

## STANDARD TERMS AND CONDITIONS OF HANTEC GMBH

### Preamble: choice of law and legal venue

- (1) The following Standard Terms and Conditions and all legal relationships between us and the business or negotiating partner will be subject to the law of the Federal Republic of Germany to the exclusion of all international and supra-national (contractual) jurisdictions, especially UN purchasing law. The preconditions for and implications of reservation of title as described in § 9 on the other hand will be subject to the law of the relevant location where the goods are delivered should the selection of German law as the applicable law not be permitted or be invalid.
- (2) Should the business partner be a registered trader within the meaning of the German Commercial Code, a civil law legal entity or civil law special assets, the sole legal venue – also internationally - for all disputes arising directly or indirectly from the contractual relationship is our registered office located at Möllner Strasse 2, D-23883 Lehmrade, Germany. We are however also entitled to initiate litigation at the Purchaser's general legal venue.
- (3) Registered traders will also be subject to the currently valid version of INCOTERMS.

### § 1 Validity

- (1) With the exception of any individual written agreements to the contrary, all our shipments, services and quotations are subject solely to these Standard Terms and Conditions. These are an integral part of all contracts we conclude with our business partner (hereafter referred to as "Client" or "Customer") relating to deliveries and services we offer the Client. They will also apply to all future deliveries, services or quotations to the Client, even when these are not separately agreed again.
- (2) The standard terms and conditions of the Client or a third party will not be applicable, even when we do not specifically contradict their validity in the individual case. Even should we refer to a letter containing or making reference to the standard terms and conditions of the Client or a third parties, this shall not constitute an acceptance of the validity of these terms and conditions.
- (3) Individual agreements (including side-agreements, additions and amendments) that may be made with the Customer on an individual basis will have precedence over these Standard Terms and Conditions. The contents of such agreements will be governed by a written contract.

### § 2 Quotation and the conclusion of a contract

- (1) Unless expressly described as binding or they contain a specific acceptance period, all of our quotations are subject to change and are non-binding. This will also apply should we have sent the Customer catalogues, documents (e.g. drawings, plans, calculations, cost estimates, references to DIN (= German standards institute) standards, other product descriptions or documents, also in electronic form. We may accept orders within fourteen days of having received them.
- (2) Legal relations between the Customer and us will be governed solely by the signed written contract, including these Standard Terms and Conditions. Subject to any other or complementary agreements made individually, this contract reflects fully all the agreements made between the contractual partners concerning the subject matter of the contract. Verbal undertakings entered into by us before the signature of this contract are legally non-binding and verbal agreements between the contractual parties will be replaced by the written contract, unless they expressly specify in each case that they will remain in force. Additions and amendments to agreements made, including these Standard Terms and Conditions, must be in writing in order to be valid. With the exception of directors and employees vested with special powers, our employees are not entitled to enter into contrary verbal undertakings. The written form shall also extend to fax transmissions, but, subject to contrary individual agreements within the meaning of § 1 section 3, sentence 2 of these Standard Terms and Conditions, telecommunicated messages, in particular by e-mail, do not satisfy the written form requirement.
- (3) Information we supply on the subject matter of the delivery or service provided (e.g. weights, measurements, values in use, load-bearing capacity, tolerances and technical data) as well as our presentations of the same (e.g. in drawings and diagrams) are only approximately valid, unless the use for the purpose foreseen in the contract presupposes they are absolutely identical. They do not constitute quality features but rather descriptions or characterisations of the goods delivered or service provided. Variances customary in the trade and variances resulting from legal requirements or which constitute technical improvements as well as the

replacement of modules by parts of equivalent value are permitted, provided that their use does not impinge the purpose foreseen in the contract.

- (4) We reserve title and the copyright to all quotations and cost estimates issued by us as well as drawings, diagrams, calculations, leaflets, catalogues, models, tools and other documents and aids provided to the Customer. The Client may not make these objects as such nor their contents accessible to third parties and may not make them known nor use or duplicate them himself or through a third party. He is required to return all of these objects to us at our request and to destroy any copies, which might have been made when no longer used by him as part of his normal business activities or when negotiations do not lead to the conclusion of a contract.
- (5) The Customer's order of the goods or service constitutes a binding offer to conclude a contract. Our acceptance will be made either in writing by means of an order confirmation or implicitly through the delivery of the goods to the Customer.

### **§ 3 Prices and payment**

- (1) Prices apply to the goods and services as described in the order confirmations. Additional or extra services will be invoiced separately. Prices are to be understood as ex factory and in Euro plus packaging, the legally applicable VAT, customs duties in the case of exports as well as fees and other public charges.
- (2) Provided that the list prices are based on the agreed prices and the delivery is to be made more than four months after the conclusion of the contract, the delivery will be invoiced at our current list prices (less in each case an agreed percentage or fixed rebate).
- (3) Unless any other written agreement has been made, invoice amounts will be payable within thirty days without any deduction. Our receipt of the payment will determine the date on which payment is made. Cheques will not be accepted as payment until credited to our account. Should the Client fail to pay on the due date, outstanding amounts will be subject to interest at the rate of 5% p.a. from the date on which payment becomes due; we reserve the right to charge higher interest and additional damages on payment arrears.
- (4) The Client is only authorised to offset his counter-claims or to withhold payment on account of such claims to the extent that the counter-claims are undisputed or have been established in law.
- (5) We are entitled to carry out outstanding deliveries or provide services only against advance payment or the provision of security should circumstances become known to us after the conclusion of the contract that are likely to considerably reduce the Client's creditworthiness and as a result of which the Client's payment of the seller's open receivables under the relevant contract (including receivables deriving from other individual orders subject to the same framework contract) are endangered.

### **§ 4 Delivery and delivery time**

- (1) Deliveries are made ex factory.
- (2) Unless a fixed period of time or a fixed date has been expressly promised or agreed, delivery periods and delivery dates we project for our goods and services will in all cases only be considered approximate. Should delivery have been agreed, delivery periods and delivery dates refer to the date on which the goods are handed to the transport company, freight forwarder or any other third party assigned to transport the goods.
- (3) Notwithstanding our rights should the Client be in arrears, we may demand an extension of period of time in which goods and services are to be provided or a postponement of the date on which goods and services are to be provided by the period of time during which the Client fails to perform his contractual services to the Seller.
- (4) We shall not be held liable should delivery be impossible nor for delivery delays should these be due to force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. all forms of disturbances of operations, difficulties in the procurement of materials or energy, transport delays, strikes, legal lockouts, shortages of labour, energy or raw materials, difficulties in the procurement of the required official permits, measures imposed by public authorities or the failure of suppliers to deliver correctly or on time) and for which we are not responsible. We are entitled to rescind the contract should such events seriously exacerbate delivery or make delivery impossible or the performance of our services and the resulting delays not be temporary. In the event of temporary delays, delivery periods will be extended and delivery dates postponed by the length of the hindrance plus a reasonable start-up time. The client may rescind the contract by notifying us immediately in writing should it be unreasonable to require him to accept the delivery or services as a result of

the delay.

- (5) We are only entitled to make partial shipments when
  - a. The Client is able to use the part shipment as part of the intended purpose defined in the contract;
  - b. The delivery of the remaining goods ordered is assured, and;
  - c. The Client does not incur any significant additional effort or costs as a result (unless we declare our willingness to assume these costs).

## **§ 5 Place of fulfilment, dispatch, packaging, transfer of risk, acceptance**

- (1) Should nothing to the contrary has been agreed, the place of fulfilment for all obligations derived from the contractual relationship is Möllner Strasse 2, D- 23883 Lehmrade, Germany. Should we be required to provide installation, the place of fulfilment is the place at which the installation is to take place.
- (2) We may use our best judgement in determining the method of delivery and the packaging.
- (3) The risk of accidental destruction and accidental deterioration of the goods will pass to the Client at the latest with the handover of the goods delivered (whereby this will be determined by the beginning of the loading process) to the transport company, freight forwarder or any other third party assigned to carry out the shipment. This will also apply should part shipments be made or should the Seller also have assumed other services (e.g. shipping or installation). Should there be a delay in the dispatch of the goods or in the handover as a result of circumstances caused by the Client, risk shall pass to the Client on the date on which we are ready to ship and have notified this to the Client.
- (4) The Client will pay storage costs incurred after the transfer of risk. Should we store the goods, the costs of storage are 0.25% per complete week of the invoice amount of the goods to be stored. We reserve the right to impose and document additional or lower storage costs.
- (5) We will only insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks at the express wish of the Client and at his expense.
- (6) To the extent that acceptance of the goods is required, the object sold will be considered to have been accepted when:
  - a. The delivery and, to the extent that this is carried out by us, the installation have been concluded;
  - b. We have notified the Client accordingly, referring to the acceptance required by this § 5 section 6 and have called upon him to accept the goods;
  - c. 12 working days have elapsed since the delivery or installation or the Client has begun to use the object sold (has for example commissioned the equipment delivered) and in this case six working days have elapsed since the delivery or installation, and;
  - d. The Client fails to carry out acceptance within this period for a reason other than a defect of which we have been notified which has prevented or severely hindered the use of the object sold.

## **§ 6 Warranty**

- (1) The warranty period is one year from the date of delivery or, should acceptance be required, from the date of acceptance.
- (2) The delivered goods must be examined carefully immediately after delivery to the Client or to the third party appointed by him. They will be considered to have been approved should we not receive notification in the form required in §2 section 2 of obvious defects or of other defects which were recognisable after an immediate and careful inspection within seven working days of the date of the delivery, or otherwise within seven working days of the discovery of the defects or the point in time at which the Client recognised the defect without closer examination in the course of normal use of the goods delivered. At the Seller's request, the goods complained of are to be returned to us freight paid. We will refund the costs of the cheapest form of freight should the complaint be justified; this will not apply should the costs be increased due to the goods delivered being at a different location to the place where the goods are regularly used.
- (3) Should the goods delivered have defects of quality we are entitled and required to exercise the option within a reasonable period of time initially either to rework the goods or to provide a replacement shipment. The Client may rescind the contract or reduce the price appropriately should this not be successful, that is on account of

the impossibility, unacceptability, refusal or unreasonable delay in the rework or provision of a replacement shipment.

- (4) Should we be responsible for a defect, the Client may demand compensation subject to the conditions laid down in § 8.

## **§ 7 Industrial property rights**

- (1) We warrant in accordance with the terms of this § 7 that the goods delivered are free from the commercial industrial property rights and copyrights of third parties. Each contractual partner will inform the other immediately and in writing should claims be made against him on account of the infringement of such rights.
- (2) Should the goods delivered infringe a commercial industrial property right or a copyright belonging to a third party, we will at our option and at our expense either alter or exchange the goods delivered in such a way that third party rights are no longer infringed but that the goods delivered continue to fulfil the functions agreed in the contract or procure a right of use for the Customer by the conclusion of a licence agreement. Should we be unable to do this within a reasonable space of time, the Client is entitled to rescind the contract or to reduce the price appropriately. Any claims pursued by the Client will be subject to the restrictions contained in § 8 of these Standard Terms and Conditions.

## **§ 8 Liability for compensation on account of negligence**

- (1) Irrespective of the legal justification but especially on account of impossibility, arrears, defective or wrong delivery, breach of contract, infringement of obligations at the time the contract was negotiated und wrongful acts, our liability for compensation is limited insofar as negligence is involved in accordance with the provisions of this § 8.
- (2) We are not liable:
  - a. in cases of simple negligence on the part of our official bodies, legal representatives, employees or other agents;
  - b. in cases of gross negligence on the part of our non-managerial employees or other agents;

provided that the infringement does not relate to essential contractual obligations. Essential for the contract are the obligations to provide a defect-free delivery and installation on time as well as to provide advice and protection and the duty of care designed to enable the Client to use the goods delivered in accordance with the contract or to protect the life and limb of the Client's employees or third parties or the Client's property from significant damage.

- (3) Should we basically be liable for compensation in accordance with § 8 (2), this liability will be limited to damages that we foresaw as a possible consequence of a breach of contract at the time the contract was concluded, or, given the circumstances known to us or which we should have known with the application of the customary caution, should have foreseen.
- (4) The restrictions contained in this § 8 do not apply to our liability in the event of deliberate behaviour, to guaranteed quality features, to injury to life, limb or health nor to our liability under the German Product Liability Law.

## **§ 9 Reservation of title**

We reserve title to the goods sold until all of our current and future receivables arising from the purchase contract and a current business relationship (secured receivables) are completely paid for.

- (1) The goods subject to reservation of title may neither be pledged to third parties nor title to them transferred until the secured receivables are completely paid for. The Client is required to inform us immediately in writing whenever and to the extent that third parties have seized the goods belonging to us.
- (2) We are entitled in the event of conduct contrary to contract on the part of the Buyer, in particular the failure to pay the purchase price due, to rescind the contract in accordance with the provisions of the law and/or to demand the return of the goods on account of reservation of title. The demand that the goods be returned does not immediately encompass the rescission of the contract; on the contrary, we are entitled simply to demand the return of the goods and to reserve the right to rescind the contract. Should the Buyer fail to pay the purchase

price due, we are not entitled to enforce these rights until we have previously unsuccessfully set the Buyer a reasonable grace period in which to make the payment or the law does not require that such a period of grace be granted.

- (3) The Customer is authorised to re-sell and/or to process the goods subject to reservation of title as part of his normal business activity. In this case the following complementary conditions shall also apply.
  - a. The reservation of title extends to the full value of products resulting from the processing, mixing or combination of our goods, whereby we shall be considered the manufacturer. Should third parties' rights of title remain in force following processing, mixing or combination with the goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Moreover, the same shall apply to the resulting products as to the goods delivered subject to reservation of title.
  - b. The Buyer assigns to us fully or to the extent of any co-ownership share we might have in accordance with the above paragraph his receivables due from third parties derived from the re-sale of the goods or products as security and with immediate effect. The Buyer's obligations described in section 2 also apply with respect to assigned receivables.
  - c. In addition to ourselves, the Buyer will still be authorised to collect the receivables. We undertake not to collect the receivables as long as the Buyer fulfils his payment commitments to us, does not fall into payment arrears, no application is made for the opening of insolvency proceedings and no other defect in his ability to perform is present. Should this however be the case, we may demand that the Buyer disclose to us the assigned receivables and their debtors, provides all the information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.
  - d. We will at the Buyer's request release securities at our discretion should the realisable value of the securities exceed our receivables by more than 10%.

## **§ 10 Time limitation**

- (1) The contractual parties' claims against each other shall become time expired in accordance with the provisions of the law, unless anything to the contrary is provided for below.
- (2) In derogation of § 438 section 1.3 of the German Civil Code ("BGB"), the general period of limitation for claims based on defects of quality and title is one year from the date of delivery. Should acceptance have been agreed or is present in accordance with § 5 section 6 of these Standard Terms and Conditions, the period of limitation will begin with this acceptance.
- (3) Special legal provisions dealing with third parties' collateral rights to possession (§ 438 section 1.1 of the German Civil Code), buildings and building materials (§ 438 section 1.2 of the German Civil Code), suppliers' rights of regress and the claims to compensation referred to in § 8 shall not be affected. In these cases the provisions of the law on time limitation shall apply.
- (4) The legal limitation periods in purchasing law (§ 438 of the German Civil Code) shall apply, also to competing compensation claims outside the contract, should we be liable to the Buyer for compensation on account of or as a consequence of a defect in accordance with § 8, unless the application of the regular limitation period in law (§§ 195 and 199 of the German Civil Code) leads in individual cases to a shorter period of limitation. The periods of limitation provided for in the German Product Liability Law shall in any event not be affected.

## **§ 11 Concluding provisions**

- (1) The legal venue for all possible disputes between the Client and us arising from the business relationship is, at our discretion, either Möllner Strasse 2, D- 23883 Lehmrade, Germany, or the Client's registered office. Möllner Strasse 2, D- 23883 Lehmrade, Germany is the sole legal venue for writs issued against us. Mandatory legal provisions concerning the sole legal venue are not affected by this provision.
- (2) Relations between the Client and us and the validity of the inclusion of these Standard Terms and Conditions are subject solely to the law of the Federal Republic of Germany, to the exclusion of all international and supranational (contractual) jurisdictions. The United Nations Convention on Contracts on the International Sale of Goods of April 11<sup>th</sup> 1980 (CISG) shall not apply. The preconditions for and the implications of reservation of title as described in § 9, on the other hand, will be subject to the law of the place where the goods are located should the choice of law in favour of German law not be permitted or be invalid.

- (3) Should the Buyer be a registered trader within the meaning of the German Commercial Code, a civil law legal entity or civil law special assets, the exclusive legal venue – also internationally – for all disputes arising directly or indirectly from the contractual relationship is our registered office in Möllner Strasse 2, D- 23883 Lehmrade, Germany . We are however also entitled to sue the Buyer at his general legal venue.
- (4) Should the contract or these Standard Terms and Conditions prove to have omissions, those legally valid provisions shall be considered to have been agreed in order to fill these omissions which the contractual partners would have agreed, given the commercial intentions of the contract and the intention of Standard Terms and Conditions, had they been aware of the omission.

**Note:**

The Client takes note of the fact that we store data in accordance with § 28 of the German Federal Protection Law concerning the contractual relationship for the purposes of data processing and that we reserve the right to pass this data to third parties (e.g. insurance companies) to the extent that this is necessary for the fulfilment of the contract. The Client declares his agreement with the use of data in accordance with the data protection regulations applicable in the Federal Republic of Germany