

General Terms and Conditions of Sale and Delivery
of
HYDROGENIOUS Technologies GmbH
(Version of May 26, 2015)

A. General provisions

§ 1 Applicability

- 1.1 Sales and deliveries by HYDROGENIOUS Technologies GmbH (hereinafter “HYDROGENIOUS”) are made solely pursuant to the following General Terms and Conditions of Sale and Delivery (hereinafter the “Terms and Conditions”). These Terms and Conditions of Sale and Delivery shall also apply to all future transactions with the contract partner. The contract partner acknowledges the validity of these Terms and Conditions of Sale and Delivery by entering into the contract or accepting delivery. The provisions of this General Part under A. and the Concluding Provisions under D. apply for all goods and services furnished by HYDROGENIOUS except as provided otherwise in the Special Parts B and C. Special Part B applies for all purchase agreements for HYDROGENIOUS products. Special terms for work and services are covered in Special Part C.
- 1.2 HYDROGENIOUS does not acknowledge terms and conditions of the contract partner that contradict or deviate from the present Terms and Conditions, unless it has consented to their applicability in a separate, written agreement expressly referring to the terms concerned. In particular, HYDROGENIOUS does not consent to the contract partner’s terms and conditions by not objecting to references to the contract partner’s terms and conditions in documentation presented by the contract partner. The present Terms and Conditions of Sale and Delivery shall also apply if HYDROGENIOUS performs delivery without stating reservations, in the knowledge of general terms and conditions of the contract partner that contradict or deviate from its own Terms and Conditions of Sale and Delivery.

§ 2 Offer and formation of contract

- 2.1 Offers made by HYDROGENIOUS are nonbinding and do not place HYDROGENIOUS under any obligation.
- 2.2 A contract is not formed until HYDROGENIOUS confirms an order. The content shall be governed solely by the order confirmation. Oral agreements or consent must be confirmed by HYDROGENIOUS in order to take effect.

§ 3 Prices, terms of payment

- 3.1 The prices stated in the order confirmation shall apply. If the parties have not expressly agreed on a specified price, the price indicated in the HYDROGENIOUS price list in effect at the time when the contract is entered into shall be deemed agreed.
- 3.2 Unless indicated otherwise, all HYDROGENIOUS prices are understood to be ex works, plus value added tax as required by law, and exclusive of packaging and shipping costs, which will be billed separately. For deliveries to other countries, the contract partner must take responsibility for the government duties applicable in connection with importing the product concerned.
- 3.3 All HYDROGENIOUS invoices are payable within 21 days from the transmission date of the invoice. Any rebates and discounts must be covered by a separate written agreement. If the above time period lapses without results, the contract partner shall be delinquent. Fulfillment of the payment obligation shall be established by receipt of payment in an account to be designated by HYDROGENIOUS. If the contract partner is delinquent, HYDROGENIOUS shall be entitled to demand late interest in the amount provided by law. This provision is without prejudice to the ability to assert further damage caused by default, particularly storage costs.
- 3.4 Agreed discounts shall be invalid if the contract partner is delinquent in whole or in part in paying other due invoices from HYDROGENIOUS.
- 3.5 The contract partner shall be entitled to offset charges only with counter-claims that are undisputed or established by a final and absolute court judgment. The contract partner shall be entitled to assert a right of retention only insofar as the relevant counterclaim is founded on the same contract and is undisputed or established as final and absolute.

§ 4 Delivery dates and delivery periods

- 4.1 Agreed periods for performance and delivery shall begin as of the date of the order confirmation. Subsequent expansions or changes to the order shall extend the periods for performance and delivery by a fair and reasonable amount of time.
- 4.2 Dates and time periods shall be binding only if expressly agreed as binding by HYDROGENIOUS. The agreement must be made in writing.

- 4.3 If there has been no binding agreement on a deadline or period for performance or delivery under § 4.1, HYDROGENIOUS shall not be in default until the contract partner has served HYDROGENIOUS with a warning notice, without results, and a grace period set by the contract partner for accomplishing the contracted performance has expired.
- 4.4 Default cannot be declared if the contract partner has not duly fulfilled its obligations towards HYDROGENIOUS to cooperate as provided in § 7, or has not paid agreed advance payments as contracted.
- 4.5 Unforeseeable and unavoidable events and events beyond HYDROGENIOUS's control, such as force majeure, including, without limitation, war, natural disasters, shortages of raw materials, labor disputes or other disruptions of production capabilities, shall relieve HYDROGENIOUS of the obligation of timely performance for their duration. For items or components of items to be performed or delivered that are not made by HYDROGENIOUS itself, compliance with agreed deadlines and time periods is subject to the proviso of correct and timely delivery to HYDROGENIOUS itself. The above sentences 1 and 2 shall not apply if the delay results from causes within HYDROGENIOUS's control.
- 4.6 In the event of delays within the meaning of § 4.4 and § 4.5 above, agreed time periods shall be extended for the duration of the delay, plus a reasonable addition for the resumption of work. HYDROGENIOUS will inform the contract partner appropriately if a delay arises. If the end of the delay is not foreseeable, or if the delay lasts longer than three months, either party may withdraw from the Agreement.
- 4.7 HYDROGENIOUS may make partial deliveries for good cause.
- 4.8 If HYDROGENIOUS's deliveries are delayed, and without prejudice to § 4.6, the contract partner shall be entitled to withdraw only if the delay is within HYDROGENIOUS's control, and a reasonable time period that the contract partner has set for fulfillment lapses without results. If HYDROGENIOUS has already made partial deliveries, the contract partner may withdraw from the entire contract only if the partial deliveries in no way serve its interests.
- 4.9 If the contract partner is delinquent in declaring acceptance, or breaches its obligations to cooperate, HYDROGENIOUS shall be entitled, without prejudice to its other rights, to have the item to be delivered stored appropriately, at the contract partner's risk and expense, or to withdraw from the Agreement after setting a reasonable deadline.

§ 5 Nature / Scope of goods and services

- 5.1 The goods or services consist of the agreed contracted product together with preliminary acceptance at the HYDROGENIOUS plant. Third-party software is expressly not included in the scope of performance to be provided. Third-party software is used on the contract partner's own responsibility. HYDROGENIOUS makes third-party software available entirely on a voluntary basis and without legal liability. Any third-party software made available by HYDROGENIOUS is not licensed by HYDROGENIOUS. The contract partner alone shall be responsible for licensing the third-party software. This also applies to paying any licensing fees, if these are incurred, for the third-party software, or paying other third-party costs.
- 5.2 The required nature of the delivered goods or services shall be determined solely on the basis of the specific agreements reached in writing between the parties concerning the properties, features and performance characteristics of the contracted product.
- 5.3 Warranties as to nature must be agreed upon expressly in writing. In particular, information provided in catalogs, price lists and other informational material furnished to the contract partner by HYDROGENIOUS, as well as product descriptions, are not to be understood as warranties or agreements concerning a particular nature of the contracted product.
- 5.4 Expenses incurred as a result of subsequent change requests from the contract partner will be invoiced separately.
- 5.5 Advice provided by HYDROGENIOUS concerning application technique, whether orally or in writing, is nonbinding, and does not relieve the contract partner from its own responsibility for testing the products for their suitability for the intended use. This also applies if the products are generally recommended for a particular use.
- 5.6 HYDROGENIOUS is entitled to engage third parties ("Subcontractors") to provide the required performance. The contract partner will be given timely notice of the engagement of Subcontractors. This does not involve a transfer of contractual responsibility.

§ 6 Rights of use, licenses

- 6.1 HYDROGENIOUS grants the contract partner a simple – i.e., non-exclusive – right of use for the intended contractual purpose within the partner's own company, for software of HYDROGENIOUS delivered with the contracted goods or services and for other delivered results of work (such as concepts, design drawings, software or the like). The contract partner cannot revise, disassemble, reverse-engineer or decompile into other forms of code the

software from HYDROGENIOUS, unless the requirements under sections 69d or 69e of the German Copyrights Act (UrhG) have been met. HYDROGENIOUS is under no obligation to provide source code.

- 6.2 If software delivered as or as part of the performance is software from a third-party provider (third-party software), the terms of the above § 6.1 shall not apply. In this case, HYDROGENIOUS will instead only mediate a contract with the third-party provider. The contract partner acknowledges the third-party provider's terms and conditions of use that are provided at the same time, to which express reference is made here; these alone shall govern the scope of rights granted.
- 6.3 Irrespective of the scope of rights transferred to the contract partner, HYDROGENIOUS shall be permitted in any case to use ideas, conceptions, acquired know-how, etc., for further developments and services, including for other counterparties.

§ 7 Contract partner's obligations to cooperate

- 7.1 Successfully carrying out the contract regularly presupposes close cooperation between the contract partner and HYDROGENIOUS. The parties therefore agree to treat one another with mutual consideration, to inform one another fully and promptly, and to provide precautionary warnings of risks and for protection against disrupting factors, including those caused by third parties.
- 7.2 A material contractual obligation of the contract partner is to ensure that all agreed cooperation and materials to be provided are made available to HYDROGENIOUS at no additional cost, in the necessary quality and at the dates agreed or necessary in order to carry out the contract. If necessary, in particular, the contract partner will provide sufficient numbers of its own personnel and capable contact persons for the duration of the project.
- 7.3 The contract partner must ensure that contracted requirements for spatial conditions, supply facilities (e.g., electric power connections, etc.) and other installations of the contract partner are met. It is the contract partner's responsibility to obtain all official permits necessary for the performance of the contract.
- 7.4 The contract partner shall fully inform HYDROGENIOUS of all facts relevant to the provision of the goods and/or services. HYDROGENIOUS is under no obligation to check the completeness or correctness of data, information or other performances made available by the contract partner, if there is no occasion to do so in view of the circumstances of the particular case, unless an express obligation to review them has been agreed.

- 7.5 If work is performed at the contract partner's premises, the necessary work spaces and supply facilities, together with adequate access opportunities, must be made available to HYDROGENIOUS at no charge.
- 7.6 If information or documents provided by the contract partner prove to be erroneous, incomplete or ambiguous, the contract partner shall promptly correct and/or supplement these at HYDROGENIOUS's request. The contract partner shall promptly rectify, or arrange to have rectified, any defects, malfunctions or other deviations in installations or supplies furnished by the contract partner if they interfere with the execution of the order.
- 7.7 For activities performed outside HYDROGENIOUS's business premises, the contract partner must take all necessary steps to meet safety obligations, unless otherwise evident from the nature of the matter or agreed otherwise with the contract partner. In particular, the contract partner shall take the necessary steps to protect HYDROGENIOUS employees, and shall timely inform, and if applicable instruct, HYDROGENIOUS employees concerning any special safety regulations, if these may be of significance for HYDROGENIOUS employees.
- 7.8 Irrespective of other rights, HYDROGENIOUS may refuse to perform if the contract partner's cooperation obligations are not properly met. This shall not apply if noncompliance with the cooperation obligations concerns only matters that are entirely immaterial according to the general standards of the market, and there is no cause for concern about impeding the work of HYDROGENIOUS.
- 7.9 Any additional expense resulting from a breach of the contract partner's cooperation obligations will be billed separately.

§ 8 Warranty

- 8.1 The warranty shall begin with the delivery or acceptance of the performance, as the case may be, and shall be governed by the laws of the Federal Republic of Germany, except as agreed otherwise in these General Terms and Conditions.
- 8.2 Minor discrepancies in the nature of the contracted product that are common commercial practice shall not establish a right for the contract partner to complain of defects. HYDROGENIOUS does not warrant that any third-party software necessary in order to use the contracted product or delivered together with it is free from material and legal defects. As provided in § 5.1, such third-party software is expressly not included in the contractual scope of performance unless agreed otherwise. Third-party software is used on the contact part-

ner's own responsibility. So far as possible and can reasonably be expected, however, HYDROGENIOUS will support the contract partner in arranging for the third-party software provider to remedy defects, in particular by forwarding any complaints about defects to that provider.

- 8.3 HYDROGENIOUS shall remedy defects, at its own discretion, either by repairing the defect at no charge to the contract partner, or by furnishing a defect-free replacement (hereinafter collectively also: the "cure"). The contract partner shall allow HYDROGENIOUS a reasonable time and opportunity necessary for the cure.
- 8.4 The contract partner shall have no rights concerning defects that occur for causes within the contract partner's control, for example because of a failure to meet cooperation obligations, improper application, improper use, or improper treatment, unless these defects were within the control of HYDROGENIOUS.
- 8.5 Unjustified claims for defects will be handled subject to an additional charge to the contract partner for the expenses incurred by HYDROGENIOUS in handling the claim.
- 8.6 If the cure fails, if the contract partner cannot reasonably be expected to accept a cure, or if HYDROGENIOUS has refused to provide a cure because it can be accomplished only at unreasonable cost, the contract partner may, at its own discretion, either withdraw from the contract as provided by law, or reduce the purchase price.
- 8.7 The contract partner's claims for defects shall be time-barred upon expiration of twelve months after the transfer of risk as provided in § 12 or after acceptance as provided in § 14, as the case may be. The statutes of limitations shall apply to damages claims of the contract partner for causes other than defects in the contracted product, and to the contract partner's rights in the event of defects fraudulently concealed or deliberately caused by HYDROGENIOUS.

§ 9 Liability and damages

- 9.1 HYDROGENIOUS shall be liable without limitation in cases of willful misconduct or gross negligence. Otherwise, HYDROGENIOUS's liability shall be limited to the damage typical of the contract that was foreseeable at the date when the contract was entered into and resulting from the slightly negligent breach of material obligations under the contractual relationship. HYDROGENIOUS shall have no further liability.

- 9.2 The liability limitation in paragraph 1 above shall not apply in cases of mandatory statutory liability, for example as provided under the German Product Liability Act (*Produkthaftungsgesetz*) or in cases of the assumption of a warranty, or for claims for injuries to life, limb or health.
- 9.3 The liability limitation in this § 9 shall also apply with regard to the liability of legal representatives, managing employees and other vicarious agents.

§ 10 Reservation of ownership

- 10.1 The contracted products will remain the property of HYDROGENIOUS (hereinafter: the "Reserved Items") until all claims of HYDROGENIOUS from the entire business connection are paid, including interest, expenses, and any future claims, and including those from contracts entered into with the contract partner simultaneously or later. If a running account is kept, the reservation of ownership shall apply to secure HYDROGENIOUS's claim for the remaining balance.
- 10.2 The contract partner is permitted to sell the products for which ownership is reserved (hereinafter: the "Reserved Items") only in the normal course of business. The contract partner is not entitled to pledge the Reserved Items, to transfer them as security, or to make any other dispositions that would endanger HYDROGENIOUS's ownership. The contract partner here and now assigns to HYDROGENIOUS the claims from the resale of these items. HYDROGENIOUS accepts this assignment. If the contract partner sells the Reserved Items after processing or reconfiguring them, or after connecting them with other goods or in combination with other goods, the assignment of the claim is to be considered as agreed only for the amount of the portion equivalent to the price agreed between HYDROGENIOUS and the contract partner plus a safety margin of 10% of that price. The contract partner is revocably authorized to collect the claims assigned to HYDROGENIOUS in its own name, as trustee for HYDROGENIOUS. HYDROGENIOUS may revoke this authorization and the right of resale if the contract partner defaults on material obligations, such as making payments to HYDROGENIOUS. In the event of a revocation, HYDROGENIOUS shall be entitled to collect the claim itself.
- 10.3 The contract partner shall provide HYDROGENIOUS at all times with all desired information about the Reserved Items or about claims that have been assigned to HYDROGENIOUS. The contract partner must notify HYDROGENIOUS promptly of any third-party seizures of or claims against Reserved Items, providing the necessary documentation. The contract partner shall notify the third party of HYDROGENIOUS's reservation of ownership

at the same time. The contract partner shall bear the costs of defending against such seizures and claims.

- 10.4 If the realizable value of the security exceeds the total claims of HYDROGENIOUS to be secured under the business relationship with the contract partner by more than 10%, the contract partner shall be entitled to demand their release to that extent. The choice of the security to be released shall entirely be at HYDROGENIOUS's discretion.
- 10.5 If the contract partner defaults on material obligations, such as payment to HYDROGENIOUS, and if HYDROGENIOUS withdraws from the contract, HYDROGENIOUS may, without prejudice to other rights, demand the surrender of the Reserved Items and sell them elsewhere in order to satisfy claims that are due and payable from the contract partner, following prior warning notice. In this case the contract partner shall grant HYDROGENIOUS or HYDROGENIOUS's agent immediate access to the Reserved Items and surrender them. This paragraph shall be without prejudice to § 107(2) of the German Insolvency Code (InsO).
- 10.6 For deliveries to countries with other legal systems, where the above reservation of ownership does not have the same securing effect as in Germany, the contract partner will do everything necessary to furnish HYDROGENIOUS promptly with equivalent security interests. The contract partner shall cooperate in all measures, such as registration, publication, etc., that are necessary and conducive to the efficacy and enforceability of such security interests.
- 10.7 The contract partner must adequately insure the Reserved Items at its own expense, must furnish HYDROGENIOUS with the associated documentation of insurance, and must assign the claims under the insurance policy to HYDROGENIOUS for the relevant amount.

§ 11 Shipping

- 11.1 Unless specially agreed with the contract partner, HYDROGENIOUS shall be entitled to perform shipment via any appropriate channel of its choice. Goods shall be insured only at the contract partner's request and expense.
- 11.2 If HYDROGENIOUS and the supplier agree to apply Incoterms, that agreement shall always apply to the Incoterms version current at the date of the agreement.

B. Special terms and conditions for purchase agreements

§ 12 Transfer of risk

Risk shall be transferred to the contract partner at the time of consignment of the contracted product to the carrier firm or to the contract partner itself. If consignment or shipping is delayed for reasons within the contract partner's control, risk shall be transferred to the contract partner on the date of notification that the contracted product is ready for shipping. This shall also apply if HYDROGENIOUS has been engaged to set up and commission the contracted product.

§ 13 Obligation to inspect

If the transaction is a commercial transaction for the contract partner (§ 343 German Commercial Code, HGB), a prerequisite for any complaints by the contract partner for defects shall be that the contract partner has inspected the contracted product after hand-over, and has notified HYDROGENIOUS in writing of any defects promptly, and in any case no later than within two weeks, including the hand-over date. Latent defects must be reported to HYDROGENIOUS in writing promptly after discovery. For any complaint of defects, HYDROGENIOUS shall be entitled to examine and test the objectionable contracted product. The contract partner shall provide HYDROGENIOUS with the necessary time and opportunity for this purpose.

C. Special provisions for agreements for services

§ 14 Acceptance

14.1 The contract partner must declare acceptance if the contracted product has only minor defects that do not seriously impair its suitability for the contracted purpose, without prejudice to the contract partner's right to assert claims for defects as provided by statute.

14.2 Acceptance shall be deemed declared if:

- the contract partner refuses to declare acceptance in violation of § 14.1 above or refuses to cooperate in joint acceptance testing, despite timely requests to do so; or
- after joint acceptance testing, the contract partner does not promptly declare acceptance in writing, even though it has been asked to do so by HYDROGENIOUS within a deadline of seven business days, unless within that time period the contract partner specifies in writing the defects because of which it refuses acceptance; at the

beginning of the deadline period, HYDROGENIOUS shall remind the contract partner of the provided significance of the contract partner's conduct.

- 14.3 For self-contained partial deliveries of work, HYDROGENIOUS may demand partial acceptance. In subsequent acceptance activities, testing of the parts already accepted shall be limited to testing whether they work together properly with the new parts.
- 14.4 Intellectual work is to be deemed accepted if the contract partner does not raise express reservations in writing within 30 days after receipt, specifically identifying defects; at the beginning of this time period, HYDROGENIOUS shall remind the contract partner of the provided significance of the contract partner's conduct. In the event of such a reservation, HYDROGENIOUS will review its work. If a reservation by the contract partner is found to be unjustified, the contract partner must bear the resulting costs, unless the contract partner is responsible only for slight negligence.

§ 15 Termination

If the contract partner exercises its right of termination under § 649 first sentence of the German Civil Code (BGB), HYDROGENIOUS may demand 15% of the agreed compensation as a lump-sum compensation if performance has not begun yet. If performance has already begun, 80% of the agreed compensation must be paid.

D. Concluding provisions

§ 16 Rights to documentation, confidentiality

- 16.1 HYDROGENIOUS reserves all rights to all documents (particularly calculations, technical notes, etc.) and samples that were provided to the contract partner in the course of the contract negotiations and the signing of the contract, irrespective of any actual formation of a contract. This shall also apply to documents prepared by the contract partner according to particular instructions from HYDROGENIOUS. These documents and samples cannot be used, reproduced or made available to third parties by the contract partner for purposes outside the contractual relationship with HYDROGENIOUS. They must be returned at HYDROGENIOUS's request, together with all copies and/or reproductions. If no contract is entered into, the contract partner must surrender all documents to HYDROGENIOUS promptly, without being asked to do so.
- 16.2 The contract partner must consider the inquiry, order, and goods or services as a trade secret and treat them confidentially.

16.3 Except as provided otherwise by law or regulation, or in order to settle one of the parties' tax affairs, the parties agree that the contract entered into between them (and the agreements it contains), together with all information exchanged and made known in the course of the contract negotiations, shall be treated with the strictest confidentiality and that they will not issue any public position statements or publications concerning this contract or any legal transaction contained herein, without the other party's prior written consent. This provision shall not include facts that are common knowledge.

§ 17 Concluding provisions

17.1 Subject to the reservation of individual terms pursuant to § 305 b of the German Civil Code, changes and additions to the contract and/or these Terms and Conditions, together with incidental agreements, must be in writing. The same shall apply for changes to this requirement of written form.

17.2 Should any provision of the contract and/or of these Terms and Conditions be invalid or impossible of performance, in whole or in part, the validity of the remaining provisions shall be unaffected. The parties shall instead arrange to replace the invalid or unperformable provision with a valid or performable provision that approximates the economic effect of the invalid or unperformable provision as closely as possible. Equivalent conditions shall apply if the contract and/or these Terms and Conditions are found to have a lacuna requiring supplementation.

17.3 The sole jurisdiction and place of performance for all disputes arising from the contractual relationship shall be Erlangen. HYDROGENIOUS shall be entitled, however, to bring action against the contract partner in that partner's legal jurisdiction.

17.4 The contractual relationship shall be governed by the laws of the Federal Republic of Germany. The terms of private international law and the U.N. Vienna Convention on Contracts for the International Sale of Goods (CISG) shall not apply.