

General Terms and Conditions of Heinze Group and subsidiaries

I. Scope of application

1. These General Terms and Conditions for the Sale of Goods and Services are the contractual basis for all our legal relations with our customers, in particular for contracts, deliveries and other services.

Terms and Conditions of the customer that differ or deviate from these General Terms and Conditions for the Sale of Goods and Services shall not apply except and unless we have expressly agreed in writing to their validity. We do not recognize deviating terms and conditions of the customer even if we execute customer orders without reservation in knowledge of contrary or deviating Terms and Conditions from our General Terms and Conditions.

2. Our General Terms and Conditions shall also apply to all future transactions with the customer, whereby the version in force at the time of conclusion of the contract shall be authoritative.

The customer may consult these General Terms and Conditions, simply and freely, at any time by clicking on the 'General Terms and Conditions of Sale' link visible on the known webpages.

3. All other contractual terms and conditions agreed between the customer and us shall, if they deviate from these General Terms and Conditions, take precedence over them.

4. Contract supplements do not exist. Any deviating agreements shall only be binding on us if we have confirmed contract supplements in writing. The same shall also apply to anything agreed additionally after the conclusion of a contract or after any changes to a contract. In particular, information material, advertising brochures or other material, which is handed over in the phase of contract initiation, does not become part of a contract, unless the contracting parties individually agree that a certain content, an attachment or a brochure becomes part of the agreed and committed services. They serve only for orientation of the customer. The contracting parties agree that the scope of a contract between the parties consists of an order, an order confirmation, the underlying offer as well as these General Terms and Conditions. As a ranking, the contracting parties stipulate that the order confirmation is the final document. The order confirmation is supplemented by the order and offer as well as by these General Terms and Conditions. In performing a project, only authorized employees are allowed to agree to any modifications or alterations. It is the responsibility of the customer to ensure that this is the case.

II. Offers

1. Our offers are subject to alteration and non-binding. The documents, drawings, plans, calculations, budgeting and others, accompanying the offers are non-binding and serve exclusively for the orientation of the customer. A contractual commitment is subject to a written order of the customer and a corresponding order confirmation by us. If an order is made by telephone, it will have to be confirmed by us in writing. In summary, the contractual relationship shall be entered only after our written confirmation of order. For the scope of a delivery, our written order confirmation is authoritative.

2. For the legal interpretation of commercial terms, the INCOTERMS in the version at the time of conclusion of contract shall apply.

III. Prices

1. Unless stated otherwise in the offer, our prices are quoted "ex works", excluding packaging, transport and insurance.

2. The prices are quoted net and are subject to the addition of VAT.

3. Unless a fixed price has been agreed upon, our price list in the version in force at the time of conclusion of the contract shall apply. In the case of goods and services which are scheduled for delivery later than three months after the conclusion of contract, we reserve the right to reasonably increase the price in the event of any increase in our own costs (e.g. increase in wages or raw material costs, change in exchange rates). We will furnish evidence of the cost increase to the customer on request. In case of long-term contractual agreements, provisions will be made in the contracts for regular price adjustments.

4. In case of long-term contracts, continuous price adjustments are regulated in the contracts. Unless an explicit arrangement is included in these, the following applies: Deviations of more than 10% of the annual order quantities, which are the basis of our quotations, lead to a recalculation, latest at end of each year. In principle, a mutually valid price escalation clause (change of costs of +/- 5%) is valid. This includes raw material, personnel, energy costs and costs for changes in exchange rates, as well as costs, which increase due to legal requirements regarding mandatory changes in the production process.

IV. Payment, offsetting, withholding of payment

1. The terms of payment stipulated in our order confirmations are binding to the customer. Unless agreed otherwise in any particular case, payments must be made immediately after receipt of the goods without any deductions. Payments have to be made by transfer to one of our bank accounts. Payments in cash or by check will not be accepted.
2. The invoice amount is payable within 14 day after receipt of invoice.
3. Regardless of any contrary agreements, all our receivables against the customer shall become due and payable immediately, if the terms of payment are not met or if circumstances become known to us of a nature that would cause a reduced customer's credit standing. In any such case, we shall have the right, at our choice and without prejudice to any other rights to which we may be entitled, to perform any outstanding deliveries only in return for advance payments, to demand security of a kind which is acceptable to us, to rescind the contract after the allowance of a reasonable grace period, or to claim compensation for damages because of non-performance.
4. We shall have the right to offset our own receivables against those of the customer, irrespective of the legal reason on which they are based and even if the reciprocal receivables are due on different dates. The withholding of payments or the making of offsets for counterclaims of the customer, which are contested by us, is not permitted.
5. At the latest, after the final date for payment, the customer is in default. We shall have the right to charge interest on amounts, which have fallen due, but in respect of which the customer has not yet been declared in arrears at a rate of 2% p.a. above the base interest rate in force at the time, but in any case at a rate of at least 6%. After the customer has been declared in arrears, we shall have the right to charge the customer interest at a rate of 8% p.a. above the base rate in force at the time. If we are able to prove having sustained higher losses or damages through the arrears, we shall have the right to claim these higher losses or damages. If the customer has fallen into arrears with his respective payments, we shall also have the right to hand back bills of exchange, which we had taken in payment before maturity and to demand immediate payment in cash.
6. Our invoices shall be deemed to be accepted unless the customer objects to them immediately in writing, but at the latest within two weeks after the invoice date or receipt of the invoice.
7. The customer is only authorized to make offsets and to claim the application of §§ 273 and 320 BGB [German Civil Code], if his own counterclaims are undisputed or have been confirmed by final court decision. The customer is only entitled to assign his rights pursuant to this contract with our prior consent.

We can only refuse the consent to a declaration of assignment to an affiliated enterprise (Art. 15 AktG [German Public Limited Companies Act] for important reasons.

V. Delivery/Duties to assist/Bearing of risk

1. Deliveries are made subject to our own receipt of correct and punctual supplies.
2. Insofar as we are directly responsible for the transport, we will charge freight, shipping and packaging costs separately. In this case, we shall be responsible for the choice of mode of transport unless otherwise agreed. The risk passes to the customer with the transfer to the carrier. A transport insurance is only provided at the explicit request of the customer and at his expense.
3. The fulfillment of our delivery and service obligations is subject to correct and timely execution of all necessary obligations by the customer to cooperate. In particular, the customer is to ensure a free access and an immediate unloading in case of our obligations of delivery. A further obligation, which is explicitly defined as a customer obligation is the timely payment of his invoices. Our performance obligation is suspended if the customer is in arrears with a specific payment.
4. Dates for delivery and performance are not binding unless they have explicitly been declared as such.
5. Delivery and performance dates shall be considered as non-binding and shall only be approximate dates, unless they have explicitly been stated as binding.
6. If the customer wishes to assert claims pursuant to Section 323 (1) BGB [German Civil Code], we must be allowed an additional respite of at least three weeks.
7. We shall have the right to make and invoice part-deliveries of goods or service always provided that this is not unreasonable for the customer. Claims or complaints relating to part-deliveries of goods or services shall not release the customer from the obligation to accept delivery in the contractually agreed manner of the ordered but still outstanding goods or services.

8. If delivery is impossible due to force majeure and in particular due to shortages of raw materials, energy or labor, labor disputes, severe disruptions to transport, e.g. through road blockades, disruptions to business operations which were unforeseeable or are due through no fault of our own, through acts of official bodies not attributable to us or subsequent to any other events that are beyond our control, we shall be released from our duty to deliver or to perform for as long as the obstacle to delivery or performance continues. In any such case, the time or date for delivery or performance shall be extended by the duration of the obstacle. If the impediment to performance exceeds three months, we are entitled to rescind the contract.

9. If the customer is in delay through his own fault in taking receipt of a delivery or in performing acceptance, we shall have the right to claim a contractual penalty for each day of delay in an amount of 0.3% of the net invoice amount for the delivery or service concerned. The total contractual penalty is limited to 5% of the net invoice amount. We need not expressly reserve the right to claim the penalty at the time of acceptance by the customer; it is sufficient if we demand payment of the penalty within 40 days from the end of the delay or the default of acceptance. We also reserve the right to claim for any higher loss or damage incurred by us, though we explicitly grant the customer the right to prove that we have sustained no loss or damage at all or only in a significantly smaller amount.

VI. Title retention and tools, jigs, etc.

1. Until full settlement of all our receivables and claims arising from the business relationship, all goods (the "conditional goods") shall, even after resale by the customer, remain our property ("extended title retention"). In the case of any current account balance in our favor, we shall retain title to the goods until the account is balanced and, in cases where we have accepted bills of exchange or cheques, until to the moment, when we have received the respective payment.

2. Any further processing of the conditional goods shall be deemed done on our behalf as manufacturers according to Section 950 BGB, but without this giving rise to any obligations on our part. The processed goods shall then be deemed conditional goods within the meaning of these provisions. If conditional goods are processed or inseparably mixed with other items not belonging to us, we shall acquire co-title to the new item in the same proportion as that between the invoice value of the conditional goods and the invoice value of other processed items at the time of processing or mixing. This shall also be the case if the conditional goods are incorporated into another item and the other item is to be seen as the principal item.

3. The customer may resell the conditional goods only in the ordinary course of his business and only on the basis of his customary business terms.

4. Receivables of the customer arising through resale of the conditional goods are hereby already assigned to us. In case of installation or processing of our goods, a share of the total receivables resulting from resale of the product by the customer, which is equivalent to the share in value as determined in accordance with paragraph 2 above, shall be deemed assigned to us as soon as the said total receivables arise.

5. The customer is entitled to collect receivables resulting from resale of the goods until further notice from us, which we may give at any time. He is not entitled to assign these receivables elsewhere.

If demanded by us, the customer must inform his customers of the assignment to us and provide us with all information and documents needed for enforcing the receivables.

6. The right of the customer to possess the conditional goods shall cease if he fails to fulfil his obligations from this or any other contract. In this case, we shall have the right, without any additional respite or the need to give notice of rescinding the contract, to enter the customer's business premises and to repossess the conditional goods and, regardless of any payment or other commitments of the customer towards us, to sell the goods at the best possible price either by private contract or through public auction. The sale proceeds shall, after the deduction of reasonable costs of sale, be balanced against the amount owed by the customer.

7. Tools and jigs produced by us for performance of the order shall remain our property until complete payment. If, after payment and termination of the delivery relationship, the customer does not raise any objections within a period of two months after a corresponding written notice, the tools may be scrapped. The customer must bear the storage costs until the time of scrapping.

8. In case of any breach of contract by the customer, in particular any delay in payment, we shall have the right to repossess the goods. Repossession of the goods by us shall not imply any contract repudiation on our part unless otherwise expressly declared by us.

9. If, in the case of deliveries abroad, certain measures are necessary in the importing countries to secure effectiveness of our retention of title, the customer shall inform us accordingly and will execute the measures in question at his own expense. If the law of the importing country does not permit the retention of title but allows us to reserve other rights to the goods, we may exercise all such rights. If this does not enable us to secure our receivables in an equivalent manner, the customer shall have the duty to provide us with other acceptable collateral at his own expense.

10. The customer may not pledge goods, which are subject to our retention of title or otherwise assign them by way of security and must inform us immediately of any garnishment pursued by third parties.

11. We undertake, on the customer's request, to release security to which we are entitled insofar as the realizable value of our security exceeds the value of the receivables and claims are secured by more than 20%. The choice of security to be released shall remain with us.

VII. Cancellation of order by the customer

1. If and insofar as we perform work and services, it will be stipulated in the contract whether the contract may be terminated and, if so, with what period of notice; otherwise, the contract cannot be terminated by proper notice. In case the contract is terminated, we shall have the right to demand the agreed remuneration, though with allowance being made for expenses avoided by us as a result of the termination or as a result of savings, which are realized through other use of personnel or which we fail to make through malicious intent. Instead of itemizing the expenses avoided or saved, we may make a lump-sum allowance of 30%. The customer may provide proof that we have suffered loss or damage on only a significantly smaller scale or not at all.

2. In the case of services that fall under the law of purchase- or service-contracts, premature termination of the contract by the customer is barred. Statutory rights of termination to which the customer is entitled shall, however, remain unaffected.

VIII. Claims and notices of defects

1. Claims for incomplete or incorrect delivery or notices of visible defects must be made in writing immediately after receipt of the goods. Other defects must be notified in writing immediately after their discovery.

2. Warranty claims are barred if claims or notices of defects are not notified in a timely manner. In case of timely notification, we shall only have the duty to replace supplies or to perform warranty work pursuant to Section IX.

3. Insofar as a notice of defect is raised by the customer, the customer cannot hold back payments against our invoices. Provided that we acknowledge a defect, which has been reported, we will make subsequent deliveries. Apart from that, we work with the generation of credit notes.

IX. Warranty

1. We shall grant a warranty for freedom from defects for the guaranteed characteristics and correctness according to the contractual agreements.

2. All claims (in particular also for the replacement due to consequential damages caused by defect) of the customer expire within 12 months, beginning with the transfer of risk. This does not apply if the law prescribes longer periods as well as for injury to life, limb or health, for intentional or gross negligence on our part and for fraudulent concealment of defects.

3. Warranty will be provided at our choice through either repair or replacement of the defective parts; a right to cancel the contract or to claim a reduction in price does not exist except in cases where we are unable to remedy the defect. Claims for damages on the part of the customer due to a defect in quality are excluded. This does not apply in the case of a malicious concealment of a defect, in case of non-compliance with the quality guaranteed, in case for injury to life, limb or health, due to intentional or gross negligence of duties by us and for fraudulent concealment of defects.

4. For necessary warranty work, the customer will have to give necessary time and opportunity. He is only entitled to carry out such necessary time himself with our explicit consent.

5. The warranty period expires if goods delivered are further customized and modified by another party or by the installation of third party parts, unless the defect has not been causally associated with the customization or modification.

6. Furthermore, there will be no claims for defects in the case of only slight variation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damages after the transfer of risk due to incorrect or not obeyed instructions or inaccurate installation or rather commissioning by the customer or a third party.

7. We strive to respect patent rights (patents, utility models) of third parties in our product sectors. However, it is not possible to ascertain all intellectual product property rights as well as their use in the various fields of processing. We can therefore not accept any liability in compliance with relevant intellectual property rights. In the case of products, which we manufacture especially for our customers and which are not part of our standard product range, the customer shall indemnify us against all claims of third parties resulting from infringement of intellectual property rights.

X. Liability

1. Unless otherwise expressly stipulated in these General Terms and Conditions, customer claims for damages are excluded, for whatever legal reason, in particular for breach of obligations resulting from the contractual relationship or from tort.

This does not apply if liability is applicable after §§ 1, 4 Product Liability Act, due to negligence, from non-compliance with a conditional guarantee assumed by us, from culpable injury to life, body or health and due to culpable violation of essential contractual obligations.

2. We may not be held liable for any damages caused by negligence, unless we have breached a material contractual obligation or have assumed a guarantee.

3. Damage claims for the breach of important contractual obligations are limited to typical foreseeable damages.

For our customers we maintain a business and product liability insurance in the amount of at least EUR 5 million per individual case.

For all liability and compensation claims from the business relationship between the parties, which are not covered by the above insurance, the parties agree to a limitation of liability of EUR 200,000.

4. Insofar as we refuse liability, this shall also extend to our employees', our subcontractors' or agents' personal liability.

5. Except in respect of personal injury, customer claims for compensation shall in all cases be limited to 10% of the net delivery value of the respective delivery of the contractual items.

XI. Installation and repair conditions

1. Insofar as we owe contractual installation or repair work, we shall only be liable if the customer has performed all necessary preliminary work completely and correctly. This is applicable especially to required earthworks and foundation work, as well as to necessary feed pipes and drain pipes as well as to all extra works outside our particular section of industry including all building materials and other materials necessary.

2. If the installation or repair work is delayed due to circumstances beyond our control, the customer shall bear the costs for the waiting period and additional necessary travel.

3. The customer is obliged to accept the installation and repair work. The acceptance shall not be affected if the customer does not accept the works ready for final inspection and acceptance within a period of two weeks, after request.

4. With regard to the notification of defects of installation or repair works Section VIII applies.

XII. Deterioration of the customer's financial situation

1. If, after conclusion of the contract, facts become known to us which raise doubt about the customer's ability to meet his financial obligations, we shall have the right, before continuing to execute the order, to demand payment in full or to be provided with appropriate security or, after the allowance of a reasonable period of time for the payment to be made in full or the security to be provided to withdraw from the contract.

2. Facts, which allow doubt on the customer's ability to pay, shall include, in particular, garnishments of a more than temporary nature and other enforcement measures as well as a petition for the opening of insolvency proceedings.

XIII. Duties of Confidentiality / Copyrights

1. The customer commits himself to be strictly confidential regarding the business conditions according to the agreed contract with him. The customer is aware that in the case of an infringement of this confidentiality clause, we are entitled to claim compensatory damages.

2. All rights of use and exploitation for property and copyrights lie with us for all documents made available to our customers by us, such as drawings, technical descriptions, operating instructions, records, etc. All documents may not be copied, reproduced or otherwise made available to third parties without our explicit written approval.

3. If software is included in the scope of delivery, the customer is granted a non-exclusive right by us to use the delivered software including documentation. Any duplication of the software apart from backup purposes or to the legal scope to §§ 69a ff. UrhG (Copyright Law) is prohibited. The revision or conversion from the object code to the source code requires our prior written approval. All other rights to the software remain with us.

XIV. Miscellaneous

1. The legal venue is Herford Local Court (Amtsgericht Herford) or Bielefeld Regional Court (Landgericht Bielefeld).
2. We shall also have the right to take legal action at any other court, which has jurisdiction pursuant to the German Code of Civil Procedure ("Zivilprozessordnung").
3. All legal relationships shall be governed exclusively by German law. The Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
4. The agreement shall remain binding and effective even in case of legal invalidity of single provisions.