Supplier engages (sub)contractors to Process the Personal Data, Supplier shall ensure that such (sub)contractors are contractually bound to the same data protection obligations, but no less restrictive as mentioned in this clause 16.
- 16.3 Upon termination of the Agreement Supplier must delete in a safe way or destroy all documents containing Personal Data. Supplier accepts and confirms that he is solely responsible for any unauthorized or illegitimate Processing or for any loss of Personal Data, insofar Supplier fails to delete or destroy the Personal Data upon termination of the Agreement.
- 16.4 Supplier agrees to indemnify and hold HES-tec and any of its officials, representatives and employees harmless from all damages, penalties, losses and claims arising from non-compliance of the clauses 16.1, 16.2 and 16.3 of these General Conditions of Purchase.

## **17. Export Controls Compliance**

- 17.1 Supplier agrees and warrants that it will comply with all applicable international and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technology to any country for which the European Union or the United States of America or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval.
- 17.2 Supplier agrees to inform HES-tec in writing whether or not the supplied information, goods, software and/or technology is US controlled and/or controlled under the export control laws of its own country, and if so, Supplier will inform HES-tec about the extent of the restrictions (including but not limited to export control legal jurisdiction, export control classification numbers, export control licenses and/or CCATS as applicable).
- 17.3 Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide HES-tec with all information required to enable HES-tec and its customers to comply with such laws and regulations.
- 17.4 Supplier agrees to indemnify and hold HES-tec harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorney's fees), which HES-tec may incur due to Supplier's non-compliance with applicable laws, rules and regulations. Supplier

agrees to notify HES-tec promptly of Supplier's receipt of any such notice of a violation of any export control related law, rule or regulation, which may affect HES-tec.

## **18. Customs Compliance**

- 18.1 On an annual basis, or upon earlier request of HES-tec, Supplier shall provide HES-tec with a supplier declaration of origin in relation to the Goods sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States of America. In particular, the declaration should explicitly mention whether the Goods, or part thereof, have been produced in the United States of America or originate in the United States of America. Dual-use Goods, or otherwise classified Goods supplied by Supplier should be clearly identified by their classification code.
- 18.2 For all Goods that qualify for application of Regional or Free Trade Agreements, general systems of preference or other preferential arrangements, it is the responsibility of the Supplier to deliver products with the appropriate documentary evidence (e.g. Supplier's declaration, preferential origin certificate/invoice declaration) to confirm the preferential origin status.
- 18.3 Supplier shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin. Supplier shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow HES-tec to be the importer of record. If HES-tec is not the importer of record and Supplier obtains duty drawback rights to the Goods, Supplier shall, upon HES-tec request, provide HES-tec with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to HES-tec.

## **19. Limitation of Liability**

- 19.1 Neither Party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, or for any liability that cannot by law be excluded or limited.
- 19.2 Subject to clause 19.1, IN NO EVENT SHALL HES-TEC BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDES WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF IMAGE OR LOST DATA, EVEN IF HES-TEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT SHALL HES-TEC BE LIABLE TO SUPPLIER, ITS SUCCESSORS OR ASSIGNS FOR DAMAGES IN EXCESS OF THE AMOUNT DUE TO SUPPLIER FOR COMPLETE PERFORMANCE UNDER THE AGREEMENT, LESS ANY AMOUNTS ALREADY PAID TO SUPPLIER BY HES-TEC.

## **20. Force Majeure**

In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. HES-tec shall be entitled to terminate the Agreement with immediate effect by written notice to Supplier, immediately if the context of the non-performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) days and, upon such notice, Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.

## **21. Suspension and rescission**



- 21.1 Without prejudice to any other right or remedy available to HES-tec under the Agreement or at law, HES-tec shall be entitled at its discretion to suspend the performance of its obligations under the Agreement in whole or in part or to declare the Agreement rescinded in whole or in part by means of written notice to Supplier in the event that: (a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; (b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; (c) Supplier ceases or threatens to cease to carry on business in the ordinary course; (d) Supplier breaches any of its obligations under the Agreement or HES-tec', in its reasonable discretion, determines that Supplier cannot or shall not deliver the Goods or perform the Services as required; or (e) Supplier fails to provide adequate assurance of performance following request by HES-tec.
- 21.2 HES-tec shall not be liable to Supplier by virtue of exercising any of the rights under clause 21.1.

## **22. Confidentiality**

- 22.1 Supplier shall treat all information provided by or on behalf of HES-tec or generated by Supplier for HES-tec under the Agreement as confidential. All such information shall be used by Supplier only for the purposes of the Agreement. Supplier shall protect HES-tec's information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of HES-tec and Supplier shall, upon HES-tec's demand, promptly return to HES-tec all such information and shall not retain any copy thereof.
- 22.2 The existence and the contents of the Agreement shall be treated as confidential by Supplier.

## **23. Miscellaneous**

- 23.1 Supplier will maintain comprehensive or commercial general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by HES-tec) with, unless otherwise agreed by HES-tec, a minimum limit of five million Euro for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or Services or acts or omissions of Supplier under the Agreement. Such insurance policies will be written with appropriately licensed and financially responsible insurers. Supplier shall inform HES-tec of any cancellation or reduction in coverage with a minimum of thirty (30) days prior written notice. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to HES-tec upon HES-tec's request.
- 23.2 Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of HES-tec and nothing contained in the Agreement is intended to create a partnership, joint venture or employment relationship between the parties irrespective of the extent of economic dependency of Supplier on HES-tec.
- 23.3 Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of HES-tec. Any such pre-approved subcontracting, transfer, pledge or assignment shall be null and void and have no effect vis-à-vis such third party.
- 23.4 The rights and remedies reserved to HES-tec are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.
- 23.5 Supplier shall provide HES-tec written notice of all product discontinuances twelve (12) months prior to the last order date, including as a minimum HES-tec part numbers, substitutions, and last order and shipment dates.

- 23.6 Neither the failure nor the delay of HES-tec to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of HES-tec to enforce each and every provision of the Agreement. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of the Agreement. No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by HES-tec and Supplier.
- 23.7 In the event that any provision(s) of these General Conditions of Purchase and of the Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
- 23.8 All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, including but not limited to "Warranty", "Intellectual Property", "Confidentiality" and "Personal Data", shall survive.
- 23.9 The Agreement shall be governed by and construed in accordance with the laws of the country or state in which the HES-tec ordering entity is located, as applicable.
- 23.10 Supplier and HES-tec each consents to the exclusive jurisdiction of the competent courts in the country or state in which the HES-tec ordering entity is located.
- 23.11 The United Nations Convention on International Sale of Goods shall not apply to the Agreement.

*Version December 2018*