

(Deliveries and Services) (Version of December 2014)

1 Scope of these conditions

- 1.1 These General Conditions of Sale (“**these Terms**”) shall govern the rights and obligations concerning the provision of items (e.g. products, devices, overall systems; the “**Deliveries**”) and services (e.g. installation, assembly, calibration, repair, including, without limitation, such services in HYTERA premises and on-site at the customer; the “**Services**”) by HYTERA Mobilfunk GmbH (“**HYTERA**”) to business customers, legal entities of public law or special funds under public law (the “**Customer**”). These Terms form part of the contract which is brought about through HYTERA’ order confirmation following the Customer’s order. In case of any conflicts between the provisions of the order confirmation and these Terms, the provisions of the order confirmation shall take precedence. Any deviating or supplementing contractual terms of the Customer shall be excluded and shall not apply even if HYTERA does not explicitly object to them.
- 1.2 The separately by explicit or tacit agreed Services Price applies additionally.
- 1.3 The regulations of the German Institute of Electrical Engineers (*Verband Deutscher Elektrotechniker*, “**VDE-Rules**”) shall apply to all Deliveries and/or Services insofar as these are relevant for the safety of the Deliveries and/or Services and the present Terms and Conditions of Sale do not provide otherwise in this respect. Deviations from the VDE-Rules are permissible to the extent that the same level of safety is achieved by other means.
- 1.4 Documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates and data sheets, etc., do not constitute any guarantees as per § 443 BGB (German Civil Code), but performance descriptions. HYTERA reserves the right to make any alterations due to and justified by technical advancements, even after confirmation of the order.
- 1.5 Except with the express prior written consent of HYTERA, the Customer shall not be entitled to reproduce, copy, make available to third parties or otherwise disclose the documents mentioned in Section 1.4 above or to use them in any manner conflicting with HYTERA’ interests as recognizable to the Customer. If the order is not placed with HYTERA, the documents shall be returned to HYTERA immediately upon request. The preceding sentences 1 and 2 shall apply correspondingly to the Customer’s documents provided to HYTERA; the documents provided to HYTERA may, however, be made available to those third parties whom HYTERA has rightfully subcontracted to perform any Deliveries and/or Services.

2 Prices

- 2.1 Cost estimates are not binding. They shall only be issued upon separate agreement. The costs for preparation hereof are included in the price and will be charged separately if the order for the Services is not placed.

- 2.2 Prices are for Deliveries (for Services, see Section 9 below) FCA, at a location specified by HYTERA according to INCOTERMS 2010, ICC Publication Section 715 ED, unless these Terms provide differently.

Prices are in Euro (€), plus VAT, if any, at the statutory rate applicable from time to time, plus any and all taxes, customs duties or charges as well as consular or legalisation fees possibly levied even according to the rules of a law other than the law applicable pursuant to Section 18.1. Customary packaging is included in the price; any costs arising for packing of antennas, installations and systems as well as special packaging requested by the Customer will be charged separately.

- 2.3 Prices reflect the cost situation for HYTERA at the time of conclusion of the contract. If any costs change before the day of delivery / performance of Service, HYTERA reserves the right to adjust the prices provided that the Deliveries and/or Services are to be carried out as agreed more than four (4) months after conclusion of contract.

3 Terms of payment

- 3.1 All payments shall be made to HYTERA within thirty (30) calendar days from the invoice date without any deductions and free of charges.
- 3.2 For orders amounting to a total value of more than € 50,000 net, a down-payment of thirty percent (30%) plus relevant VAT shall be made upon placing of the order. HYTERA shall not be obliged to pay any interest on the down-payment.
- 3.3 HYTERA reserves the right to demand security for payment and/or advance payments.
- 3.4 The Customer may set off payments only against such claims or assert a right of retention only with respect to such claims which are uncontested or established with non-appealable effect. A right of retention of the Customer on the ground of contested counterclaims or counterclaims not established with non-appealable effect under any other contractual relations shall be excluded. The Customer shall be entitled to assert a right of retention only on the ground of such claims which derive from the same contract as the corresponding counterclaim of HYTERA.
- 3.5 If the Customer is in delay of payment, HYTERA reserves the right, without waiving any other rights, to charge annual interest of nine (9) percentage points above the official basic rate of interest as published by the Deutsche Bundesbank and to charge a lump-sum fee amounting 40 Euro. The lump-sum fee stipulated in the preceding sentence shall be offset against the compensation of damage, insofar the damage is justified in the cost of legal proceeding.
- 3.6 All agreed price discounts on the prices shown in the contract and all agreed rebates of any kind whatsoever will cease to apply entirely if the Customer is fully or partially in default to HYTERA with its payment and acceptance obligations.

3.7 The place of payment shall be Bad Muender.

4 Retention of title

- 4.1 Title to delivered items ("**Retained Goods**") is retained by HYTERA until all claims and receivables of HYTERA against the Customer under the business relation (including any current account receivables) are satisfied, insofar as this is permissible under the law of the country in whose territory the Retained Goods are located. If such law does not permit retention of title to the Retained Goods, but permits commercially and legally similar collateral rights, HYTERA shall be entitled to assert such rights ("**Similar Rights**"). The Customer undertakes to notify HYTERA in writing in each case sufficiently in advance of each prospective crossing of national borders and of all measures to be taken in order to protect the title to Similar Rights or security interests in the Retained Goods and to support HYTERA at the Customer's expense with the implementation thereof. The Customer will impose to his customer corresponding obligations including the obligation to pass on the relevant obligations to their respective customers. To the extent permitted by law, only the laws of country in which the Retained Goods are located as agreed upon should apply to the Retained Goods, in particular, without limitation, with regard to ownership and Similar Rights.
- 4.2 Insofar as the title of HYTERA to the Retained Goods expires through combination with another item and/or processing, HYTERA acquires co-ownership to the new item on proportional basis, i.e. at the ratio the value of the combined Retained Goods (final invoice amount including VAT) bears to the other combined items or to the value of the processing, respectively, at the time of combination or processing. If the Retained Goods are combined in such a manner that the items of the Customer are to be regarded as the main item, HYTERA and the Customer hereby agree that the Customer assigns to HYTERA proportionate co-ownership to such item. HYTERA hereby accepts such assignment. Any costs incurred by HYTERA in connection with the enforcement of its claims as co-owner will be borne by the Customer.
- 4.3 Insofar as the value of all titles, Similar Rights and security interests to which HYTERA is entitled under this Section 4 exceeds the amount of all secured claims and receivables by more than ten percent (10%), HYTERA will release a corresponding portion of the security interests in the Retained Goods at the Customer's request; HYTERA, however, may select the Retained Goods to be released.
- 4.4 Subject to the condition precedent set forth in the present Section 4.4, the Customer may resell the Retained Goods within the ordinary course of business. The Customer hereby assigns to HYTERA its claims under the resale of the Retained Goods. The assignment includes all ancillary rights and those claims of the Customer regarding the Retained Goods which arise on a different legal ground against its buyers or third parties (in particular, claims based on tort and claims to insurance benefits) as well as all current account receivables in the amount of the claims and receivables owing to HYTERA. HYTERA hereby accepts the assignment. The Customer will impose *mutatis mutandis* to his clients these obligations, including the present sentence as well as the provisions included in Sections 4.2 and 4.3 above, and cause them assign to himself the relevant claims and impose the relevant obligations upon their customers.
- 4.5 The Customer shall be entitled to collect the assigned claim as long as it satisfies its payment obligations vis-à-vis HYTERA. In case of the Customer's payment default, HYTERA will be entitled to revoke this power of collection. The Customer may not assign such claims, however, in order to have them collected by way of factoring, unless the Customer obligates the factor irrevocably to effect the counter-performance directly to HYTERA for as long as HYTERA still has receivables against the purchaser. The Customer will agree on these provisions *mutatis mutandis* including, without limitation, the present sentence, with

those of his customers which he causes to assign claims to himself according to Section 4.4 above.

- 4.6 The Customer shall immediately inform HYTERA of any seizures, attachments or other dispositions or interventions by third parties. If the third party is unable to reimburse HYTERA for the court or out-of-court costs incurred by HYTERA in this connection, the Customer shall be liable therefor.
- 4.7 HYTERA shall have the right to withdraw from the contract and take back the delivery items if the Customer violates any obligations, especially in case of payment delay; the Customer shall be obliged to return the delivery items.
- 4.8 If the Deliveries and/or Services consist of software, the Customer shall not acquire title, but solely the rights specified in Section 7.

5 Periods for Deliveries and/or Services

- 5.1 Compliance by HYTERA with the periods for Deliveries and/or Services requires that all obligations of the Customer are fulfilled properly and in due time, in particular, that all documents, approvals and releases to be furnished by the Customer are received by HYTERA in time, and that such other obligations are satisfied which are required for the Deliveries and/or Services by HYTERA to be carried out properly and in due time. If such requirements are not satisfied in time, the periods shall be extended accordingly, plus a reasonable restart period. If a down-payment according to Section 3.2 or a corresponding agreement between the contracting parties has to be made, the preceding sentence shall apply correspondingly.
- 5.2 If the obligations of HYTERA according to the INCOTERMS 2010 applicable according to Section 2.2 above are fulfilled, the periods will be deemed complied with.
- 5.3 If the Deliveries and/or Services are delayed for reasons attributable to Customer's responsibility, the periods shall be deemed complied with upon notification of the readiness for dispatch and service within the agreed periods.
- 5.4 If non-compliance with the periods for Deliveries and/or Services is due to force majeure, e.g. mobilisation, war, riot or similar events such as, but not limited to, strike, lockout or the occurrence of other unforeseen events, the periods will be extended accordingly, plus a reasonable restart period. The events of force majeure shall include any sovereign acts, such as, but not limited to, the refusal of a required governmental approval in spite of an application having been properly filed, transport restrictions and restrictions of energy consumption, but also general shortage of raw materials and common supplies as well as other reasons, such as non-delivery or late delivery by suppliers, beyond the control of HYTERA.
- 5.5 If HYTERA is in delay exclusively by its own fault, the Customer may – if it can prove that it suffered damage owing to the delay – demand, from the third full week, liquidated damages equal to zero point five percent (0.5%) for each further full week of delay up to a total of five percent (5%) of the value of the delayed part of the Deliveries and/or Services.
- 5.6 Claims of the Customer for compensation of the default damage due to the delayed Delivery and/or Service and any further claims for damages exceeding in total the limit of five percent (5%) as provided in Section 5.5 shall be excluded in all cases of delayed delivery, even after expiry of any extension period granted to HYTERA.

5.7 The Customer may withdraw from the contract in accordance with the statutory provisions only if the default damage has reached the upper limit of five percent (5%) specified in Section 5.5.

5.8 At the request of HYTERA, the Customer shall state within a reasonable period whether it will withdraw from the contract due to delayed Deliveries and/or Services and/or whether it will claim damages in lieu of performance or damages in addition to performance or will insist on the Delivery and/or Service. Claims based on default will become statute-barred within six (6) months from their accrual and knowledge, or grossly negligent lack of knowledge, of the Customer.

5.9 If the dispatch or delivery is delayed at the Customer's request (or for other reasons within the Customer's scope of responsibility), the Customer may be charged storage costs equal to zero point five percent (0.5%) of the invoice amount for each commenced month, starting on the first day after notification of the readiness for dispatch; the storage charge shall be limited to a maximum of five percent (5%) of the invoice amount. The parties shall be entitled to prove higher or lower storage costs.

6 Delivery / acceptance

6.1 If acceptance is agreed, the contractual Deliveries and/or Services must be accepted / received by the Customer, even if they show minor defects.

6.2 Early delivery and partial delivery shall be permissible insofar as reasonable for the Customer.

6.3 If acceptance is agreed and HYTERA demands the acceptance of the contractual Deliveries and/or Services after completion, the Customer shall make such acceptance immediately, but no later than within two (2) weeks. If the Customer fails to make acceptance in due time or refuses acceptance without justification, the acceptance shall be deemed made. The acceptance shall likewise be deemed to be made if the Deliveries – as applicable after completion of an agreed trial period – have been put to use.

7 Software

7.1 HYTERA grants the Customer the non-exclusive right to use the contractual computer programmes and the related documentation (computer programmes and related documentation are collectively referred to as the "Software") exclusively for the operation of the hardware intended or supplied therefore. The right of use is limited to the agreed period of time; in the absence of such an agreement, the right of use shall be unlimited in time.

In particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense or the right to distribute, publicly reproduce or make the Software available online to third parties outside the Customer's company. Furthermore, the right to use the Software shall not include the right to reproduce the Software unless such reproduction is necessary for the operation of the hardware intended or supplied therefore or to produce a backup copy. Save as provided otherwise by mandatory law or written contractual regulations, the Customer shall not be authorised to modify, decompile, disassemble or otherwise reverse engineer the Software, whether in whole or in part, in order to acquire the source code.

7.2 HYTERA grants the Customer the right, which may be revoked in case of good cause, to transfer to third parties the right to use the Software granted to the Customer. The Customer may transfer the right to use the Software to third parties only together with the hardware which the Customer acquired together with the Software from HYTERA or for which the Software of HYTERA is intended. In that case, the Customer will impose the above obligations and restrictions on the third party.

7.3 The Software will be provided solely in machine-readable form (object code) and without source code or source code documentation.

7.4 All other rights to the Software shall remain with HYTERA.

7.5 Insofar as Software is provided to the Customer for which HYTERA owns only a derived utilisation right and which is not open source software (third-party software), the terms of use agreed between HYTERA and its licensor shall – also with regard to the relationship between HYTERA and the Customer – apply additionally and prior-ranking to the provisions of this Section 7. If and to the extent that open source software is provided to the Customer, the terms of use governing such open source software shall apply prior-ranking to the provisions of this Section 7. HYTERA will provide the source code to the Customer at least upon request if such terms of use for the open source software require disclosure of the source code. HYTERA will make reference at a suitable place to the existence and the terms of use of third-party software so provided, including open source software, and will make the terms of use available.

8 Transfer of risk

The risk shall pass to the Customer:

8.1 For (partial) Deliveries without Services in accordance with the INCOTERMS 2010 as stipulated in Section 2.2.

8.2 For (partial) Deliveries with Services on the day the Customer puts the Deliveries into operation, if a trial run has been agreed, after defect-free trial run. This requires that the trial run or the putting into operation takes place immediately after ready-for-operation installation or assembly. Otherwise, the risk shall pass to the Customer upon installation or assembly for operation.

8.3 For any period by which the dispatch, delivery, beginning or performance of the agreed Services is delayed at the request of the Customer or for reasons within its responsibility (default of acceptance). HYTERA is prepared, however, to undertake the required safeguards at the request and cost of the Customer.

9 Services

9.1 With regard to the invoicing of Services, the relevant effective HYTERA Services Price as per Section 1.2 applies.

9.2 HYTERA shall be free to decide where the Services shall be performed insofar as the Services cannot be performed at one place only.

9.3 If performance of the Services is delayed by circumstances, especially at the construction site or at the place of performance, without the fault of HYTERA, the Customer shall reimburse HYTERA for all cost resulting from this, including the costs for waiting time and additional required travels of staff.

10 Customer-Supplied Items

10.1 During the provision of Services by HYTERA, the Customer shall assume, supply and provide at its own expense and in due time:

10.1.1 Supporting personnel such as unskilled workers and, if necessary, skilled workers such as bricklayers, carpenters, locksmiths, crane operators, etc. with the necessary number of appropriate tools;

10.1.2 All excavation, foundation, construction, masonry, scaffolding, plastering, painting and other work outside the HYTERA line of business, including the materials required;

- 10.1.3 All items and materials required for installing and putting the object into operation, such as scaffolding poles, wedges, supports, cement, plastering and sealing materials, lubricants, fuels, etc; moreover, scaffolds, lifting and other devices;
- 10.1.4 Power supply and water including the necessary outlets and supply lines at the point of use, as well as heating and general lighting;
- 10.1.5 At the site of provision of the Services, sufficiently large, suitable, air-conditioned and lockable rooms for storing machine parts, equipment, materials, tools, etc., in accordance with HYTERA specifications as well as adequate workrooms and break rooms, including adequate sanitary facilities that satisfy hygiene requirements, for the personnel employed by HYTERA. For the protection of the property of HYTERA and the personnel employed by HYTERA, the Customer shall take the same measures as for the protection of their own property and personnel;
- 10.1.6 Protective clothing and devices that are required due to special circumstances of the site and the type of Services to be provided and that are not part of the HYTERA line of business;
- 10.1.7 Official authorizations if required.
- 10.2 If HYTERA has any objections regarding the quality or suitability of items made available by the Customer for the performance of Services, HYTERA reserves the right to refuse the performance of the Services or to refuse to accept any liability.
- 10.3 Prior to commencing the performance of Services, the Customer shall furnish, without being requested to do so, the necessary information on the location of underground supply and disposal lines such as, for example, electricity, gas and water lines, etc. as well as the necessary structural data.
- 10.4 Prior to commencing the performance of Services, the required delivery items must be available at the site, and all necessary preparatory work to be accomplished by the customer must be at such a stage as to permit the personnel employed by HYTERA to start the Services immediately upon their arrival and proceed without interruption. In particular the approach roads and the assembly or installation site must be leveled and cleared, the foundation brickwork must be set and dry, the foundation walls aligned and back-filled; for internal installations, the interior walls and ceilings must be plastered and ready, and doors and windows must be in place.
- 10.5 The personnel employed by HYTERA and the Customer shall jointly prepare a report of putting an installed system into operation and handing it over.
- 11 Repair Work**
- 11.1 The price for the repair of an item applies subject to final cost determination after the repair is carried out. The costs for the examination are included in the price unless otherwise agreed and will be invoiced separately if no repair order is placed. Packaging shall be invoiced at cost price.
- 11.2 The period of repair shall commence on the date of acknowledgement of order, provided that HYTERA is already in possession of the item to be repaired; otherwise the date on which the item is received is decisive for the repair period.
- 11.3 The Customer grants HYTERA the right to remedy defects that become evident only when performing the Services. HYTERA shall also be entitled, as a preventive measure, to replace any parts that, in the opinion of HYTERA, are expected to fail within a short time.
- 11.4 Parts that have been removed and replaced pass into the ownership of HYTERA unless otherwise agreed in writing.
- 11.5 If the repair work is performed at the premises of HYTERA, HYTERA is responsible for proper storage and handling of the item to be repaired. HYTERA is liable for damage or loss in accordance with the statutory provisions for gratuitous bailment.
- 12 Hours of Work / Transport**
- 12.1 The work time, the costs of board and lodging and for the use of a motor vehicle shall be invoiced based on the rates of the HYTERA Services Price.
- 12.2 The regular work time for HYTERA skilled personnel is at present 40.0 hours per week. Travel time is counted as work time.
- 12.3 Unless otherwise agreed in writing with the Customer, the 40.0 hours per week shall be divided as follows:
Monday through Friday 8.0 hours per day, each commenced unit of time (1/10 hour) being charged as a full unit. Regular work time is between 7:00 a.m. and 5:30 p.m. Services rendered upon request of the customer outside regular working hours or exceeding a daily work time of 8 hours as well as Services on Saturdays (12:00 a.m. to 12:00 p.m.) will be invoiced at the price per hour plus a 30 % increment. Services rendered on Saturdays (after 12:00 p.m.) and/or Sundays or public holidays (12:00 a.m. to 12:00 a.m.) will be invoiced at the price per hour plus a 100 % increment.
- 12.4 Sundays and public holidays shall be determined by local practice. Days on which there is generally no work performed shall be considered public holidays. Christmas (three days) and Easter (four days) shall be holidays in any case.
- 12.5 In addition to the price of on-site Services, the corresponding daily allowance and the costs for the hotel accommodation according to the Services Price as well as travelling expenses and other transport costs will be invoiced separately. Travel time is counted as work time. Incidental travel expenses shall be invoiced according to the actual costs incurred.
- 12.6 Transport costs, e.g. for installation material, tools, scaffolding, machines and measuring instruments, shall be charged in accordance with the actual costs incurred. HYTERA reserves the right to choose the means of transport it considers the most suitable.
- 12.7 The personnel employed by HYTERA shall make their own arrangements for board and lodging. If adequate lodging is not available on-site, the Customer shall bear the additional cost of transport between the lodging and the site.
- 12.8 The provision of measuring and test equipment will be invoiced additionally at the rate of 0.25 % of the list price per calendar day commenced, transport time included.
- 12.9 After three (3) months of uninterrupted work at the site, the personnel employed by HYTERA shall be entitled to a trip home if the site is at least 150 km away from the domicile of the personnel employed by HYTERA. The costs of the trip home and back to the site, including incidental expenses, shall be charged to the Customer.
- 13 Interruptions / Additional Services / Adverse Conditions**
- 13.1 If the personnel employed by HYTERA is not able to work the number of hours stipulated in Section 12.2 due to shorter work time at the Customer's location or for any other reasons attributable to the Customer, the time difference shall be charged as normal work time according to the Services Price.
- 13.2 If the Customer requests services not covered in the governing contract, such services can be performed only upon written confirmation of HYTERA.

- 13.3 If, for reasons beyond the responsibility of HYTERA, the personnel employed by HYTERA must work at times or under circumstances that deviate from the contractually stipulated conditions and that involve additional expenses, such expenses shall be invoiced separately by HYTERA.
- 13.4 Adverse work conditions, for which HYTERA will invoice extra charges, are considered to exist, for example, if work has to be carried out at high locations – without fixed scaffolding – or if the personnel employed by HYTERA is exposed to a considerable extent to water, mud, dirt, dust, noise, etc., while performing the work.
- 14 Liability for material defects**
- 14.1 If Deliveries and/or Services show a material defect, HYTERA shall at its option and free of charge for the Customer repair, replace or reperform (“**subsequent performance**”) such Deliveries and/or Services if the cause of such defect was present at the time of the transfer of the risk according to Section 8.
- 14.2 Claims of the Customer based on material defects shall become statute-barred after twelve (12) months from the date of delivery according to Section 2.2 and 5.2 or acceptance according to Section 6. This shall not apply if the law provides for extended periods pursuant to § 438 (1) No. 2 (buildings and items for buildings) and § 634 a (1) No. 2 (defects in construction) BGB (German Civil Code) as well as in cases of intent, fraudulent concealment of the defect or non-compliance with a guaranteed quality.
- 14.3 The Customer shall immediately give detailed written notice of any material defects to HYTERA. If the defect notification was unjustified, HYTERA shall be entitled to demand reimbursement from the Customer for any expenses incurred by HYTERA.
- 14.4 HYTERA shall always be afforded two opportunities to make subsequent performance within a reasonable period. If such subsequent performance fails, the Customer may withdraw from the contract or reduce the compensation, notwithstanding any claims for damages according to Section 16.
- 14.5 Claims based on material defects shall not arise where the deviation from the agreed quality is only minor and/or where the usability is impaired only insignificantly.
- 14.5.1 Furthermore, claims based on material defects shall not arise in case of damage occurring after the passing of the risk (e.g. following incorrect or negligent handling, excessive stress, unsuitable operational facilities, deficient construction work, inappropriate construction site) or in case of usual wear and tear of the objects.
- 14.5.2 In addition, the Customer cannot make any claims based on material defects for damage which results from particular external influences (e.g. chemical, electrochemical, electrical or atmospheric) after transfer of risk which are not provided for in the contract.
- 14.5.3 Claims based on material defects shall also be excluded for any modifications or repairs carried out by the Customer or by third parties, and for the resulting consequences.
- 14.6 Expenses necessary for the purpose of the subsequent performance, in particular transportation, travel, labour and material costs, will be borne by HYTERA only if the delivered item has not been taken, contrary to its intended use, to a place other than the place of delivery. If the delivered item, following its intended use, was taken to a place other than the place of delivery, HYTERA will be responsible only for those expenses that would have been incurred if the Customer had not transferred the item; in such case, any additional costs of the subsequent performance caused by such transfer shall be borne by the Customer.
- 14.7 Software
- Software is considered to have a material defect only if the Customer can prove that there are reproducible deviations from the specifications. A material defect shall not be deemed to exist, however, if it does not manifest itself in the latest version of the Software supplied to the Customer and the use thereof by the Customer can reasonably be required. Furthermore, the Customer will not have any claims based on material defects if the material defect is based on any of the following circumstances: (i) incompatibility of the Software with the data processing environment used by the Customer, (ii) use of the Software together with software supplied by third parties unless this is expressly provided for in the documentation of HYTERA or is otherwise permitted by HYTERA in writing; (iii) improper maintenance of the Software by the Customer or third parties.
- 14.8 Calibrations
- Calibration consists of ascertaining the connection between the values shown by a measuring instrument or measuring installation and the corresponding values – specified by standards – of a measurable variable under given conditions. The scope of the measurements is determined by the technical data and/or the related product description. Depending on the specific instruction, measured values will be documented in a test report and confirmed as correct at the time of measurement. The Customer shall have the right to satisfy itself of the proper performance of the calibration on the premises of HYTERA at the time of the calibration. The Customer cannot assert any further claims based on defects.
- 14.9 Any additional claims based on material defects are excluded.
- 15 Liability for defects of title / infringement of intellectual property rights**
- 15.1 HYTERA shall be obliged to perform the Deliveries and/or Services free from defects of title, e.g. industrial property rights and copyrights of third parties (“**Intellectual Property Rights**”), only in the country of the place of delivery. If a third party asserts justified claims against the Customer due to the infringement of Intellectual Property Rights resulting from the contractual use of HYTERA Deliveries and/or Services, HYTERA shall be liable to the Customer within the period stipulated in Section 14.2 as follows:
- 15.1.1 HYTERA shall, at its option and cost, either obtain a right to use the concerned Deliveries and/or Services, or modify them to prevent an infringement of the Intellectual Property Right, or replace them.
- 15.1.2 If this is not possible for HYTERA under reasonable conditions, the Customer shall have the statutory rights to withdraw from the contract or to reduce the contract price as well as the right to claim damages according to Section 16.
- 15.1.3 The above obligations of HYTERA shall apply only on the condition that the Customer immediately informs HYTERA in writing about any claims asserted by third parties, that the Customer does not acknowledge any infringements, and that the right of HYTERA to conduct any defence measures or settlement negotiations shall be unaffected. If the Customer ceases to use the Deliveries or Services on the ground of claims by third parties, the Customer shall make sure, such as by express notice to the third party, that the cessation of use does not constitute an acknowledgement of an infringement of Intellectual Property Rights.
- 15.2 Claims of the Customer based on defects of title shall be excluded insofar as the Customer is responsible for the infringement of the Intellectual Property Rights.

15.3 Claims of the Customer shall also be excluded insofar as the infringement of the Intellectual Property Rights is caused by specific Customer requirements, through any use which was not foreseeable for HYTERA or because of the Customer modifying the Deliveries and/or Services or using them together with products not delivered by HYTERA.

15.4 Any further claims based on defects of title shall be excluded.

16 Liability

16.1 HYTERA shall be liable without limitation for damage caused with intent, for guarantees given in writing and in case of culpable damage to life, body or health. The liability under the mandatory provisions of product liability law applicable from time to time shall remain unaffected.

16.2 HYTERA shall not be liable for any work performed by HYTERA personnel or by any other agents employed (*Erfüllungsgehilfen*) if the work is not associated with the performance of the stipulated Services, or if the work is performed at the Customer's request.

16.3 Otherwise, the liability of HYTERA towards the Customer, no matter on what legal ground, including delay (Section 5.5), shall be limited in aggregate to an amount equal to fifteen percent (15%) of the agreed remuneration.

16.4 Notwithstanding the liability according to Section 16.1 and Section 5.5, HYTERA shall not be liable for financial loss or consequential damages, for loss of profit, loss of production, interruption of business, contractual claims of third parties, lost usage, financing expenditure, interest loss and claims under a covering purchase as well as for loss of data, information and programmes as a result of a software error.

16.5 Subject to the liability by mandatory law (Section 16.1), the limitation period for any liability claims shall be twelve (12) months from accrual and knowledge, or grossly negligent lack of knowledge, of the Customer. Section 14.2 remains unaffected thereby.

16.6 Any further liability of HYTERA shall be excluded.

17 Accident Prevention Regulations

17.1 If, at a construction or installation site, any regulations for the prevention of accidents are to be complied with in addition to those of the Professional Association of Fine Mechanics and Electrical Engineers, the Customer shall inform HYTERA of these regulations in writing.

17.2 At installation or construction sites outside Germany, the Customer shall take the protective measures required by the law of their country and any other measures necessary to prevent accidents.

18 Applicable law / place of jurisdiction

18.1 The contractual relations between HYTERA and the contractor shall be governed exclusively by German law, excluding the conflict-of-law-rules. The application of the UN Convention on Conflicts for the International Sale of Goods (CISG) shall be excluded.

18.2 All disputes arising in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. Place of arbitration is Hanover. Language of the proceeding is English; documents can be submitted to the tribunal in German and/or English languages. All arbitrators shall be proficient in German and English languages. The sole arbitrator and the presiding arbitrator shall each have the qualification for the office of a judge (*zweites Staatsexamen*) or equivalent.

18.3 The language of the contract shall be German. If the contracting parties use another language in addition to German, the German wording shall prevail.

19 Validity of the contract

19.1 If any provisions of the contract are invalid, the remaining provisions shall continue to be in force. This shall not apply if adherence to the contract would constitute an unreasonable hardship for one of the parties.

19.2 All agreements, including covenants, must be made in written form to be valid. This form requirement can be waived only in writing.