

General sales and delivery terms for HEITEC Heisskanaltechnik GmbH, 35099 Burgwald, Germany (As at: May 2009)

§ 1 Area of validity

1. Our goods and services are provided exclusively on the basis of the following conditions. These apply exclusively. We do not recognise customer's conditions that are contrary to or differ from our own unless we have expressly agreed to them in writing. Our terms also apply should we supply the goods unreservedly being aware of customer's conditions that are contrary to or differ from our own.
2. Our terms only apply to contractors in the sense of § 310 para. 1 BGB (German Civil Code).
3. Our terms also apply to all future transactions with the customer.

§ 2 General conditions

1. All agreements made between us and the customer in order to execute this contract shall be stipulated in writing in this contract. All transactions and deals shall only be binding for us if we confirm them in writing or comply with them by delivering the goods or sending the invoice.
2. The information and illustrations contained in brochures, catalogues, circulars, advertisements or on our Internet site are only approximate unless we have expressly indicated that they are binding.
3. Should individual contractual clauses be unworkable, this does not affect the validity of the contract. The parties shall be bound to replace an unworkable clause by a workable one that comes closest to it with regard to economic outcome and corresponds best to the purpose of the contract.

§ 3 Offer, offer documents, product development

1. Our offer is subject to confirmation should there be nothing to the contrary in the order confirmation. Should it be necessary for the order to be qualified as an offer in accordance with § 145 BGB, we can agree to this within 2 weeks, for example, by sending the goods or an order confirmation.
2. We reserve our ownership and copyright rights for illustrations, drawings, calculations, samples and other documents. This shall also apply to those documents that are marked as "confidential". The customer requires our express written approval before forwarding them to a third party.
3. We are entitled to develop products further and to supply the latest product without informing the customer of this separately in advance as long as the differences are not of a fundamental or essential nature and the contractual purpose is not restricted.

§ 4 Prices, payment terms, delayed payments

1. The prices stated in the order confirmation are definitive. So long as there is nothing stated to the contrary in the order confirmation our prices apply “ex-works” plus turnover tax at the statutory level on the day the invoice is raised, plus packaging, freight, postage and insurance.
2. Should the customer change the order after the order has been confirmed, the customer shall bear any additional costs arising from this. The level of additional costs depends on the current level of production.
3. Should completion be delayed for more than 5 months for reasons for which the customer is responsible and should wages, material costs or market acquisition prices increase, we shall be entitled to increase the price to a reasonable extent to correspond to the increases in costs.
4. For new customers or customers whose financial position does not justify the granting of credit terms in our opinion, we reserve the right to supply our goods only on pre-payment or by cash on delivery.
5. Invoices are payable within 10 days of the date of invoice with a 2% discount or within 30 days cash net to our payment centre. No discount can be allowed with part payments.
6. Should a fixed payment date be agreed, the customer shall be deemed to be in default of payment should the payment deadline not be observed. Otherwise, on receipt of our warning letter payment should be made no later than 30 days after the due date and receipt of the invoice. Payment deadlines are deemed to have been observed if funds are available to us within the time limit.
7. Regardless of customer’s conditions that may state otherwise, payments made are credited first of all to earlier outstanding amounts and to costs and interest already incurred.
8. Bills of exchange and cheques are accepted at our discretion and only for payments. Regardless of the fact that we have accepted bills of exchange, we are entitled at any time to demand payment of the original debt on exemption from the acceptance liability.
9. Should the customer fall into arrears, all outstanding debts, even those for other goods and services, shall become payable immediately strictly net even if they are not yet due or have previously been deferred. All debts shall also become due if, after the contract has been concluded, it turns out that the customer’s financial situation does not justify the granting of credit terms in our opinion. In this case we shall also be entitled to provide further goods and services only on pre-payment. Should the customer not make a pre-payment, we shall be entitled to withdraw from current contracts should they not have been fulfilled already.
10. The customer is only entitled to withhold payments or to make counter claims insofar as his counterclaims or complaints have been recognised by us in writing or have been accepted as undisputed or legally binding.
11. Should the customer be wholly or partly in default of payment, notwithstanding all our other rights, he shall pay delay interest at an annual rate of 8% above the BGB base rate from this date unless we should prove higher damages. Moreover, the statutory regulations apply to the arrears.

12. Should deliveries be made outside the Federal Republic of Germany the customer shall bear costs arising from customs, consulate fees and other taxes, levies and fees charged resulting from regulations outside the Federal Republic of Germany. Any turnover tax will be charged in addition.

13. We shall only be bound to observe foreign packaging, weighing and customs' regulations if the customer gives us specific information about these in good time. Any additional costs arising from this shall be borne by the customer.

§ 5 Delivery, delivery time, delay in delivery

1. In the absence of special agreements we may make partial deliveries.

2. Information on delivery times applies from the completion of the contract. Deliveries times are given according to our best judgement but, unless it has been agreed to the contrary in writing, have no binding force. The start of the delivery time specified by us moreover assumes that all technical questions and implementation details have been settled. With orders where, for example, a construction drawing requires the customer's prior approval, the delivery period starts when the approval declaration has been received.

3. Keeping to our delivery obligations also assumes that any necessary approvals have been granted and that the customer has fulfilled his obligations properly. We reserve the right to except an unfulfilled contract. The delivery period shall be extended for a reasonable amount of time if the above conditions have not all been fulfilled at the right time.

4. The delivery period shall be extended by a reasonable amount of time should the customer require subsequent changes.

5. A critical factor for observing the delivery date/delivery time is the handing over of the goods to the carrier or our notification that the goods have been dispatched or are ready for collection. Should we be prevented from delivering the goods on time as a result of mobilisation, war, uprising, strike, lockout, malfunctions, fire, natural disasters, transport hold ups, difficulties in obtaining materials, changes in legal regulations, official action or orders or the occurrence of other unforeseeable events beyond our control, the delivery time will be extended appropriately. The same applies should the delayed delivery be due to a customer's action or neglect.

6. Should we realise that the goods cannot be delivered within the delivery period, we shall inform the customer immediately giving reasons and, if possible, the probable delivery date.

7. Should it not be possible to deliver all or part of the goods at the correct time through no fault of our own, we shall be entitled either to withdraw or partially withdraw from the contract.

8. We shall be liable, in accordance with statutory regulations if, exceptionally, the contract on which the delivery is based is for the goods to be delivered at a fixed time as set out in § 286 para. 2 no. 4 BGB or § 376 HGB (German Commercial Code), or if as a result of a delayed delivery for which we are responsible the customer can claim that he no longer has an interest in continuing with the contract.

9. We shall also be liable in all cases of delayed delivery in accordance with statutory regulations but subject to the conditions set out in § 8 and § 9.

§ 6 Transfer of risk, acceptance delay

1. Should nothing to the contrary be stated in the order confirmation, the delivery shall be “ex-works”.
2. The risk of any decline or deterioration of the goods is transferred to the customer as soon as the consignment has been handed over to the carrier or has left our stores for dispatch and this even if it is a partial delivery. Should dispatch be delayed at the customer’s request or through his fault or if the goods are collected by the customer, the risk is transferred to the customer with the notification or dispatch or the notification that the goods are ready for collection. Should the customer delay acceptance or be in arrears, the risk transfers to him no later than this date.
3. Goods are dispatched and transported using our own vehicles or our own people and this is always at the customer’s expense and risk. We shall select the type of packaging, means of transport and method of dispatch - without accepting any liability - with the care of a scrupulous business man within the regulations applying to the individual means of transport.
4. At the customer’s request we shall cover the consignment with transport insurance. The customer shall bear any costs arising for this.
5. The customer may not refuse to accept the goods because of minor faults.
6. Should the customer delay acceptance or be responsible for infringing other obligations to co-operate, we shall be entitled to demand compensation for any damages incurred including any extra expense. We reserve the right to make further claims.

§ 7 Guarantee

1. Should we produce parts in accordance with the customer’s drawings, the drawings compiled by us and approved by the customer shall be the deciding factor. Deviations from approved drawings require special agreement.
2. Assurances and promised features only apply if they have been expressly identified as such. Standard commercial tolerances regarding size, volume, weight, quality and colour etc. do not justify complaints. A reference to DIN standards, reference or other standards does not represent any guarantee assurance in the absence of other agreements expressly made in writing applying to the particular individual case.
3. No claims may be made for damage arising from natural wear and tear, normal deterioration of parts including nozzle tips, tip inserts, seals, O-rings and shut-off needles, for damage arising after risk has been transferred as a result of incorrect or negligent treatment, not observing the instructions for use, excessive load, improper storage, unsuitable production facilities – e.g., also following the utilisation of abrasive or aggressive synthetics, except if the synthetic has been approved by us – through special external influences not provided for by the contract or when using the goods for a purpose other than the normal purpose or a purpose expressly agreed in the contract.
Warranty claims are additionally not valid following excessive utilisation. This also includes

systems which are operated with nozzle pressures exceeding 2000 bar should these components not have been specifically constructed and manufactured with our consent for such high levels of pressure.

4. Should the customer or a third party carry out inappropriate changes or maintenance work no claim for damages will exist for these and any consequences arising from them.

5. Defect claims made by the customer assume that he has complied with his examination and complaint obligations in accordance with § 377 HGB properly. Complaints about obvious defects or incorrect quantities are deemed to be in time if they are notified to us in writing within 5 working days of receiving the goods. Complaints about hidden defects are deemed to be in time if they are notified to us within 5 working days of their discovery. Externally visible damage must be certified by the carrier. If goods have been transported by train, post or other package or courier service, a certificate from the relevant carrier is necessary for claim settlement. Simply sending the goods back is not considered a complaint.

6. Should the goods be faulty and should we be liable for this we shall be entitled either to make reparation in the form of remedying the fault or to supply a new, fault-free article.

7. Multiple attempts at repair are permissible. Should attempts at repair fail within a reasonable time (§ 440 p. 2 BGB) or if we refuse to make good, the customer is entitled either to cancel the contract or demand a reduction in the purchase price.

8. Should the customer make a complaint he must keep the damaged goods for us to inspect or send the goods back to us. We shall decide on the course of action. We do not refund costs for unsolicited returns. Should the customer leave goods with us because of alleged faults for checking or carrying out repairs and during the examination it is discovered that actually there is no fault, the customer shall refund the costs of checking the goods including any dispatch and packaging costs. Moreover, in the case of remedying faults, we are obliged to bear all necessary expenditure for remedying the fault, particularly transport, route, labour and material costs as long as these do not increase because of the fact that the goods were taken to a place other than the place of fulfilment.

9. The period of warranty for claims and rights arising from defects in the goods supplied is one year. This period begins with delivery. Also § 8 and § 9 apply accordingly.

10. The limitation period in the case of goods being returned in accordance with §§ 478, 479 BGB remains unaffected. The customer only has return claims against us in accordance with §§ 478, 479 BGB insofar as the customer has not made any agreements with his buyer that go beyond statutory defect claims and the fault represents a fault in the relationship between us and the customer under the terms of § 377 HGB.

11. Claims for faults against us – irrespective of their legal basis – only apply to the direct customer and are not transferable.

§ 8 Liability

1. We assume liability for all damages culpably caused by us to the life, limb or health of an individual, for damages originating from negligent or grossly negligently acts on our part, for claims relating to the product liability law, for damages originating from guaranteed

characteristic features or a characteristic feature guaranteed by us in as far as this is specifically designed to protect against these forms of damage.

2. Should we violate through ordinary carelessness a contractual duty of which the observance is vital for the orderly performance of the contract and on which the contractual partner can regularly trust to be adhered to or is of particular significance for the fulfillment of the contractual purpose (cardinal obligation), we will undertake liability for damages ensuing from this violation according to legal regulations, but limited to foreseeable damages which could typically occur.

3. Moreover, there shall be no claim for damages against us regardless of the type of obligation infringement and regardless of the legal nature of the claim asserted. This applies in particular to damage claims arising from errors when the contract was concluded, because of other infringements of obligations or because of tortious claims for compensation for material damage in accordance with § 823 BGB [German Civil Code] and for claims for compensation for lost profits, saved or futile expenses, from third party damage claims and to other indirect damage and consequential damage.

4. If the liability for damages against us is excluded or restricted, this also applies with regards to the personal damage liability of our employees, staff, representatives and agents of vicarious liability.

5. There is no change in the burden of proof to the customer's disadvantage in any of the above liability regulations.

§ 9 Limitation period

1. The limitation period for all damage claims against us in connection with a defect is 1 year, regardless of the legal basis.

2. The limitation period for all damage claims of any sort not connected with a fault is 2 years.

3. The limitation periods as set out in nos. 1 and 2 do not apply:

a) In the event of malice aforethought or in cases of injury to life, the body, health or freedom, for claims under the Product Liability Act, for a grossly negligent obligation infringement or for an infringement of essential contractual obligations.

b) The limitation periods also do not apply if we maliciously keep a defect secret or have guaranteed the composition of the goods.

4. The limitation period begins with the transfer of risk for all claims.

5. If nothing is specified to the contrary, the legal regulations regarding the beginning of the limitation period, suspension of expiry, suspension and restarting the period remain unaffected by this.

6. There is no change in the burden of proof to the customer's disadvantage in any of the above regulations. § 8 No. 5 is correspondingly valid.

§ 10 Reservation of proprietary rights

1. Goods supplied remain our property until all payments from the business connection with the customer have been received.
2. Should the customer behave in a way that is contrary to the contract, in particular regarding default of payment, we shall be entitled to retrieve the goods. Should we retrieve the goods this does not entail withdrawing from the contract unless we had expressly declared this in writing. The customer shall bear any costs for the return (e.g. for transport, customs etc.). We shall be authorised to recycle returned goods. Any income from the recycling shall be set against the customer's debts less reasonable recycling costs.
3. The customer is obliged to treat the goods supplied with care. He must insure the goods against fire, water and theft for a sufficient replacement as new value at his own expense. If maintenance and inspection work is necessary, the customer shall carry this out at the right time at his own expense where the customer shall also bear the costs if the maintenance and inspection work is carried out by us during the reservation of proprietary rights.
4. The customer shall inform us in writing immediately of any third party access, in particular compulsory execution measures or other harm to our property. The customer shall compensate us for any damages and costs incurred by an infringement of this obligation and by necessary intervention measures against third party access.
5. The customer shall be entitled to resell the goods as a proper business transaction. However, he shall now transfer the amount of the final invoice (including VAT) of our claim from all accounts receivable arising from the resale to his buyers or third parties regardless of whether the goods supplied were sold with or without finishing. The customer is still authorised to collect this debt even after assignment. Our authority to collect the debt ourselves remains unaffected by this. However, we are bound not to collect the debt as long as the customer complies with his payment obligations from the income received, is not in arrears with payments and in particular, no application has been made to institute bankruptcy, composition or insolvency proceedings or payments have not been stopped. Should this be the case, however, we may demand that the customer discloses to us the assigned debts and the liable parties thereof, gives all the necessary information for collection, surrenders the associated documentation and informs the liable parties (third parties) of the assignment.
6. Finishing or remodelling the goods supplied is always carried out by the customer for us. Should the goods be finished or inextricably mixed with other items not belonging to us, we shall acquire co-ownership of the new article in the proportion of the value of the goods supplied (final invoice amount including VAT) to the other finished objects at the time of finishing or mixing. Should the mixture be such that the customer's item shall be considered the main item, it shall be considered agreed that the customer shall transfer co-ownership to us pro rata. The customer shall hold the sole or co-ownership thus arising for us. The same applies to items that have been finished or mixed as does to goods supplied under reservation of proprietary rights.
7. At the customer's request we shall be bound to release securities we are entitled to to the extent that the realisable value of our securities exceeds the debts to be secured by more than 20%. We shall be entitled to select the securities to be released.

§ 11 Other customer duties/obligations

1. The customer shall ensure that the goods are only resold to people who are familiar with the product dangers and risks.
2. Should the customer use the goods as part of his own product, he must comply with his warning and instruction obligation with regard to the goods supplied by us too when bringing the end product to the market.
3. Should the customer infringe the above obligations he shall release us from all third party claims arising against us therefrom.
4. Should the goods have been supplied in accordance with the customer's drawings and information and a third party's protection rights are infringed by this the customer shall release us from all claims in internal relations.

§ 12 Place of jurisdiction, applicable law, place of fulfilment

1. Should the customer be a businessman, our official place of business shall be the place of jurisdiction. However, we shall also be entitled to take action against the customer in his local court.
2. The law of the Federal Republic of Germany applies. The United Nations' Convention on contracts for the international purchase of chattels (UN Purchasing Law) does not apply. This also applies should the customer be a foreigner or have his registered office abroad.
3. The language of the contract is German. The German version of the contractual wording and these general conditions is the determining factor. This also applies should the customer be a foreigner or have his registered office abroad.
4. Should there be nothing to the contrary in the order confirmation, our business location shall be the place of fulfilment for all contractual and legal claims.