

# General Terms and Conditions of HiperScan GmbH

## Version May 3, 2018

### 1. General Provisions

1.1 These General Terms and Conditions (hereinafter referred to as "GTC") shall govern the rights and obligations regarding the delivery of items (e.g. products, devices, integral systems, services; hereinafter referred to as "Delivery Items") of HiperScan GmbH, Weißeritzstraße 3, 01067 Dresden, Germany (local court [Amtsgericht] of Dresden, company number: HRB 24683) (hereinafter referred to as "HiperScan") to entrepreneurs, legal persons under public law or special funds under public law as defined by Section 310, subsection 1 of the German Civil Code [Bürgerliches Gesetzbuch, BGB] (hereinafter referred to as "Customer").

1.2 In cases of contradictions between the provisions of the respective order confirmation and these GTC, the provisions of the order confirmation shall take priority in accordance with Section 305b of the German Civil Code. Any deviating, adverse or supplementary contractual provisions of the Customer shall only apply when HiperScan has granted their express consent to them.

### 2. Conclusion of Contracts

2.1 Quotation documents, which contain product information and these GTC, submitted by HiperScan to the Customer shall not constitute an offer to conclude a contract within the meaning of Section 145 of the German Civil Code, but shall be regarded as invitation to the Customer to submit an offer. Until the order confirmation by HiperScan, the quotation documents shall not have a binding effect regarding prices, quantities, delivery periods, and delivery options.

2.2 By means of submitting their order, the Customer shall submit to HiperScan an offer within the meaning of Section 145 of the German Civil Code.

2.3 The acceptance of the Customer's offer and in this way the conclusion of the contract shall be effected by HiperScan submitting an order confirmation.

### 3. Quotation Documents

3.1 Figures, drawings, indications of weights, performance figures in prospectuses, in estimates of costs, and in data sheets, etc. (hereinafter referred to as "Quotation Documents") concerning the Delivery Items shall not constitute any guarantees as defined by Section 443 of the German Civil Code, but performance descriptions. HiperScan shall reserve deviations which are based on the technical progress that has occurred or changed legal regulations and that only insignificantly restrict the usability of the Delivery Items for the Customer, even after the confirmation of the respective order. HiperScan shall undertake to inform the Customer of such deviations after they have become apparent.

3.2 The Customer shall not be permitted to reproduce, copy, provide to third parties or pass on in any other way quotation documents without the express prior written approval of HiperScan or to use these documents in a way that is contrary to the interests of HiperScan. HiperScan shall expressly reserve the title to and copyrights in the quotation documents.

### 4. Withdrawal, Cancellation, and Return

4.1 HiperScan shall receive any withdrawal of offers by the Customer before the submission of the order confirmation by HiperScan. Any further contractual right of cancellation, rescission, or withdrawal shall not be granted.

4.2 Any return of sold goods which are free of defects shall only be permitted with the express, prior, and written approval of HiperScan. Unless otherwise agreed, HiperScan shall only accept carriage paid deliveries and shall issue a credit note in the amount of the purchase price paid by the purchaser minus an appropriate handling fee.

4.3 In the case that the return shipment of defect-free goods has been agreed upon, HiperScan shall be entitled to a claim for compensation amounting to 15% of the invoice amount, but at least €10.00.

### 5. Prices

5.1 Unless these GTC set out deviating regulations, the prices shall be understood as net amounts, ex works Dresden (EX WORKS – INCOTERMS 2010, hereinafter referred to as "INCOTERMS"). Unless deviating regulations have been agreed upon, a lump sum amounting to €15.00 per shipment shall be charged for shipping costs in the case of deliveries within Germany if the net order value amounts to less than €100.00, and in other cases €7.50. In the case of deliveries to foreign countries, the transport and shipping costs shall basically be charged separately.

5.2 If a quantity discount is granted, the discount shall apply to the complete acceptance of an order delivered to one single recipient's address. Unless deviating regulations have been agreed upon, in the case of call-off orders, the prices applicable at the day of the delivery shall be charged.

5.3 The prices shall be understood in euros (€) plus the statutory turnover tax applicable in each case, if such a tax accrues. All taxes, customs duties, and charges which may also be charged in accordance with another law than the one applicable in accordance with these GTC (if applicable) shall be added. Disposable or transport packaging, respectively, shall be included in the price and shall not be credited in the case of a return shipment. If the parties have not agreed upon a certain transport route or a certain shipping method, HiperScan shall be permitted to select the most economical solution. The costs of any special packaging requested by the Customer shall be charged separately.

5.4 Unless otherwise agreed, the postage and packaging costs shall be borne by the Customer. Upon request, the Delivery Items shall be insured by HiperScan

against damages in transit. The costs of the transport insurance shall be borne by the Customer.

### 6. Delivery

6.1 HiperScan shall provide the goods ex works for collection by the purchaser. The purchaser shall transport the goods at their own expense.

6.2 HiperScan shall be permitted to render partial performances if this is reasonable for the Customer.

6.3 The set periods shall be deemed to be complied with if the obligations on the part of HiperScan in accordance with the INCOTERMS applicable pursuant to item 5.1 are fulfilled.

6.4 HiperScan shall be permitted to store the ordered goods at the Customer's expense at the premises of HiperScan or a third party if the Customer postpones the delivery time or does not collect the provided goods subsequent to the announcement of their provision.

6.5 In the case that the purchaser is not liable for the postponement of the delivery or the fact that the goods are not collected, HiperScan shall two weeks after the commencement of the storage of these goods be permitted to rescind the contract with the purchaser and to sell the ordered goods otherwise. In this case, the purchaser shall not be entitled to asserting any claims vis-à-vis HiperScan. HiperScan shall be permitted to claim damages from the purchaser if the purchase price of the other sale is lower than the purchase price agreed upon with the purchaser or if another sale is not possible.

6.6 In the case of force majeure, the delivery periods shall be suspended during the duration of the force majeure and shall only start to run again after the expiration of an appropriate restart time, which shall amount to at least 14 days, after the termination of the period of force majeure.

6.7 Force majeure within the meaning of item 6.6 shall be particularly mobilisation, war, riots or similar events, such as strikes, lockouts or other unforeseen events the occurrence of which is beyond HiperScan's control. Cases of force majeure shall also include all sovereign measures such as the non-issuance of a necessary regulatory approval despite an orderly application filing, transport restrictions, and limitations of the energy consumption, but also a general lack of raw materials and supply goods as well as other reasons such as the non-delivery or delayed delivery by suppliers that HiperScan is not liable for.

### 7. Installation of Devices

7.1 Upon the Customer's request, HiperScan shall assume the installation of devices delivered by HiperScan at a destination defined by the Customer. Upon request, HiperScan shall assume, against a separate charging, the installation of the devices at more than one place of destination defined by the Customer. For that purpose, a separate contractual agreement shall be reached between HiperScan and the Customer. The installation costs shall be borne by the Customer.

7.2 The Customer shall be responsible for positioning the device or other products to be installed at the future operating site and shall ensure that the installation is possible for HiperScan or a third party retained by HiperScan.

### 8. Passing of the Risk of accidental Deterioration, Destruction or Loss

8.1 The risk of an accidental loss or the accidental deterioration shall pass to the Customer as soon as HiperScan has announced to the Customer that the Delivery Items are provided and to be collected or HiperScan has handed them over to the forwarding agent selected by HiperScan.

8.2 In the case that HiperScan themselves performs the delivery, the risk shall pass to the Customer when the Delivery Item is handed over to the Customer.

8.3 In the case that the Customer is in default of acceptance, the statutory provisions shall apply.

### 9. Payment and Defaults in Payment

9.1 Unless a deviating agreement has been reached, the invoices of HiperScan shall be payable within fourteen (14) days after the receipt of the invoice, strictly net without any deductions. After the expiration of the payment period, the Customer shall enter into default in payment without a reminder being necessary.

9.2 The following shall apply to SEPA direct debit mandates: In the case that amounts that are subject to a debit advice cannot be withdrawn due to insufficient funds in the account or due to missing or faulty information, the Customer shall bear the costs and charges of the negative booking operation.

9.3 In the case of a default in payment, HiperScan shall reserve the right to charge interest amounting to 9 percentage points above the respective basic rate of interest per year.

9.4 If the time of the receipt of the invoice is uncertain, the Customer will enter into default no later than 50 days after the receipt of the counterperformance.

9.5 In the case of a default in payment of the Customer, HiperScan shall reserve the right to claim a lump sum of default costs amounting to €40.00.

9.6 In the case that the Customer is in default in payment or the Customer has ceased their payment or there are facts that are equivalent to a cessation of payment, HiperScan shall have the right to request an advance payment or the provision of securities or to cease the delivery.

9.7 The Customer may set off only receivables or assert a right of retention regarding receivables that are uncontested or have become res judicata.

# General Terms and Conditions of HiperScan GmbH

## Version May 3, 2018

- 9.8 A right of retention of the Customer on the basis of counterclaims arising from other contractual relationships shall be excluded. The Customer shall be entitled to assert a right of retention only on the basis of receivables that arise from the same contract as the respective counterclaim of HiperScan.
- 10. Default**
- 10.1 After the expiry without the desired result of a period for the performance amounting to at least three (3) weeks, which shall be set by the Customer whereby the Customer shall threaten the rejection of the performance in the case of non-compliance with the period, the Customer shall have the right to rescind the contract on the basis of a non-performance.
- 10.2 Claims arising from default shall become statute-barred within six (6) months from its accrual and the knowledge or grossly negligent lack of knowledge of the Customer.
- 10.3 In other respects, the statutory provisions governing the default shall apply.
- 11. Reservation of Title**
- 11.1 HiperScan shall reserve the title to the Delivery Item until the receipt of all payments in the scope of the respective delivery contract. In the case of a conduct of the Customer violating the respective contract, in particular in cases of defaults in payment, HiperScan shall be entitled to withdraw the Delivery Item subsequent to setting an appropriate period; the purchaser shall be obliged to return the Item. In any case, the withdrawal of the Delivery Item by HiperScan shall constitute a rescission of the respective contract. In the case of an attachment or other interventions of third parties, the Customer shall notify HiperScan in writing without delay.
- 11.2 The Customer shall be entitled to resell the Delivery Item in the orderly course of business; however, the Customer shall already now assign to HiperScan all receivables arising from the resale vis-à-vis the Customer's purchasers or third parties and amounting to the final invoice amount (including VAT), irrespective of whether the Delivery Item has been resold without or after processing. After the assignment, the Customer shall be authorised to collect this receivable. The authority of HiperScan to collect the receivable themselves shall remain unaffected thereof; however, HiperScan shall undertake to not collect the receivable as long as the Customer properly meets their payment obligations and is not in default in payment. However, if this is the case, HiperScan may request that the Customer discloses to HiperScan the assigned receivables and their debtors, provides all information required for the collection, hands over the related records, and informs the debtor (third party) of the assignment.
- 11.3 The processing or remodelling of the Delivery Item by the Customer shall be made on behalf of HiperScan at all times. In the case that the Delivery Item is processed together with other items not belonging to HiperScan, HiperScan shall acquire the co-ownership in the new item at the ratio of the value of the Delivery Item to the other processed items at the time of the processing. In other respects, the same as to items that are subject to a reservation of title shall apply to any item being created by the processing.
- 11.4 In the case that the delivery item is inseparably combined or mixed with other items not belonging to HiperScan, HiperScan shall acquire the co-ownership in the new item at the ratio of the value of the Delivery Item to the other combined or mixed items at the time of the combination or mixing. If the combination or mixing was performed in a way that the items of the Customer are to be regarded as main item, it shall be agreed upon the fact that the Customer transfers to HiperScan co-ownership proportionately. The Customer shall keep the items in the sole ownership or co-ownership on behalf of HiperScan.
- 11.5 HiperScan shall undertake to release upon the Customer's request securities that they are entitled to if the value of the securities exceeds the receivables (if the outstanding amount is still unpaid) to be secured by more than 10%.
- 12. Liability for Defects of Quality**
- 12.1 If Delivery Items have a defect of quality, they shall be subsequently improved, newly delivered or newly performed (hereinafter referred to as "**Supplementary Performance**") free of charge at the option of HiperScan, if the cause of the defect existed already at the time of the passing of the risk of accidental deterioration, destruction or loss in accordance with items 8.1 and 8.2.
- 12.2 Claims of the Customer based on defects of quality shall become statute-barred after two (2) years, calculated from the time of the passing of the risk of accidental deterioration, destruction or loss in accordance with items 8.1 and 8.2.
- 12.3 The Customer shall check the Delivery Items for defects of quality without delay after the delivery. HiperScan shall be notified of any defects of quality without delay and in writing, whereby the defect of quality shall be described. In the case that the Customer fails to submit the notification, the Delivery Items shall be deemed to be approved. This shall not apply if the defect was unrecognisable.
- 12.4 In the case that an unrecognisable defect becomes obvious at a later time, the notification must be submitted subsequent to its discovery without delay; otherwise, the Delivery Items shall be deemed to be approved.
- 12.5 In the case that the complaint in respect of a defect was submitted wrongfully, HiperScan shall be permitted to claim from the Customer the compensation of the expenses caused by the complaint in respect of a defect.
- 12.6 At all times, HiperScan shall be granted the opportunity of two Supplementary Performances within an appropriate period. In the case that this Supplementary Performance fails, the Customer may rescind the respective contract or reduce the remuneration, irrespective of any possible claims for damages.
- 12.7 Claims based on defects of quality shall not exist in the case of damages that occur after the passing of the risk of accidental deterioration, destruction or loss (e.g. as a result of incorrect or careless handling, overuse, unsuitable equipment, defective processing) or in the case of natural wear and tear of the items. Furthermore, the Customer shall also not be permitted to assert claims based on defects of quality regarding damages if these occur after the passing of the risk of accidental deterioration, destruction or loss as a result of special external (e.g. chemical, electrochemical, electrical, and atmospheric) influences that have not been provided for in the respective contract. If the Customer or third parties perform alterations, maintenance works, or subsequent improvements without the prior consent of HiperScan, no claims based on defects of quality shall exist vis-à-vis HiperScan also regarding these and the consequences arising therefrom.
- 12.8 HiperScan shall bear expenses that are necessary for the purposes of the Supplementary Performance – particularly transport, travel, labour, and material costs – only if the delivered item has not, contrary to its intended use, been transferred to a place other than the place of delivery. If the item has, in accordance with its intended use, been transferred to a place other than the place of delivery, HiperScan shall only bear the expenses that would have been accrued if the Customer would have failed to make this transfer; in such a case, the costs of the Supplementary Performance caused by the transfer and exceeding this shall be borne by the Customer. Any possibly arising costs of a disassembly and assembly of an item and the costs of the shipping to HiperScan shall be borne by the Customer.
- 13. Liability for Defects of Title / Infringement of Industrial Property Rights**
- 13.1 HiperScan shall be obliged to deliver or perform the Delivery Items solely in the country of the place of delivery free of defects of title, particularly industrial property rights and copyrights of third parties (hereinafter together referred to as "**Protective Rights**"). If a third party asserts legitimate claims vis-à-vis the Customer on the basis of the infringement of Protective Rights by Delivery Items delivered or performed by HiperScan, which are used as intended in the contract, HiperScan shall be liable to the Customer as follows:
- (i) at their own option and at their own expense, HiperScan obtain a right of use for the Customer regarding the relevant Delivery Items or alter the Delivery Items in a way that the respective Protective Right is no longer infringed, or exchange them for Delivery Items that are free of defects of title.
- (ii) If this is not reasonable for HiperScan under appropriate conditions, the Customer shall be entitled to the statutory rights of rescission or rights to reduce the purchase price as well as damages in accordance with item 14. The aforementioned obligations of HiperScan shall only exist if the Customer notifies HiperScan without delay and in writing of the claims asserted by the third party, does not acknowledge an infringement, and all defensive measures and settlement negotiations are reserved for HiperScan. In the case that the Customer ceases the use of the Delivery Items due to third parties asserting claims, the Customer shall ensure – e.g. by means of an express notification to the respective third party – that the cessation of the use shall not be related to an acknowledgement of the infringement of Protective Rights.
- 13.2 Claims of the Customer based on defects of title shall be excluded to the extent that the Customer themselves is liable for the infringement of Protective Rights.
- 13.3 Claims of the Customer shall be excluded if the infringement of Protective Rights is caused by an application unforeseeable by HiperScan or by the fact that the Customer has altered the Delivery Items or has used them together with products not delivered by HiperScan.
- 14. Liability**
- 14.1 HiperScan shall be liable exclusively for damages the cause of which is based on a grossly negligent or intentional infringement of obligations or on an at least negligent infringement of essential contractual obligations (cardinal obligations). Obligations, the fulfilment of which enables the due performance of the contract in the first place and on the compliance with which the Customer therefore does and also may rely and/or obligations, the infringement of which jeopardises the achievement of the purpose of the contract, shall be deemed to be cardinal obligations. In the case of cardinal obligations, the amount of liability shall be limited to the typically foreseeable damage.
- 14.2 The foregoing limitation of liability shall not apply to damages arising from the injury to life, body, or health or if HiperScan has exceptionally assumed a guarantee. Furthermore, the liability in accordance with the statutory and mandatory provisions under product liability law that are applicable in each case shall remain unaffected.
- 15. Applicable Law / Jurisdiction**
- 15.1 Exclusively German law shall apply to the contractual relationship between HiperScan and the Customer; any conflict of law rules shall be excluded. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 15.2 If the Customer is a businessperson, a legal person under public law of a special fund under public law, Dresden shall be agreed upon as exclusive place of jurisdiction regarding all disputes arising directly or indirectly from the contractual relationship.