

Kunde / client	All
Dokument / document	General Terms and Conditions
Ausgabedatum / date of issue	01.12.2005



## 1 General Terms and Condition

**HEINKEL Process Technology GmbH**  
**Ferdinand-Porsche-Str. 8**  
**D-74353 Besigheim, Germany**

- hereinafter referred to as the Supplier-  
General Terms and Conditions / Terms of Delivery 12/2005

### 1. Validity, Scope

The following General Terms and Conditions and any separate contractual agreements shall apply to all supplies and services provided by the Supplier. General terms and conditions of the Purchaser which are contrary to these General Terms and Conditions/Terms of Delivery shall only apply if they are explicitly recognized in writing by the Supplier. Subsidiary agreements and modifications shall only be valid if confirmed in writing by the Supplier.

### 2. Offer

Offers shall be made without obligation pending acceptance. If the offer is submitted on the basis of documents issued by the Purchaser (illustrations, drawings, including dimensions), such documents shall only be deemed to be binding if this explicitly stated in the offer. In all other cases the documents of the Supplier shall represent the currently applicable standard. The Supplier reserves title and copyrights to cost estimates, drawings and other documents. Such cost estimates, drawings and other documents shall only be disclosed to third parties with the consent of the Supplier.

### 3. Formation of the contract

Unless otherwise agreed, a contract shall be formed upon written confirmation of order by the Supplier.

The Supplier shall be entitled at all times to make technical changes and modifications to the delivery item provided that such changes or modifications do not impair the technical function of said delivery item and provided that the delivery item is not prejudiced by the same.

### 4. Price and payment

Prices are non-binding. Prices are stated in euros ex Supplier's works, inclusive of loading at the works but exclusive of packaging, transport insurance and statutory value-added tax. Partial deliveries shall be invoiced separately. Payment may only be withheld or offset against claims which are uncontested or against which no legal recourse is possible.

The performance of installation work shall be subject to an explicit, prior written agreement. The performance of installation work shall in all cases be paid for by the Purchaser and shall be subject to our Terms of Installation under Clause 12.

Unless otherwise agreed in writing, the purchase price for orders worth €30,000 and more shall be settled as follows:

30% of the full contract price at the time of order placement by separate invoice,  
40% of the full contract price after receipt of major parts at HEINKEL's production facilities, but no later than three months after receipt of the order, by separate invoice,  
30% of the full contract price at the time the equipment is ready for shipment by separate invoice.

Orders valued at under €30,000 and all spare part and repair invoices shall be due for settlement within 30 days at no discount.

If the Purchaser defaults on payment, the Supplier shall – notwithstanding further claims – be entitled to demand interest on arrears at a rate of 5% above the ECB rate. The rate of interest on arrears shall be higher or lower if the Supplier is able to demonstrate that it has suffered higher costs or the Purchaser is able to demonstrate lower costs.

Should the Purchaser fail to honour its payment obligations in whole or part or should the Supplier become aware of circumstances subsequent to conclusion of the contract which cast doubt on the credit standing of the Purchaser, all receivables due to the Supplier from the Purchaser shall fall due for settlement immediately. Such circumstances shall also entitle the Supplier to require advance payment or provision of collateral for the performance of any outstanding supplies and services or to withdraw from the contract.

### 5. Delivery period

5.1. The delivery period shall be agreed by the contracting parties. Compliance with the delivery period by the Supplier shall be contingent on fulfilment of all the Purchaser's duties and obligations, such as provision of the relevant documents, approvals, licenses, or an agreed advance payment. This shall apply in particular if test material is not provided as agreed.

The delivery period shall be deemed to have been met if the delivery item is available to the Purchaser prior to expiry of the same or if readiness for delivery has been notified to the Purchaser within this period. Should deliveries be subject to an acceptance inspection, acceptance shall – except in cases in which acceptance is legitimately refused – be performed on the acceptance date, alternatively on notification of readiness for acceptance.

5.2. Should failure to comply with the delivery period be due to *force majeure*, unforeseeable, unavoidable or other serious occurrences, such as labour disputes affecting the Supplier or its subcontractors, shortages of raw materials, transport

damages, elementary losses or delivery delays or wrong deliveries due to subsuppliers, the delivery period shall be extended for an appropriate period of time. The Supplier shall notify the Purchaser of the onset and termination of such circumstances as soon as possible.

Should it be unreasonable for the Purchaser to accept such extension and if partial deliveries do not meet the Purchaser's needs, the Purchaser shall be entitled to withdraw from those parts of the contract which have not been fulfilled at such time. Claims for compensation against the Supplier are excluded in such cases. Any claims for compensation against third parties shall be ceded to the Purchaser.

5.3. Claims based on delayed delivery shall be exclusively subject to Clause 10.2. of these terms and conditions.

### 6. Transfer of risk

The risk shall pass to the Purchaser upon dispatch of the delivery parts to the Purchaser at the latest, including in those cases in which partial deliveries are made or where the Supplier has assumed responsibility for other supplies and services such as travel to the site and installation or the costs of shipping. If an acceptance inspection is required, the transfer of risk shall coincide with such acceptance. At the request of the Purchaser the delivery shall be insured – at the cost of the Purchaser - by the Supplier against theft, breakage, transport, fire and water damage and other insurable risks. Should dispatch or acceptance be delayed for reasons for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day on which readiness for dispatch has been notified; however, the Supplier shall obtain requisite insurance cover at the request and cost of the Purchaser. Without prejudice to the rights in section VIII, delivered items shall be accepted by the Purchaser even if they have immaterial defects. Partial deliveries shall be allowed.

### 7. Retention of title

All supplies shall remain the property of the Supplier pending full settlement of all claims against the Purchaser arising from the business relationship, regardless of their legal standing. If the Supplier has assumed contingent liabilities in the interest of the Purchaser, all additional supplies shall remain the property of the Supplier pending full indemnification of all such liabilities, including but not limited to those based on bills of exchange. The same shall apply even if payments for especially designated claims have been made. In the case of open accounts retained title shall be deemed as security for the claim in respect of the Supplier's debit balance.

If goods subject to reservation of title are joined with goods which are not the property of the Supplier, the Supplier shall acquire co-ownership of the object as a whole. If the Purchaser acquires sole title to the goods by virtue of joining, the Purchaser hereby grants co-title to such goods based on the ratio of the value of the goods subject to reservation of title to the other goods at the time of joining.

If goods subject to reservation of title are sold by the Purchaser on their own or with other goods which are not the property of the Supplier, the Purchaser hereby assigns the claims arising upon such sale, including all subsidiary rights, equal to the value of the goods subject to reservation of title to the Supplier. The Supplier hereby accepts such assignment. If the resold goods are co-owned by the Supplier, the assignment of claims shall extend to the amount which corresponds to the Supplier's share of the co-owned property.

The Purchaser shall only be entitled to resell, use or assemble/install the goods subject to reservation of title in the ordinary course of its business and subject to the proviso that the resulting claims are in fact transferred to the Supplier in accordance with the above terms. The Purchaser shall not be entitled to dispose of the goods subject to reservation of title – including but not limited to pledging or use as security – in any other way.

The Supplier shall authorize the Purchaser, subject to revocation, to collect the claims assigned to the Supplier provided that the Purchaser honours its payment obligations to the Supplier. At the request of the Supplier the Purchaser shall name the debtors of the assigned claims and shall disclose the assignment of such claims in the event of delivery delays. In the event of delivery delays, the Supplier shall be entitled to disclose such assignment to the relevant debtors itself and to exercise its right to collect such receivables.

Goods subject to reservation of title shall be insured at the cost of the Purchaser; such insurance cover shall include but not be limited to elementary losses, theft or other impairments. All claims against the relevant insurance company as these apply to the goods subject to reservation of title shall be hereby assigned to the Supplier. The Supplier hereby accepts such assignment.

Should the Purchaser act in breach of contract, particularly in the event of default in payment, the Supplier shall be entitled to rescind the contract and retake possession of the goods subject to reservation of title after issuing a warning and the Purchaser shall be obliged to surrender.

The institution of insolvency proceedings shall entitle the Supplier to terminate the contract and to demand immediate surrender of the delivery item.

### 8. Notification of defects

Obvious defects or other complaints relating to the delivery item – including the absence of warranted characteristics or quantity variances – shall be notified in writing immediately, at the latest however 10 days following receipt of the delivery item; defects which are not obvious shall also be notified in writing immediately, no later however than 10 days after the detection of such defects, to the Supplier.



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If defects or other complaints are not asserted within the periods stated above, all warranty claims due to the Purchaser against the Supplier shall be excluded.

#### 9. Warranty claims

The Supplier shall provide warranty for all defects in delivery, including for the absence of explicitly warranted characteristics, to the exclusion of all other claims – subject to Clause ... – as follows:

##### Material defects

All parts which prove to be unusable or the usability of which is substantially impaired as a result of circumstances occurring prior to the transfer of risk – including but not limited to defective design, defective materials or faulty workmanship – shall be subsequently improved or redelivered at no charge at the discretion of the Supplier. The discovery of such defects shall be notified to the Supplier in writing forthwith. Replaced parts shall become the property of the Supplier.

Following agreement with the Supplier, the Purchaser shall make the necessary time and opportunity for carrying out all the reworking and replacement deliveries reasonably deemed necessary by the Supplier; should the Purchaser fail to provide such time and opportunity, the Supplier shall be released from liability for the consequences of the same. Only in urgent cases, and following immediate notification of the Supplier, in which operational safety may be jeopardized or in order to ward off disproportionately greater damages shall the Purchaser be entitled to rectify the defect itself or to arrange for such defects to be rectified by third parties and to demand reimbursement of the necessary expenditure from the Supplier.

If the complaint proves legitimate, the Supplier shall bear all direct costs for the subsequent improvements, redelivery and assembly/installation of spare parts under warranty, the costs of spare parts, their delivery and the costs incurred for the deployment of any fitters and auxiliary personnel who may be required, including travel expenses, provided that this does not entail imposing an unreasonable burden on the Supplier.

Further claims are governed by Clause 10.2. of these terms and conditions.

##### Defects in title

Should use of the delivery item result in the infringement of intellectual property rights or copyrights in the country in which contractual delivery is to be made, the Supplier shall – as a matter of principle and at its own cost – procure the right of the Purchaser to make further use of the delivery item or shall modify the delivery item in a manner acceptable to the Purchaser such that it no longer infringes the intellectual property rights.

Should this not be possible on reasonable business terms or within a reasonable period, the Purchaser shall be entitled to terminate the contract. Subject to the specified preconditions the Supplier shall also be entitled to terminate the contract.

The Supplier shall also hold the Purchaser harmless against undisputed or legally effective claims asserted by the owners of the relevant intellectual property rights.

Subject to Clause 10.2, the duties and obligations of the Supplier shall be exhaustive with regard to the infringement of intellectual property rights or copyrights.

These shall only exist if

- the Purchaser notifies the Supplier forthwith of any claims regarding infringements of intellectual property rights or copyrights,
- the Purchaser provides the Supplier with appropriate support warding off such claims or enables the Supplier to perform the modification measures,
- all measures to ward off such claims, including out-of-court settlements, remain the preserve of the Supplier,
- the legal defect is not the result of instructions issued by the Purchaser, and
- the infringement has not been caused by the fact that the Purchaser has modified the delivery item independently or in a manner which does not comply with contractual provisions.

#### 10. Liability

**10.1.** Should it not be possible for the Purchaser to use the delivery item as foreseen by contract through the fault of the Supplier as a result of omitted or faulty implementation of suggestions and consultations made before or after conclusion of the contract or as a result of the infringement of other subsidiary contractual duties, in particular instructions regarding the operation and maintenance of the delivery item, the provisions of Clauses 9 and 10.2 shall apply accordingly, ruling out further claims by the Purchaser.

**10.2.** The Supplier shall only be liable for damages not incurred on the delivery item itself – regardless of the legal standing of the same – in the event of:

- wilful intent
- gross negligence of the proprietor / corporate bodies or executive employees,
- non-accidental injury to life, limb or health,
- in the event of the fraudulent concealment of defects or where the absence of such defects has been warranted,
- in the event of defects in the delivery item where liability is borne under the German Product Liability Act (Produkthaftungsgesetz) for personal injury and damage to privately used property.

In the event of a culpable breach of contract, the Supplier shall also be liable for gross negligence on the part of non-executive employees and for slight negligence – in the latter case limited to reasonably foreseeable damages which are intrinsic to the contract. Further claims are excluded.

#### 11. Limitation period

All claims of the Purchaser – whatever their standing – are subject to a limitation period of 12 months. Claims for compensation under Clause 10.2 shall be subject to the statutory periods. These shall also apply to defects in work or to delivery items which are customarily used for such works and which cause the defects in the same.

If multiple shift operations are agreed by contract, the limitation period for material defects shall be reduced to 6 months.

The warranty period for replacement items and subsequent improvements – with the exception of wear and tear parts – shall be three months; such warranty period shall run at least until the expiry of the original warranty period for the delivery item.

#### 12. Special terms for deliveries with assembly/installation

**12.1.** The costs incurred by the Supplier for its assembly/installation personnel – such as assembly/installation and separation allowances – shall be reimbursed, including but not limited to costs incurred for overtime, work on Sundays and public holidays, travelling times and waiting times. The travel expenses of personnel responsible for assembly/installation, and the costs incurred for the transport of luggage and tools shall be reimbursed by the Purchaser. The Supplier shall choose the most economic means of transport available.

**12.2.** All construction work shall be completed prior to assembly/installation to the extent that work can be started immediately on delivery and without interruptions. The supporting structures must be completely dry and hardened and the rooms in which assembly/installation is to take place must be protected against weather conditions, well lighted and adequately heated.

**12.3.** The Purchaser must provide a dry, lighted and lockable room for the storage of machine parts, materials, tools and similar; such rooms must be supervised and monitored.

**12.4.** The Purchaser shall provide at its own expense and in good time: sufficient numbers of ancillary personnel and skilled workers as assessed by the Supplier, the equipment and auxiliary materials required for the purpose of assembly/installation and commissioning, loading and unloading of transport vehicles and the transport of items from the delivery location to the assembly/installation location.

#### 13. Legal venue

The legal venue shall be the court with jurisdiction for the registered office of the Supplier. However, the Supplier may also bring an action at the Purchaser's place of business.

#### 14. Choice of law

All legal relationships between the Supplier and the Purchaser shall be exclusively subject to the law of the Federal Republic of Germany to the exclusion of United Nations Convention for the International Sales of Goods (CISG).

#### 15. Severability

Should a provision of these terms and conditions or in the framework of any other agreements be or become ineffective, this shall not affect the validity of the remaining provisions or agreements. The contracting parties shall agree a provision to replace said ineffective or absent provision which they would have agreed had they been aware of such defect.

