

I. General Conditions

1. The scope of the supplies or services (hereinafter called Supplies) including written supplements shall be determined by the written order confirmation of the supplier or service provider, HIGHVOLT Prüftechnik Dresden GmbH (hereinafter called HIGHVOLT).
2. Our Supplies are governed exclusively by these General Conditions of Sale. These General Conditions of Sale shall also be valid for future Supplies even if not explicitly agreed upon again, unless HIGHVOLT bases the supply on other General Conditions of Sale. Other conditions shall only apply if expressly approved by us in writing. Without written compliance, such conditions are not binding even if they have been mentioned in the order and have not been contradicted by us.
3. Any documents relating to a quotation such as illustrations, drawings and weight details shall not be binding unless specifically so stated. For cost estimates, drawings and other documents (hereinafter called "Documents"), HIGHVOLT reserves all rights, right, title and interest in and to the property and the copyright. Such Documents may not be made available to third parties without the prior consent of HIGHVOLT and they shall, upon request, be immediately returned to HIGHVOLT if HIGHVOLT is not awarded the contract. Sentences 2 and 3 shall apply reciprocally to Purchaser's Documents, but these may be made available to those third parties to whom HIGHVOLT may transfer Supplies.
4. The Purchaser shall have the non-exclusive right to use standard software in unchanged form with the stipulated performance characteristics for the agreed Supplies. The Purchaser is allowed to make two back-up copies without the Supplier's express consent.
5. Partial Supplies shall be permissible as far as reasonable for the Purchaser

II. Prices and terms of payment

1. Prices are based on delivery ex works excluding packing plus the sales tax payable under the applicable law, unless otherwise expressly agreed.
2. Payments shall be made within 30 days after date of invoice, in cash and free of all charges, to the address of payment specified by HIGHVOLT, unless other payment conditions have been expressly agreed.
3. Should the agreed payment date be exceeded, HIGHVOLT is entitled to demand interest on arrears in the amount of 8 percentage points above the basic interest rate of the European Central Bank p.a. without giving previous notice.
4. The Purchaser may set off only those claims that are undisputed or have been determined in a legally binding manner.

III. Retention of title

1. The items of Supplies (Secured Goods) shall remain the property of HIGHVOLT until each and every claim against the Purchaser to which HIGHVOLT is entitled under this business relationship has been duly satisfied. If the value of all security rights of HIGHVOLT exceeds the value of all secured claims by more than 20 %, HIGHVOLT shall release a corresponding part of the security rights at the Purchaser's request.
2. For the duration of the retention of title the Purchaser is prohibited from giving any items of Supplies in pledge or as security, and release shall be permissible only to resellers in the ordinary course of business and only on condition that the reseller receives payment from his customer or retains title so that the property is transferred to the customer only after fulfilment of his obligation to pay.
3. In case of seizure, confiscation or other acts or interventions at or by third parties, HIGHVOLT shall be immediately informed thereof in writing by the Purchaser.
4. In cases of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, HIGHVOLT shall be entitled to terminate the contract and take back the goods. The Purchaser shall be obliged to return the purchased goods. The taking back or the assertion of the retention of title does not require termination of the contract by HIGHVOLT; such activities or a seizure of the Secured Goods by HIGHVOLT do not mean termination of the contract except if expressly stated by HIGHVOLT.

IV. Time for delivery; delay

1. Delivery periods are approximate target times and therefore not binding. Observance of the stipulated time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as fulfilment of the agreed terms of payment and other obligations by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where HIGHVOLT is responsible for the delay.
2. If non-observance of the time for delivery is due to Acts of God such as mobilization, war, riot or similar events, e.g. strike or lockout, such time shall be extended accordingly.

3. In the event that HIGHVOLT is responsible for a delay in meeting stipulated execution or delivery deadlines, the Purchaser-provided he can credibly establish that he has suffered a loss from such delay-may claim compensation for delay for every full week of delay from 0.5% to a maximum of 5% of that part could not be put into intended operation due to the delay in completing individual components thereof.
4. Purchaser's claims for damage as a result of delayed delivery and claims for damage instead of performance which exceed the limits specified in no. 3 shall be excluded in all cases of delayed delivery even after expiry of an extension of time for delivery that may have been granted to HIGHVOLT. This exclusion shall not apply where, in cases of intent, gross negligence or injury to life, body or health, there is a legally binding liability on the part of HIGHVOLT. The Purchaser may only terminate the contract within the framework of the legal provisions as long as the delay in delivery is within the responsibility of HIGHVOLT. No change in the burden of proof to the detriment of the Purchaser is associated with the aforementioned arrangements.
5. Upon request by HIGHVOLT, the Purchaser is obliged to state within a reasonable length of time if he is terminating the contract as a result of the delay in delivery and/or demanding a claim for damage instead of performance or insisting on delivery.
6. If, at Purchaser's request or for reasons for which he is responsible, dispatch or delivery is delayed by more than one month after notice is given that goods are ready for dispatch, the Purchaser may be charged storage costs for each month thereafter to the amount of 0.5% of the price of the supplied goods, but in no event shall the aggregate storage charges exceed a total of 5 % of the price. The parties to the contract are still at liberty to furnish proof of higher or lower storage costs.

V. Transfer of risk

1. All risk shall pass to the Purchaser, even if "carriage paid" delivery has been agreed, when the consignment leaves the factory. At the request and expense of the Purchaser shipments will be insured by HIGHVOLT against usual transport risks.
2. If the dispatch or the delivery is delayed for reasons within the Purchaser's responsibility, or if the Purchaser has failed for other reasons to accept delivery the risk shall pass to the Purchaser as soon as HIGHVOLT has given notice that the goods are ready for dispatch.
3. For services, all risk shall pass to the Purchaser upon completion of the respective service.

VI. Scope of Service

1. The Purchaser is responsible for supplementary products such as the definition of interfaces between our product deliveries and services and other products or systems. However, he is liable for the composition of and compatibility with the Interfaces defined in the performance specification or contract.
2. HIGHVOLT shall not be liable for testing the interfaces supplied and/or defined by the Purchaser with regard to compatibility and proper function.

VII. Installation

Insofar as installation work has been stipulated, the following supplementary rules apply:

1. Before installation is begun, the Purchaser must provide all necessary information and any necessary supplementary materials, as well as power and water - at no charge to HIGHVOLT - at the service site, including supply connections, heat and light, as well as sanitary facilities in sufficient quantity.
2. All preliminary work to be performed by the Purchaser must, at the time of assembly, be progressed to such a degree that the assembly or installation may be begun and executed as stipulated without interruption; this also applies to preparation of access roads and the installation site.
3. If installation or commissioning should be delayed due to reasons that are not the responsibility of HIGHVOLT, the Purchaser shall bear, to a reasonable extent, the costs for waiting periods and necessary additional trips.
4. The Purchaser is to perform the final inspection within two weeks of being requested to do so. If the Purchaser fails to do so, the system shall be considered accepted. The system shall also be considered accepted if the system has been put into operation - if applicable, after a stipulated test phase.

VIII. Taking delivery

Deliveries, even with minor defects, have to be accepted by the Purchaser.

IX. Warranty

1. HIGHVOLT shall, at their option and expense, repair, replace or newly provide any parts or services that prove to be defective within the limitation period - irrespective of operating time - provided that the cause of the defect occurred prior to the time at which the risk was passed.

2. For services, the liability for defect of quality born by HIGHVOLT shall be limited to exchanged parts and work performed.
 3. Warranty claims are subject to a limitation period of 12 months from the day of transfer of risk, but at most, 18 months after notification of readiness to ship. This does not apply insofar as the law dictates a longer period of time pursuant to §§ 438 par. 1 no. 2 (buildings and materials for buildings), 479 par. 1 (claim for legal recourse and 634a par. 1, no. 2 (building defects) of German Civil Code.
 4. The Purchaser is obligated to immediately notify HIGHVOLT in writing of any defects of quality.
 5. For complaints about defects, the Purchaser may withhold payment in an amount that is commensurate with the actual defects. If the contract is a part of his business operations, the Purchaser may only withhold payment when a complaint about a defect is lodged, the legitimacy of which must be undisputed.
 6. HIGHVOLT must always be given the opportunity to rectify a defect within a reasonable time frame. The Purchaser shall grant an adequate period within which the defect is to be repaired. If the Purchaser refuses to do so, HIGHVOLT shall no longer be liable for the defect.
 7. HIGHVOLT bears the necessary costs associated with the rectification of the defect, particularly those for material, work, and transport time at HIGHVOLT. If costs are increased because the products or devices on which services were performed have been transferred to some place other than the agreed upon place of delivery, the Purchaser must bear such additional costs. Costs for sending the defective material to HIGHVOLT shall also be paid by the Purchaser.
 8. If the rectification of the defect fails again, the Purchaser - irrespective of any claims for damage with respect to Art. XII - can terminate the contract or decrease the remuneration. The same shall apply if HIGHVOLT has allowed a granted time period to pass without having repaired the defect.
 9. Warranty claim rights on replacement parts as well as repair of defect shall expire after 12 months. However, this time period shall end, at the earliest, upon conclusion of the original limitation period for warranty claims for products or services.
 10. Defect of quality claims do not include minor deviation from the quality or condition agreed upon, minor impairment of usability, or natural wear and tear or damage arising - after the transfer of risk - from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil, chemical, electrochemical, electrical or other external influences not assumed under the contract, or from non-reproducible software errors. Claims for defects of quality do not cover modifications or repairs (and the consequences that result) carried out improperly by the Purchaser or by third parties.
 11. Claims for legal recourse by the Purchaser against HIGHVOLT are only valid to the extent that the Purchaser has not made any agreements with his customer that extend beyond the realm of the legally applicable defective quality claims. Moreover, no. 7 applies respectively to the scope of the claim for legal recourse of the Purchaser.
 12. Art. XII additionally applies to claims for damage (Other claims for damage"). Further reaching claims or any claims made by the Purchaser against HIGHVOLT and its agents other than those dealt with in this, article IX, concerning warranty for defect of quality are excluded.
- X. Industrial property rights and copyrights; defects of title**
1. Unless otherwise agreed, HIGHVOLT is obligated to furnish the products free of industrial property rights and third party copyrights (hereinafter called "Property Rights") only in the country of the delivery location. If a third party, because of an infringement of Property Rights, asserts legitimate claims against the Purchaser for products furnished by HIGHVOLT and used in conformity with the contract, HIGHVOLT shall be liable to the purchaser within the period set forth in Art. IX, No. 3 as follows:
 - a) At its own option and expense, HIGHVOLT shall either obtain a right to use the relevant products, modify them so as not to infringe upon the Property Rights, or replace them. If this is not possible to HIGHVOLT on acceptable terms, the Purchaser is entitled to legal termination or purchase price reduction rights.
 - b) The obligation of HIGHVOLT to honour a claim for damage is based on the information contained in Art. XII.
 - c) The obligations of HIGHVOLT referenced above are only applicable when the Purchaser immediately notifies HIGHVOLT in writing as to the claims lodged by a third party, an infringement is not acknowledged, and all counter-measures and settlement negotiations are reserved by HIGHVOLT. If the Purchaser ceases to use the product in order to reduce damage or for other important reasons, he is obligated to inform the third party that an acknowledgement of an infringement of Property Rights is not associated with the cessation of use.
 2. Claims of the Purchaser shall be excluded if he is responsible for an infringement of Property Rights.
 3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a use of the product not foreseeable by HIGHVOLT or by the product being altered by the Purchaser or being used together with products not provided by HIGHVOLT.
4. In the case of Property Right infringements, the provisions as defined in Art. IX, Nos. 4, 5, 6 and 11 apply respectively to those claims by the Purchaser cited in No. 1a).
 5. For other defects of title, the provisions as defined in Art. IX apply respectively.
 6. Further reaching claims or any claims made by the Purchaser against HIGHVOLT and its rectification agents other than those dealt with in this, article X, concerning a defect of title are excluded.
- XI. Impossibility of performance, contract adaptation**
1. If a delivery is not possible, the Purchaser shall be entitled to claim damages, unless HIGHVOLT does not bear the responsibility for this. The Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply where in cases of intent, of gross negligence or injury to life, body or health, there is a legally binding liability on the part of HIGHVOLT; no change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected.
 2. Where unforeseeable events as described in Art. IV, No. 2., substantially change the economic importance or the contents of the Supplies or considerably affect HIGHVOLT's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, HIGHVOLT shall have the right to terminate the contract. If HIGHVOLT wants to make use of this right of termination, he shall notify the Purchaser in writing immediately after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time had been agreed with the Purchaser.
- XII. Further liability/further damage claims**
1. HIGHVOLT shall be liable for material damage or financial loss for which it is responsible up to an amount of EUR 500,000 per incidence of damage, but a maximum of EUR 1.5 million in the case of multiple incidences of damage for the same product. Further compensation claims for damages and expenses of the Purchaser (hereinafter called "Claims for Damage") especially those concerning violation of contractual obligations and tort, due to loss of production, lost profit, loss of information, data or interest, are excluded, regardless of their legal basis.
 2. This limitation of liability shall especially apply to the violation of significant contractual obligations.
 3. The limitation of liability in accordance with No. 1 shall not apply insofar as intent or gross negligence was the cause or if mandatory liability has resulted from injury to life, person or health.
 4. If the Purchaser is entitled to claims for damage under this, Art. XII, the duration of liability of these claims corresponds to the time as set forth in the applicable limitation period regarding claims for defects of quality pursuant to Art. IX, No. 3. The legal provisions for limitation periods apply to claims for damage that fall under the product liability law.
- XIII. Terms of export**
- Any export of the contractual goods and documents may be subject to licensing - e.g. due to its nature or purpose of use (see also the Notes on the delivery note and invoice). Unless otherwise agreed, the Purchaser is responsible for fulfilling the obligations and acquiring the appropriate licenses at his own expense.
- XIV. Applicable law**
- All relations arising out of the contract shall be governed by German law not including the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- In all cases in which legal proceedings have been initiated for whatever reason and where the Purchaser is a registered merchant, the sole court of jurisdiction for all disputes arising directly or indirectly from the contract shall be at the option of HIGHVOLT, the HIGHVOLT head office or one of its subsidiaries.
- XV. Arbitration clause**
1. All disputes arising out of or in connection with this contract and including those regarding the legal validity of this contract and this arbitration clause shall be settled out of court and shall be referred to arbitration for final decision.
 2. The court applicable for any disputes arising in connection with deliveries within the Federal Republic of Germany shall be the "Deutscher Institut für Schiedsgerichtswesen e.V." in Bonn whose rules of arbitration determine the procedure and the appointment of the arbitrators.
 3. If the delivery contract is cross-border (HIGHVOLT and Purchaser are domiciled in different countries and delivery is cross-border), any disputes shall be finally decided out of court according to the rules of settlement and arbitration of the chamber of commerce in Zurich by one or more arbitrators appointed also according to the rules of arbitration of the chamber of commerce in Zurich.
- XVI. Validity of the contract**
- Even in case of legal invalidity of individual terms, the remaining parts of the contract shall remain binding. The parties shall undertake to replace the invalid provision by a new one which as far as possible shall meet the economic purpose intended by the invalid provision save where adherence to the contract would mean an undue hardship on one of the parties.