



# HITEC PRODUCTS

## 1. DEFINITIONS

- 1.1 The sales agreement (hereinafter called "Agreement") consists of these general terms, technical documentation and other documents that are made a part of the Agreement by specific reference.
- 1.2 The sales price (hereinafter called "Sales Price") shall mean Hitec Products compensation for the Delivery in accordance with this Agreement, as amended in accordance with clause 9.
- 1.3 The delivery (hereinafter called "Delivery") shall mean all products, services, documentation, equipment, materials, drawings, software, software licenses and other items to be supplied by Hitec to Buyer in accordance with the Agreement.
- 1.4 "Hitec Products" refers to:  
Hitec Products AS, 4069 Stavanger, NORWAY.  
Hitec Products Inc, Houston, USA.
- 1.5 "Buyer" refers to the party who will buy and receive the Delivery from and compensate Hitec Products in accordance with this Agreement.

## 2. DRAWINGS, DOCUMENTS AND SOFTWARE

- 2.1 All drawings and technical documents intended for use during the manufacturing of the Delivery or parts hereof submitted to one of the parties by the other party before, in connection with or after the signing of the Agreement shall belong to the party, which has handed over the material.
- 2.2 When the Delivery includes software, Hitec Products grants Buyer a non-exclusive and non-transferable license to use the program (hereinafter called the "Software"), and as defined in clause 2.3, according to the terms and conditions herein. Buyer is permitted to install and use one copy of the Software on one computer at one location at any one time.  
  
However, if the Software is licensed to Buyer for use on a network system, then Buyer may operate the Software as a multiple-user-installation with the maximum number of concurrent users limited to one user per license, so that multiple individuals may access and use the Software, but that only one person may use one license at any one time.  
  
In addition Buyer is permitted to make only one backup copy of the Software.  
  
Manuals and accompanying documentation in printed form shall not be copied. If any such documentation is in electronic form, Buyer may print out one copy, which shall not be copied.
- 2.3 The term Software shall in this Agreement include the following programs:
  - All Software applications including protocols and drivers within the project
  - All PLC/Controller programs within the project
  - All configuration files for distributed I/O's within the project
  - All configuration files for smart sensors/actuators/converters/within the projects

Software may be restricted with know how protection up to a certain level.

The Software is protected by copyright laws and international treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold.

# GENERAL TERMS OF SALE

- 2.4 Buyer shall not:
  - a) Modify, translate, reverse engineer, de-compile or Disassemble the Software.
  - b) Separate components, as the Software is licensed as a single product, not to be separated for use on more than one computer.
  - c) Rent or lease the Software to third parties.
  - d) Remove any proprietary notices, labels or marks from the Software, manuals or accompanying documentation.
  - e) May only transfer the Software, provided that Buyer transfer permanently all his rights under this Agreement as a part of sale or transfer of the computer and accompanying hardware and the recipient agrees to the terms of this Agreement.
- 2.5 Hitec Products may offer upgrades and updates. If such upgrade or update is supplied to Buyer, then Buyer shall destroy all previously licensed Software including any soft and/or hard copies on all storage medium or back up within 30 days from the transfer of the upgraded or updated Software.
- 2.6 Material rights, title, copyrights, trademarks and all other immaterial rights to the Software and accompanying material or documentation and any copies made by Buyer, shall remain with Hitec Products, exclusively and unlimited. Unauthorised copying of the Software or documentation, or failure to comply with this Agreement, will result in automatic termination of this license in accordance with clause 12.3.
- 3. PERFORMANCE TESTS
  - 3.1 If relevant, performance test(s) shall be performed and included in Hitec Products delivery. This test shall satisfy the requirements specified in this Agreement.
  - 3.2 In the absence, or lack of completeness of the procedures for the performance test, the Delivery shall satisfy the requirements of generally accepted and applicable standard or specifications.
  - 3.3 Unless otherwise specified, the performance test will be performed during normal working hours at Hitec Products or his sub-contractor's premises. Hitec Products shall render possible for a representative of Buyer to attend the performance test by giving sufficient notice. Should Buyer not be represented during the performance test, then Hitec Products shall transmit a test report verifying the result of the test to Buyer.
  - 3.4 If any part of the Delivery is found defective or not in accordance with the Agreement, Hitec Products must remedy the defect as soon as possible in order to ensure that the Delivery complies with the Agreement.
  - 3.5 With respect to performance test held at Hitec Products premises, Hitec Products shall bear all costs connected with the performance test except costs incurred by Buyer due to his attendance at the test. With respect to tests held at Buyer's premises or at any other site requested by Buyer beyond the requirements in the Agreement, then Buyer shall bear all extra costs incurred as a result of change of location for this test.
- 4. TIME AND TERMS OF DELIVERY
  - 4.1 The Delivery shall be delivered and marked, at the agreed place and at the agreed time of delivery. If the place is not specifically indicated, all deliveries are to be delivered from the Hitec Products location referred to in clause 1.4.  
  
Unless otherwise agreed, the terms of delivery are ex.works Hitec Products. (Incoterms 2000).



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4.2 If Hitec Products has reason to expect that any part of the Delivery will be delayed, written notice shall immediately be given to Buyer about this. Hitec Products shall within 10 days after such warning give written notice about:

- a) The reason for, and the extent of the delay
- b) Efforts done or planned by Hitec Products to avoid or reduce the delay

4.3 If the delay is due to force majeure, Hitec Products can ask for an extension of the delivery time in accordance with clause 9, provided that such request is forwarded without undue delay.

4.4 Hitec Products reserves the right to change the Sales Price should any changes occur with respect to customs duty rates, other duties and taxes, or currency exchange rates between Norwegian kroner and relevant currencies.

### 5 TITLE

5.1 The Delivery will become Buyer's property progressively as the work is performed and paid. Materials and equipment, which are intended to form part of the Delivery, will be Buyer's property when Buyer has paid for the material and equipment.

5.2 Hitec Products shall, as far as possible, store the Delivery and/or parts thereof separated from other objects belonging to Hitec Products or third parties.

### 6. PAYMENT AND AUDIT

6.1 Buyer shall, unless otherwise agreed, or unless the Buyer has within 20 days after receipt of the invoice in writing disputed the invoiced amount, pay the Sales Price to Hitec Products within 45 days after receipt of the invoice.

6.2 Buyer shall have the right to audit all documentation concerning supplies from Hitec Products, which will be paid on a reimbursable basis by Buyer. Buyer shall have this right for the duration of the Agreement and for two calendar years following the year in which delivery was effected.

6.3 Unless otherwise agreed upon, payment shall be made as follows:  
1/3 at the signing of the Agreement  
1/3 at date of submission of design documents to Buyer  
1/3 at the time Buyer accept FAT as specified in the Agreement  
If letter of credit shall be raised, buyer shall pay all costs in connection with the opening and handling of it.

6.4 Should Buyer fail to pay within due dates(s), Hitec Products shall be entitled to as from due date to charge interest on overdue payments corresponding to 1,0 % per month.

6.5 Should Buyer fail to pay the amount due within a period of 2 (two) months due to other reasons than stipulated in clause 13, Hitec Products shall be entitled in writing to terminate the Agreement in accordance with clause 12.3.

### 7. ASSIGNMENTS AND SUB-CONTRACTING

7.1 Hitec Products shall not assign the Agreement, without the written approval of Buyer. Use of contract labour, well-qualified sub-contractors and relevant purchases do not require such approval.

7.2 Buyer shall not assign his rights and obligations according to Agreement to a third party without the written approval of Hitec Products.

## GENERAL TERMS OF SALE

### 8. INSPECTIONS

8.1 The Buyer or his authorised representative shall have the right to make any inspection or test at the facilities of Hitec Products and his sub-contractors which the Buyer deems necessary in order to ensure delivery in accordance with this Agreement.

### 9. VARIATION ORDERS

9.1 Buyer may give, or Hitec Products may request, a variation order (hereinafter called "Variation Order") specifying increases or reductions in scope, character, quality, kind or performance of the Delivery or any part of these, as well as changes in delivery time, provided that these variations are within what could reasonably have been expected by the parties when the Agreement was entered into.

9.2 Before Buyer issues a Variation Order, Hitec Products shall, within 20 days after receipt of inquiry or after issue of the request, give Buyer a specification containing the following:

- a) Description of the scope of the Variation Order.
- b) Effect on Sales Price.
- c) Effect on delivery time.

9.3 Buyer shall decide upon Hitec Products specifications as mentioned in clause 9.2 within 20 days after receipt of such specifications.

9.4 Unless otherwise specified in the Agreement, the effects of the Variation Order will be established through negotiations.

9.5 A Variation Order shall be referred to as such. It shall contain a complete description of the effects of the Variation Order for the Agreement. Effects not stated in the original Variation Order, shall be described in an addendum to the Variation Order.

### 10. CANCELLATION

10.1 Buyer can cancel the Agreement by informing Hitec Products in writing. Buyer shall in such event pay Hitec Products for work already performed, relevant commitments already made and any other unavoidable direct expenses incurred by Hitec Products due to the cancellation. In addition to this a cancellation fee shall be paid equalling six per cent of the Sales Price.

### 11. WARRANTY

11.1 Hitec Products guarantees that the Delivery conforms to the technical documentation, and that any design and engineering performed by Hitec Products is suitable for the intended purpose and use of the Delivery.

11.2 Unless otherwise agreed, the warranty period expires twelve months after the actual delivery date of the Delivery to Buyer.

11.3 If Hitec Products has carried out any rectification work during the warranty period, a new twelve month warranty period comes into effect for that part of the Delivery which has been rectified, starting on the completion date for the rectification work.

11.4 The Software is developed by use of state of the art and well-recognised tools, and is customised and tested for Buyer's intended purpose.

If, within the time limit set forth in clause 11.2, any defect in the Delivery caused by breach of Hitec Products obligations under this clause 11.4, should be discovered, then Hitec Products will, at its option, provide Buyer with corrected Software at no charge or refund Buyer the amount paid for the Software, provided that the defective items are returned to Hitec Products as soon as possible and within the warranty period. Any misuse or unauthorised modification of the Software will void this limited warranty.



Except for the above expressly limited warranties, Hitec Products makes no warranty, representation, promise or guarantee either expressed or implied, statutory or otherwise, with respect to the Software, use of documentation or related technical support, including their quality, performance, merchantability or fitness for particular purposes.

11.5 Hitec Products liability for rectification work under this clause 11 shall not in any event exceed an aggregate amount of 25 % of the Sales Price.

**12. DEFAULT**

12.1 Should defects occur during the warranty period set out in clause 11.2 and 11.3, Hitec Products shall immediately, or, later if so required by Buyer, make the necessary rectification at no cost to Buyer.

Should Hitec Products not be able to rectify the defect within a reasonable period after the claims, then Buyer can himself, do the rectification work at Hitec Products cost and risk. Buyer shall in such case inform Hitec Products without delay.

When rectification work is carried out outside Hitec Products premises, Buyer shall pay any travelling, accommodation and/or per diem costs from Hitec Products premises to and from the ship or offshore installation, accommodation on the ship or offshore installation and furnish Hitec Products necessary labour and material assistance if available.

12.2 Buyer may terminate this Agreement with immediate effect by giving written notice to Hitec Products due to one or more of the following situations:

- a) Hitec Products becomes insolvent
- b) Hitec Products is in substantial breach of the Agreement.

When the Delivery is specifically manufactured for Buyer and which Hitec Products can not otherwise dispose of without suffering a substantial loss, Buyer can not terminate the Agreement unless his purpose is considerably missed due to Hitec Products default.

12.3 Hitec Products may terminate this Agreement with immediate effect by giving written notice to Buyer due to Buyer's default as described in clause 2.6, or clause 6.5. Hitec Products should in such event be obliged to claim compensation from Buyer for the loss suffered by Hitec Products.

12.4 Neither party shall in any circumstances be liable for any indirect or consequential losses suffered by the other party.

**13. FORCE MAJEURE**

13.1 Neither party shall be considered to be in default in performance of his obligations under this Agreement to the extent it can be proved that such performance has been prevented due to Force Majeure.

13.2 Any party intending to claim Force Majeure, shall immediately give the other party written notice to the other party.

13.3 If a Force Majeure situation continues without interruption for 30 days or more, each of the parties shall be entitled to terminate the Agreement by written notice. Buyer can require title to the Delivery in its present condition at the time of cancellation, by paying a proportional part of the Sales Price.

**GENERAL TERMS OF SALE**

**14. INSURANCE**

14.1 Hitec Products shall take out insurance covering the Delivery until actual delivery per Agreement has been effected.

**15. LIABILITY AND INDEMNIFICATION**

15.1 As otherwise provided for herein, Buyer and Hitec Products shall indemnify and hold each other harmless from any claim concerning:

- a) Injury to or death of their employees and
- b) Loss of or damage to their respective properties

15.2 Buyer and Hitec Products will indemnify and hold each other harmless from any claims of whatever nature for damage or loss of third parties' equipment and assets or death or injury of third parties' personnel, as a result of Buyer respectively Hitec Products operations under this Agreement.

15.3 In no event shall Hitec Products be liable for any damages, whether arising from tort or contract, including damages or costs relating to loss of profit, business, goodwill, data or computer programs or any other direct, consequential or indirect damages arising out of the use or inability to use the program or accompanying documentation.

**16. PATENTS ETC.**

16.1 Hitec Products is responsible for that the Delivery and the use of it do not infringe any third parties' patents or other industrial rights.

16.2 Hitec Products will indemnify and hold Buyer harmless from and against any claim, lawsuit or proceeding, and shall pay any amount of damages awarded by court of final jurisdiction, arising out of claims by third parties, that the Software infringes any EC copyrights, trademarks or patents, provided that:

- a) Such infringement is not caused mainly or solely by Buyer's own use, which deviate from instructions, purpose or provisions in the agreement between the parties, and
- b) Buyer promptly notifies Hitec Products in writing of any such claim, lawsuit or proceeding, and
- c) Buyer permits Hitec Products to control the defence thereof and co-operate in the defence thereof.

If, as a result of any such claim, Buyer's right to use the Software is revoked, then Hitec Products, at its expense and sole discretion, shall provide Buyer with either a) the right to continue using the Software or b) replacement or modified product with substantially the same functionality as the Software or c) refund the original Sales Price in exchange for termination of this Agreement.

**17. CONFIDENTIALITY**

17.1 Each party shall maintain confidential all information received from the other party in connection with this Agreement. Both parties shall however have the right to transfer such information to a third party to the extent that this is necessary in connection with manufacturing and use of the Delivery.

17.2 Hitec Products shall not make public any information in connection with this Agreement without Buyer's approval, such approval not to be unreasonably withheld.

**18. LAW**

18.1 This Agreement shall be governed by and construed according to Norwegian Law.

18.2 The parties hereto agree that any legal dispute arising out of this Agreement shall be brought before the Stavanger City Court.