

General Terms and Conditions of Sale

1. SCOPE OF APPLICATION

- 1.1. These General Terms and Conditions (GTC) shall apply to all contracts concluded between Heat and Power Engineering GmbH (HPE) and the customer for the delivery of goods and the provision of services and work,
 - a) insofar as the customer is an entrepreneur, a legal entity under public law or a special fund under public law in accordance with § 310 para. 1 sentence 1 BGB (German Civil Code) with its registered office in the EU and
 - b) unless the parties have agreed otherwise in writing.
- 1.2. All contractual documents complement each other. In case of contradictions between the contract documents, the following order of precedence applies:
 - a) the order including all special terms and conditions of business included in the order, insofar as these have been accepted by HPE with legal effect,
 - b) the offer from HPE
 - c) these terms and conditions
- 1.3. Subject to the inclusion of amended General Terms and Conditions by HPE, these General Terms and Conditions shall also form the basis of future contracts between HPE and the customer for all services without the need for their renewed inclusion.
- 1.4. General terms and conditions of the customer do not become part of the contract. This shall also apply if reference is made to them in the customer's contract offer or in other documents and HPE has not expressly objected to the agreement of the terms and conditions. General terms and conditions of the buyer shall only apply if this has been expressly agreed in writing.

2. CONCLUSION OF CONTRACT

- 2.1. All offers made by HPE are subject to confirmation and are valid for 3 months unless otherwise agreed. HPE reserves the right to make technical changes insofar as these are reasonable for the customer. HPE shall only be bound by the offers if they are expressly designated as binding. Otherwise they shall be deemed an invitation to submit offers. In such cases, a contract shall be concluded only if HPE confirms the order in writing within 2 weeks after receipt of the order. Information and promises given orally, by telephone or by telex shall not be binding.

3. SCOPE OF SERVICES

- 3.1. The scope of the services is finally determined by the agreed specification of HPE.
- 3.2. The performance of a service not provided for in the contract or the modification of a service provided for in the contract requires prior written agreement between the parties, in particular regarding price and the effect on any agreed deadlines.

- 3.3. Unless otherwise agreed, HPE shall be permitted to use subcontractors provided that they are competent, efficient and reliable.
- 3.4. The services of HPE comply with the relevant statutory provisions. If these change after the date of submission of the offer, HPE shall be entitled to adjust the agreed schedule as well as the agreed price and the other terms and conditions of the contract, unless the change in the statutory provisions has no effect on these terms and conditions. Any changes as well as their implementation require prior written agreement between the parties.
- 3.5. The place of performance of HPE's obligations is the place of business or the delivery warehouse of HPE, which is communicated to the customer in the order confirmation.

FOR PURCHASE OR WORK CONTRACTS

- 3.6. We reserve the right to make design or form changes with regard to the ordered goods or the work performance, provided that the goods or the work are not substantially changed and the changes are reasonable for the customer.

FOR SERVICE CONTRACTS

- 3.7. At the request of the customer, HPE shall summarize the essential services in a written documentation after completion of the services and hand it over to the customer. Insofar as the purchaser does not assert this request until after conclusion of the contract, HPE is entitled to adjust the remuneration appropriately, unless the remuneration is based on time spent.
- 3.8. Unless otherwise agreed, only the agreed services are the subject of the respective contract, but not the achievement of a specific economic, technical or other success. The statements and conclusions contained in the written documentation (Section 3.7) are merely non-binding recommendations.
- 3.9. If the customer has justified doubts about the reliability or competence of the respective consultant or if there are other important reasons which make the work of the respective consultant unreasonable for the customer, HPE is obliged to replace the respective consultant.

4. TERMS OF PAYMENT

- 4.1. In the absence of an agreement, the prices are ex works including loading at the factory but excluding packaging, transport and unloading. Value added tax (VAT) at the respective statutory rate is added to the prices. Any taxes, customs duties, levies or other charges incurred in connection with the provision of services abroad shall be borne by the customer.
- 4.2. Payments are to be made in EURO on the agreed dates without deduction. Irrespective of the agreed payment dates, the value-added tax shall become due for payment upon invoicing. Payment by bill of exchange is excluded.
- 4.3. The respective contractually agreed payments must be paid into the account designated by HPE within 30 days of receipt of the invoice by the customer or according to the contractually agreed payment dates.
- 4.4. HPE shall only commence with the execution of the order when due advance payments have been received on the account.
- 4.5. The customer is only entitled to withhold or set off against claims arising from other legal relationships to the extent that his counterclaims are recognized by HPE or have been finally adjudicated by a court of law.
- 4.6. Unless otherwise agreed, partial services may be invoiced pro rata.

FOR CONTRACTS FOR WORK AND SERVICES

- 4.7. The price quoted in the offer or contract is not a fixed price, unless otherwise agreed in writing. Should the agreed price not be sufficient to achieve an optimum result, HPE shall inform the customer thereof and submit proposals for further action.
- 4.8. The completion of a service will be communicated to the customer. The sending of the invoice shall also be considered as notification. Acceptance must take place within two weeks of the notification being made.
- 4.9. If the performance has not been objected to at the time of acceptance by the customer or if the acceptance has not taken place in due time - for reasons for which HPE is not responsible - the performance shall be deemed to have been duly accepted.
- 4.10. If the purchaser is in default of acceptance, HPE is entitled to charge the purchaser for the additional costs incurred by the delay or in this case to store the object of performance at a third location at the expense of the purchaser.

FOR SERVICE CONTRACTS

- 4.11. In the absence of any agreement to the contrary, the services of the personnel shall be invoiced on the basis of time spent in accordance with HPE's rates valid at the time of performance. The schedule of service hours shall be agreed by the customer with HPE's personnel and the time worked shall be certified.
- 4.12. For services which HPE, at the instigation of the customer or due to the presence required for the performance of the services, does not provide at the place of its business, the costs incurred for travel to and from the place of business, expenses, accommodation and other necessary expenses shall be invoiced separately. These costs must be usual and reasonable. Travel time shall be invoiced as working time. HPE may demand that the customer makes a reasonable advance payment before the personnel commences a journey to the place of deployment or, in the case of services abroad, that he opens a letter of credit in an appropriate amount confirmed by a German bank, irrevocable, callable in instalments and free of charges for HPE.
- 4.13. HPE is entitled to further charge to the customer all increases in insurance premiums, collective wages and other cost increases which occur after conclusion of the contract without HPE being represented by the customer, if performance is to take place later than six months after conclusion of the contract or if a continuing obligation exists.
- 4.14. In the absence of any agreement to the contrary, HPE will invoice its services under service contracts on a monthly basis. The customer shall receive the final invoice within a reasonable period after completion of the services.

5. DELAY OF PAYMENT

- 5.1. Subject to the expiration of an agreed payment deadline or an earlier reminder, the customer shall be in default at the latest 30 days after the due date and receipt of an invoice or an equivalent request for payment.
- 5.2. If the payment date is exceeded, interest will be charged at a rate of 8 percentage points above the respective base interest rate in accordance with § 247 (1) BGB (German Civil Code) plus VAT, without prejudice to other legal claims.
- 5.3. In addition to the statutory rights, HPE is entitled in the event of default of payment by the customer to withhold further performance also from other contracts or to make such performance dependent on the provision of security at its own discretion. The same shall apply if, after conclusion of the contract, circumstances become known which give rise to doubts as to the solvency or willingness to perform of the customer.

6. DELIVERY AND PERFORMANCE DEADLINES

- 6.1. Unless otherwise agreed upon in writing, the dates given are to be understood as approximate. If a binding time of performance has been agreed, the following applies:

Compliance with the agreed time of performance is subject to the timely receipt of all documents, information, necessary permits and releases to be supplied by the Purchaser, in particular of plans. If these prerequisites are not fulfilled in time, the deadlines shall be extended accordingly. This shall not apply if HPE is responsible for the delay.

- 6.2. In the event of force majeure (clause 17) and the occurrence of unforeseen obstacles beyond the control of HPE, the performance deadline shall be extended accordingly.
- 6.3. If HPE itself is not supplied with the necessary spare parts and materials although it has placed congruent orders with its suppliers or with the respective manufacturer, the performance period shall be extended accordingly. In this case HPE shall inform the customer immediately.
- 6.4. If HPE is in default and the customer suffers damage as a result thereof, the customer is entitled to demand a lump-sum compensation for default. Such compensation shall amount to 0.5% for each full week of the delay, but in total not more than 5% of the value of that part of the total delivery which cannot be used in time or in accordance with the contract as a result of the delay.
- 6.5. The delivery time shall be deemed to have been met if the delivery item has left HPE's factory or HPE has given notice of readiness for dispatch by the end of the delivery time. If acceptance has been agreed, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.
- 6.6. If the purchaser grants HPE in default a reasonable period of time - unless there is a statutory exception - and this period of time is not complied with, the purchaser shall be entitled to withdraw from the contract in accordance with the statutory provisions. He undertakes - at the request of HPE - to declare within a reasonable period of time whether he exercises his right of withdrawal. No further claims shall exist - notwithstanding clause 14.2 of these contractual terms and conditions.

7. TRANSFER OF RISK AND TRANSPORT

- 7.1. The customer shall be responsible for ensuring that transport of the goods or a plant to the place of delivery is possible or that the ordered service can be performed by HPE without disruption.
- 7.2. The risk shall pass to the customer at the latest upon delivery to the forwarding agent or other transport person. This shall also apply in the event that partial deliveries are made or HPE assumes the shipping costs according to a separate agreement. In the absence of specific instructions from the buyer, HPE shall be responsible for selecting a suitable forwarder. If acceptance has been agreed, this shall be decisive for the passing of risk. It must be carried out immediately on the date of acceptance, alternatively after notification by HPE of readiness for acceptance. The purchaser may not refuse acceptance in the event of an insignificant defect.
- 7.3. If dispatch or acceptance is delayed or does not take place due to circumstances not attributable to HPE, the risk shall pass to the customer on the day of notification of readiness for dispatch or acceptance. HPE undertakes to take out the insurance policies requested by the customer at the customer's expense.
- 7.4. Partial deliveries are permissible, as far as reasonable for the customer.

8. RESERVATION OF TITLE

- 8.1. HPE retains title to the delivery item until receipt of all payments - also for any additional services owed - from the delivery contract. This also applies to installation and resale.

- 8.2. HPE is entitled to insure the delivery item at the expense of the customer against theft, breakage, fire, water and other damage, unless the customer has demonstrably taken out such insurance itself.
- 8.3. The customer may neither pledge the delivery item nor assign it as security. In the event of seizure, confiscation or other dispositions by third parties, the purchaser shall notify HPE thereof without delay.
- 8.4. If the customer acts in breach of contract, in particular in case of default in payment, HPE is entitled to take back the delivery item after a reminder and the customer is obliged to surrender it.
- 8.5. Due to the reservation of title, HPE can only demand return of the delivery item if it has withdrawn from the contract.
- 8.6. An application for the opening of insolvency proceedings entitles HPE to withdraw from the contract and to demand the immediate return of the delivery item.

9. OBLIGATIONS OF THE PURCHASER

- 9.1. The customer shall provide HPE free of charge with all necessary documents, information, permits, releases and data at the beginning of the performance of the services. Insofar as the customer has new knowledge, documents, information or data relating to the activities of HPE during the performance of the contract, the customer shall make these available to HPE without request and without delay.
- 9.2. The customer shall, at its own expense and in good time, create all prerequisites which enable HPE's services to be performed expeditiously at the place of performance. This shall include in particular the provision of auxiliary staff, equipment and working materials, including media (e.g. electricity, water, compressed air, lighting ...) and internet access - in accordance with HPE's requirements - as well as unrestricted access to the place of performance of the services and unrestricted inspection of the operating and maintenance documents. The auxiliary staff shall comply with the instructions of the persons entrusted by HPE. HPE assumes no liability for the auxiliary staff provided.
- 9.3. In the case of on-site services, the customer must create a safe working environment to protect persons and property. In addition, the customer shall provide suitable working, sanitary and recreation rooms and shall inform HPE of the safety regulations to be observed in the customer's plant.
- 9.4. The customer must ensure that the performance of the services can be commenced immediately after arrival of HPE's personnel at the place of work. Any delays occurring for which the customer is responsible shall be borne by the customer. Waiting times of the personnel for which HPE is not responsible shall be invoiced as overtime.
- 9.5. In the case of services abroad, all entry, work and other necessary permits shall be procured by the customer at his expense. All public charges (taxes, fees, customs duties, etc.) arising from or in connection with the conclusion or execution of the contract outside the Federal Republic of Germany shall be borne by the customer.
- 9.6. If materials containing asbestos are present on the construction site/plant, these must be removed professionally by the customer at his expense. After refurbishment, a clearance measurement must be carried out in accordance with the Technical Rules for Hazardous Substances (German Technical Rules for Hazardous Substances TRGS 519), whereby the permissible limit value may not be greater than 500 fibres per m³, with an upper confidence limit of the Poisson distribution of less than 1000 F/m³. Measurement and evaluation must be carried out in accordance with VDI Guideline 3492 (VDI: Association of German Engineers) and German Trade Association Information BGI 505-46. The measurement result shall be submitted to HPE. The costs of these measures including any necessary subsequent measurement by HPE shall be borne by the purchaser.
- 9.7. The disposal of old parts and other items that are no longer usable is the responsibility of the customer. Insofar as statutory provisions are enacted which provide otherwise, the customer undertakes to enter into a reasonable agreement with HPE regarding recycling.

10. CONSEQUENCES OF THE NON-FULFILMENT OF THE PURCHASER'S OBLIGATIONS

- 10.1. If the customer does not fulfil the obligations incumbent on him in due time or to a sufficient extent, HPE is entitled but not obliged, after setting a deadline to no avail, to perform the necessary services and measures itself or have them performed by third parties at the customer's expense.
- 10.2. Any additional costs incurred as a result of the non-fulfilment of customer obligations shall be borne by the customer. The additional costs shall be calculated according to the respective valid rates. Dates are to be adjusted appropriately based on the period of non-fulfilment of the customer's obligations. Section 10.4 remains unaffected.
- 10.3. In the event of necessary remediation due to asbestos contamination (subclause 9.6), the obligation to perform the services on the construction site/plant shall be suspended until HPE has confirmed a complaint free measurement result. Clause 10.2 sentence 3 applies accordingly.
- 10.4. If as a consequence of the non-performance of the customer's obligations it becomes apparent that the services intended at the time of conclusion of the contract can no longer be performed in this form or that the performance of the services has become unreasonable for HPE, HPE is entitled to terminate the contract with immediate effect. If the right of termination is exercised, the customer shall pay for the services rendered by HPE up to the time of termination and for the expenses already incurred according to the applicable rates. If invoicing on the basis of expenditure has not been agreed, HPE is entitled to demand the agreed remuneration. HPE must, however, offset any expenses saved by HPE as a result of the termination of the contract, which it has saved by using its labour elsewhere or which it has maliciously failed to acquire.

11. RIGHTS OF PROTECTION, USE AND COPYRIGHT

- 11.1. HPE has unrestricted copyright in the written documentation and other documents of HPE (all know-how including cost estimates, drawings, specifications and other data made available by HPE in connection with the contract as well as all documents or data derived from this information and this know-how) - insofar as they are capable of being protected by copyright. The documents may not be made available to third parties without the written consent of HPE and may only be used by the customer for the contractually agreed purpose.
- 11.2. The customer receives an irrevocable non-exclusive right of use for the results obtained. The customer shall reimburse HPE for the costs of registration, maintenance and defence of industrial property rights which have arisen in connection with the order for a fee yet to be agreed. Should the purchaser use the property right, he shall also be obliged to reimburse the employee invention compensation.
- 11.3. If the scope of supply and services also includes the control system by means of associated software, the control system together with the remaining parts of the system shall become the property of the customer. All rights to the software - in particular the copyrighted rights of use and exploitation - shall remain with HPE, unless they are expressly granted to the customer in these terms of sale or by other agreement. The purchaser shall only be granted the limited right to use the software in accordance with the purpose and scope of the contract in accordance with a separately concluded software license agreement.

12. DUTY OF FAITH

- 12.1. During the term of the contract, the parties are prohibited from enticing away employees of the other party who are working under the contract.

13. CANCELLATION OF THE CONTRACT

- 13.1. Termination of contract by the purchaser

In addition to the other rights existing in these General Terms and Conditions or on the basis of mandatory statutory law, the customer may withdraw from the contract by written declaration if the

performance of the contract has become completely impossible for HPE. In case of partial impossibility, this right shall only exist if the partial performance is demonstrably of no interest to the customer.

In all other respects, the customer may demand an appropriate reduction in price. If the impossibility occurs during the delay in acceptance or through the fault of the purchaser, the latter remains obliged to make counter-performance. If the impossibility is not attributable to any contracting party, HPE shall be entitled to a part of the remuneration corresponding to the services rendered.

13.2. Termination of contract by HPE

HPE may, in addition to the other rights existing in these General Terms and Conditions or on the basis of mandatory statutory law, withdraw from the contract in whole or in part by written declaration if unforeseen, unavoidable events for which HPE is not responsible substantially change the economic significance or the content of the services or have a substantial effect on the operation of HPE, or if the economic circumstances of the customer deteriorate to such an extent that the performance of the contract is endangered.

14. LIABILITY

14.1. If, due to the fault of HPE, the object of performance cannot be used by the customer in accordance with the contract as a result of omitted or faulty execution of suggestions and advice given before or after conclusion of the contract as well as other secondary contractual obligations - in particular instructions for operation and maintenance of the object of performance - the provisions of Sections 15 and 14.2 apply to the exclusion of further claims of the customer.

14.2. HPE is only liable for damage which has not occurred to the object of performance itself - irrespective of the material and legal grounds - if

- a) on purpose,
- b) in the event of gross negligence on the part of the owner/bodies or executive employees,
- c) in case of culpable injury to life, body or health,
- d) for defects that he maliciously concealed,
- e) in the framework of a guarantee promise
- f) in so far as liability for personal injury or property damage to privately used objects is assumed under product liability law

In the event of culpable breach of material contractual obligations, HPE shall also be liable for simple negligence, but limited to reasonably foreseeable damage typical for the contract.

14.3. Further claims - in particular for compensation for loss of profit, loss of use, loss of production, cost of capital, cost of fuel, cost of replacement of energy, as well as compensation for other financial or economic losses, as well as indirect, consequential and incidental losses - are excluded.

14.4. Insofar as the liability of HPE is excluded or limited, this shall also apply to the personal liability of its employees, workers, staff members and other vicarious agents, but not to legal representatives and executives.

14.5. All claims of the customer - for whatever legal reasons - shall become statute-barred after 12 months; this shall also apply to the statute of limitations for recourse claims from the supply chain in accordance with §445b para. 1 BGB (German Civil Code), provided that the last contract in this supply chain is not a purchase of consumer goods. The suspension of the statute of limitations under §445b para. 2 BGB remains unaffected. The statutory periods shall apply to claims for damages under No. 14.2a) - d) and f) They shall also apply to defects in a building or to delivery items which were used for a building in accordance with their usual purpose and which caused its defectiveness.

14.6. Insofar as HPE - at the request of the customer - performs contractual services at the works or workplaces of third parties, the customer shall indemnify HPE against any claims of third parties resulting therefrom, insofar as these go beyond the above limitations and exclusions of liability.

14.7. A change in the burden of proof to the disadvantage of the purchaser is not associated with the above provisions.

15. WARRANTY

- 15.1. HPE guarantees the application of engineering care and compliance with the recognized rules of technology; in the case of service contracts, however, not the actual achievement of the development objective.
- 15.2. Warranty claims become time-barred 12 months after delivery or, if acceptance of the service is required, after acceptance, alternatively after notification of readiness for acceptance. HPE must be notified in writing without delay of the discovery of defects. HPE is entitled to rectify any defects occurring in its workshop or at the location of the object of performance. If the rectification of defects fails, the customer shall be entitled to demand a reduction of the remuneration. Further warranty claims are excluded. Replaced parts shall become the property of HPE.
- 15.3. If the customer has carried out performance work improperly by himself or by a third party without the consent of HPE, HPE's liability shall not apply. The same shall apply if, at the request of the customer, parts requiring replacement are not replaced.
- 15.4. If HPE - taking into account the statutory exceptions - allows a deadline set for subsequent performance to elapse without success, the customer shall be entitled to the statutory right to reduce the price.

16. CONFIDENTIALITY AND DATA PROTECTION

- 16.1. Each party is obligated to treat secret or confidential information, as well as materials disclosed by the other party in connection with this contract, as strictly confidential. Confidential Information shall mean all information and material disclosed by one party in the course of the Agreement or during the initiation of the Agreement, whether in oral, written, physical, electronic or other form, which is not public or proprietary, constitutes a trade secret or is by its nature confidential. Confidential information also includes any information or documents, regardless of their form, which are derived in whole or in part from the information or materials described in the previous sentence.
- 16.2. The mere reference to business relations is not covered by the confidentiality obligation mentioned in point 16.1
- 16.3. The confidentiality agreement is valid for 3 years beyond the duration of this contract, as long as and insofar as this information has not become generally known in any other way or the respective partner has waived confidentiality in writing.
- 16.4. The contracting parties undertake to comply with the provisions of the EU basic data protection regulation (EU-DSGVO). Personal data may only be stored and processed in accordance with the provisions of the EU-DSGVO.
- 16.5. The contracting parties shall enter into corresponding obligations with subcontractors or other companies affected within the scope of the contract.

17. FORCE MAJEURE

- 17.1. "Force Majeure" shall be deemed to be events which affect at least one of the parties or at least one vicarious agent or subcontractor of at least one party, and which are not attributable to either party and which are unavoidable even if the affected party exercises the greatest possible care; these include in particular war and civil war, riots, civil commotion and terrorist actions, mobilization, strike, lockout, sabotage, embargo, import restrictions, general shortage of energy or raw materials, scrap of important forgings or castings, natural disasters, fire, storm and lightning, pandemics or official decrees.
- 17.2. The party reporting the force majeure shall be relieved of the performance or punctual fulfilment of its obligations under the Agreement for as long as the relevant force majeure event continues and insofar as the

performance of the Agreement is prevented or impeded thereby. The affected party shall notify the other party in writing without delay, but not later than 14 days after becoming aware of the occurrence or termination of such event.

18. MISCELLANEOUS

- 18.1. The parties will endeavour to resolve all disputes arising from this contract, including those concerning its validity, by mutual agreement, regardless of whether they arise during the validity period or until the end of the warranty.
- 18.2. In the case of domestic contracting parties, all legal relations between HPE and the customer shall be governed exclusively by the law of the Federal Republic of Germany. Place of jurisdiction is Stuttgart.
- 18.3. Legal relations between HPE and a customer with its registered office outside Germany shall be governed by Swiss law. Place of jurisdiction is Geneva. The language of negotiations is German.
- 18.4. Should difficulties of interpretation arise, the German version of this General Terms and Conditions of Sale shall be binding.

Stuttgart, 29.10.2020