

	HILTRON GMBH Emil-Rathenau Strasse 1 71522 Backnang Tel.: + 49 (0) 7191 34357-0 Fax: + 49 (0) 7191 34357-50 VAT/Ust-Id. DE 128228293
Hiltron EN Allgemeine Geschäftsbedingungen Hiltron GmbH	Stand 26.06.2012

**Hiltron GmbH**  
**General Terms and Conditions of Business and Delivery**  
**for Products and Services**  
**as per 26. June 2012**

**I. General Terms**

1. The following terms and conditions shall apply exclusively to all our deliveries and services, subsequently called „deliveries“. The General Terms and Conditions of the orderer shall only apply as far – to the extent that Hiltron GmbH has explicitly agreed to them in writing. The mutual written and corresponding undertakings are decisive for the scope of the products and services supplied.
  
2. Hiltron GmbH shall fully retain rights of title and exploitation rights under copyright law in respect of cost estimates, technical drawings, samples and other documents. These may only be disclosed to third parties upon prior approval by Hiltron GmbH, and must be returned immediately if the order is not placed with Hiltron GmbH. Accordingly, sentences 1 and 2 shall apply to orderer’s documents; however, these may be made available to those third parties that Hiltron GmbH has legitimately transferred deliveries to.
  
3. With regard to standard software and firmware the customer shall have the non-exclusive exploitation right with agreed performance features, in unchanged form, on the agreed equipment. The orderer may make a back-up copy of the standard software without explicit agreement. Over and above this he shall not be entitled to duplicating it or passing it on to any third parties.
  
4. Partial deliveries are permitted to the extent that such deliveries do not pose a hardship to the orderer.

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5. The term „claims for damages“ within the meaning of these conditions shall also include claims for compensation for any unnecessary expenditures.

## II. Prices, Terms of payment and Offsetting

1. Prices shall be ex works excluding packaging plus the statutory value-added tax prevailing from time to time.
2. Payment shall be effected free of charge to the accounts office of the Supplier.
3. The orderer may only deduct such debits that are undisputed or declared legally effective.

## III. Retention of Title

1. The objects supplied remain property of Hiltron GmbH until all claims to the orderer arising from the business relationship have been fulfilled. Should the value of all security rights thus due to Hiltron GmbH exceed the value of all secured claims by more than 10%, the company will, upon request of the orderer release a corresponding proportion of the security as Hiltron GmbH sees fit.
2. For the duration of the retention of title the orderer may not pledge the retained goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and on condition that the resellers receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

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3. In the event of attachments and seizures or other third party dispositions, the orderer has to notify Hiltron GmbH immediately.
  
4. In the event of the orderer defaulting on their payments even after setting a reasonable time limit, Hiltron GmbH shall be entitled to withdraw from the contract in addition to taking back the goods; statutory provisions relating to the dispensability of a deadline shall remain unaffected. The orderer is obliged to return the goods. The act of Hiltron's reversing delivery, or enforcing the title reservation, or pledging the conditional goods shall not constitute a cancellation of the contract by Hiltron GmbH unless the Supplier has made an explicit declaration to that effect.

#### **IV. Periods for Deliveries; Delay**

1. Times set for supplies shall only be binding if all documents to be furnished by the orderer, necessary permits and approvals, especially concerning plans, are received in time, and if information and documents to be provided by the orderer and required for the purposes of export, transport and import to place of delivery terms of payment and other obligations are fulfilled. If these preconditions are not met in good time, the delivery deadline shall be extended appropriately; this shall not apply if the delay is at our fault. Hiltron GmbH is obligated for execution of the service only after permits required for export and import according to national, European and international law have been received without any contrary embargo to be taken into consideration by Hiltron GmbH.
  
2. If non-observance of the time for delivery is due to force majeure such as mobilisation, war, riot or similar events, e.g. strike or lockout, such time shall be extended appropriately.
  
3. We shall reserve the right to have the deliveries delivered to us correctly and on time.

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4. In the event of a delay on the part of Hiltron GmbH, the orderer may, if he makes a plausible case for the occurrence of a loss, demand compensation amounting to 0,5% for every full week of the delay, at the utmost yet of 5% of the value of that part of the deliveries, which could due to the delay not be appropriately put into operation.
  
5. Both compensation claims on the part of the customer for delivery default and compensation claims in lieu of performance which exceed the limits stipulated in clause 3 shall be excluded in all instances of delayed delivery, including after the expiry of any delivery deadline. This shall not apply to such an extent as liability is imposed by law for example in cases of willfulness, gross negligence or death, personal injury and injury to health. The orderer may only terminate the contract within the framework of the legal provisions as long as Hiltron GmbH is responsible for the delay. A reversal of the burden of proof to the disadvantage of the buyer is not associated with the above provision
  
6. Should on request of the orderer the dispatch or delivery be postponed for more than one month after the cargo-ready notification, the supplier is entitled to invoice the orderer a storage fee for each month started in the amount of 0.5 % of the price of the goods, however, up to a maximum 5%. The proof of higher or lower storage fees and the right to assert further damages shall remain reserved to the parties to the contract.

#### **V. Risk transfer**

1. Even in the case of delivery having been effected freight free, the risk shall pass to the orderer as follows:
  - a) if the supplies do not include assembly or erection, at the time when the supplies were shipped or picked up.

At the request of the orderer Hiltron GmbH may take out insurance against common transport risks;

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b) if the scope of supply includes installation and mounting services: on the date of takeover on the orderer's premises or, if so agreed, upon successful test-run.

2. The risk shall pass to the orderer if dispatch, delivery, the start or performance of assembly or erection, the taking over in the orderer's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the supplies.

### VI. Set-up and Installation

The following provisions shall apply for any type of setup and installation to the extent that nothing to the contrary is agreed upon in writing:

1. In any event the orderer shall provide in good time and bear the costs of the following:
  - a) all earth works, construction work and other ancillary work which does not fall within the scope of work in this sector including any necessary specialists and auxiliary workers, building materials and tooling,
  - b) the scaffolding, cranes and devices necessary for set-up and installation.
  - c) energy and water at the point of use, including connections, heating and lighting,
  - d) sufficient large, suitable, dry and lockable rooms at the place of installation to store machine components, apparatus, materials and tools, etc., and suitable work and staffrooms for installation personnel, including sanitary facilities according to the circumstances; furthermore, the orderer has to take those measures on the building site for the protection of assets of the supplier and his installation personnel, which he would take for the protection of his own assets.
  
2. Prior to the start of the assembly work, the customer shall unsolicitedly provide the required information about the position of subsurface energy, gas, water conduits or similar installations as well as the required data on statics.

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3. Prior to the beginning of the installation or mounting, the provisions and items required for commencing the work shall be at the place of installation or mounting, and all preliminary work must have progressed so far, prior to the beginning of the set-up, that the installation or mounting can be started according to agreement and be performed without interruption.
4. If assembly, erection or commissioning is delayed due to circumstances for which Hiltron GmbH is not responsible, the orderer shall bear the reasonable costs incurred for idle times and any additional travelling expenditure of Hiltron GmbH.
5. The orderer shall provide Hiltron GmbH without undue delay with weekly reports recording the hours worked by assembly personnel and the end of set-up and assembly or commissioning.
6. Upon notification of readiness to dispatch the orderer has to formally accept the delivery within two weeks upon the request of Hiltron GmbH. If this is not done, acceptance shall be deemed effected. Acceptance is also deemed to have been effected if the supplies are put to use, after completion of an agreed test phase, if any.

### VII. Acceptance

The orderer shall not refuse receipt of deliveries due to unimportant defects.

### VIII. Material defects

Hiltron GmbH shall be liable as follows for defects as to quality:

1. All those defective parts or insufficient services shall be repaired, re-delivered or re-performed free of charge as Hiltron GmbH chooses if the cause of their impairment occurred before transfer of risk.

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2. Claims for Claims for supplementary performance shall become time-barred within 12 months of the statutory start of the period of limitations; the same shall apply in respect of withdrawal from the contract. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("BGB"), in the case of intent, fraudulent concealment of the Defect or noncompliance with guaranteed characteristics. The statutory provisions on the suspension, interruption and recommencement of the running of time shall remain unaffected.
3. The orderer must provide notice of defects in writing without delay.
4. In case of reports of defects, buyer's payments may be withheld to an extent which is in reasonable proportion to the occurred defects of quality. The orderer may only withhold payments if an asserted notification of a defect can be justified without doubt. The orderer shall not be entitled to withhold payments if his warranty claims have become timebarred. If the notification of defects is unjustified, then the supplier is authorised to claim compensation from the purchaser for costs incurred by the former.
5. The orderer shall grant us an opportunity for subsequent performance within reasonable time.
6. If and when the subsequent performance fails and repetition of subsequent performance cannot be reasonably expected to be accepted by the orderer, the orderer shall be entitled - irrespective of possible claims for damages as per no. 10 – to withdraw from the contract or reduce the purchase price.
7. Defect claims do not apply if there is only a minor deviation from the agreed nature of the goods or only a minor impairment of usability, of natural wear and tear, and of defects that occurred after the passing of risk due to improper or careless handling, excessive use unsuitable means of operation, defective construction work, unsuitable construction site or special external influences that are not preconditions in accordance with the contract, and in the event of non-reproducible software errors. If modifications,

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maintenance or repairs are carried out improperly by the orderer or third parties, there is no claim to warranty for these or for the effects of the same.

8. Claims of the orderer derived from the expenses required to satisfy subsequent obligations, in particular transport, in-transit, work and material costs are ruled out in as far as the expenses increase because the subject of the consignment was taken subsequently to a place other than the branch of the orderer, unless such transport corresponds to the designated contractual use.
9. Claims for recourse against Hiltron GmbH by the orderer in accordance with § 478 BGB (proprietor's recourse) will only exist if the customer and his purchaser have not struck any agreements beyond the the statutory claims for defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the orderer has against Hiltron GmbH pursuant to § 478 para. 2 BGB.
10. Claims of the orderer for damages because of material defects are excluded. This shall not apply in the event of fraudulent concealment of a deficiency, non-compliance with a guarantee of quality, fatal injury, bodily harm, hazard to health or liberty, premeditated or grossly negligent violation of obligations by Hiltron GmbH. A change in the onus of proof to the detriment of the orderer is not associated with the above provisions. Further or other claims than those provided for by this Art. VIII governed the orderer claims due to a defect shall be excluded. Provision IV. fig. 5 shall remain unaffected.

#### **IX. Commercial Trade Mark Rights and Copyrights; Defects of Title**

1. Insofar as nothing to the contrary has been agreed, Hiltron GmbH is obliged to deliver only in the country in which the place of delivery is located, free of industrial property rights and third party intellectual property rights (hereinafter: property rights). If a third party asserts justified claims against the orderer because of a breach of a property right through the goods and services supplied by Hiltron GmbH and deliveries made use of according to contract, Hiltron GmbH shall be liable to the orderer within the period stipulated in Art. VIII No. 2 as follows:

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- a) We shall, at our choice and at our expense, either obtain a licence for the use of the delivered items in in question, modify these such that the property right is not infringed or replace them. Should this prove impossible to do on reasonable terms, the orderer shall have the statutory right to rescind the contract or to reduce the purchase price.
  - b) Our obligation to pay damages is governed by Art. XI.
  - c) Our obligations stated above shall only apply in so far as the client informs Hiltron GmbH, in writing and without undue delay, of the claims asserted by the third party, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of Hiltron GmbH. If the orderer stops using the supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred.
2. Claims of the orderer are excluded insofar as he is responsible for the infringement of property right.
  3. Moreover, claims on the part of the orderer will not be considered to the extent that the infringement of proprietary rights is caused by specific specifications of the orderer, by a use the orderer could not have foreseen, or by the fact that the items supplied have been modified or are used together with other products, and with a property right infringement based on it.
  4. If infringement of commercial or intellectual property rights should arise, the claims settlement of the orderer in No. 1 a) and the conditions in Art. VIII No. 4, 5 and 9 shall apply.
  5. In the event of other defects of title the provisions of Art. VIII shall apply.

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6. Further claims or claims other than those dealt with in Art. IX by the orderer against Hiltron GmbH and persons employed by Hiltron GmbH in performing the obligations due to a legal error shall be excluded.

**X. Impossibility; contractual adaptation**

1. Insofar as delivery is impossible, the orderer shall be entitled to claim damages unless Hiltron GmbH is not liable for the impossibility. However, the claim for compensation of the orderer shall be confirmed on 10% of the value of the part of the delivery or services which cannot be put into appropriate operation. This restriction shall not be applicable as far as cases of intent, gross negligence or injury to human life, body and health are concerned, which are legally subject to liability; a change of the burden of proof to the disadvantage of the orderer is not associated with this. The orderer's right to withdraw from the contract remains unaffected.
2. Contractual adaptation as far as unexpected incidences according to Art. IV No. 2, will have substantial effect on the commercial relevance, or on Hiltron's business, or will substantially alter the subject matter of supply, the contract shall be suitably revised in compliance with the principle of good faith. Insofar as this is economically unreasonable, Hiltron GmbH shall have the right to retreat from the contract. Prior to using this right to cancel, we must advise the orderer of this without delay after becoming aware of the significance of the event, even if an extension of the delivery time was initially agreed upon with the orderer.

**XI. Other claims for damages; Limitations of time**

1. Claims for damages by the orderer, whatever their legal foundation, in particular those that are due to a breach of duties arising from the contractual obligation and from impermissible acts shall be excluded.

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2. This does not apply where liability is legally mandated, such as under the Product Liability Act, in cases of malicious intent, gross negligence on the part of our legal representatives or employees in leadership positions due to non-fulfillment of an accepted guarantee or if life and limb or health have been injured or if essential contractual duties have been violated. The claim for compensation for the infringement of essential contractual commitments is, however, limited to contract-typical, foreseeable damage unless it is a matter of willful intent or gross negligence or unless liability is assumed for injury of life, body or health. A change in the onus of proof to the detriment of the orderer is not associated with the provisions above.
  
3. In as much as the orderer is entitled to compensation claims pursuant to Art. VIII No. 2 such claims shall lapse upon the expiry of the applicable limitation period. The same applies to claims by the orderer in connection with measures to minimise loss (e.g. product recalls). The legal provisions for limitation periods apply to claims for damage that fall under the product liability law.

## XII. Jurisdiction and applicable law

1. If the orderer is a qualified merchant, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the headquarters of Hiltron GmbH. However, Hiltron GmbH is also entitled to litigate at the seat of the orderer.
  
2. For the legal relationships in connection with this contract German substantive law shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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