



## General Terms and Conditions of Sale and Payment ("GTS")

Correct as of July 2021

### Article 1 Validity

(1) All deliveries, services and offers of HEIS – Hargreaves-EWT Industrieservices GmbH (hereafter referred to as "HEIS") are provided exclusively on the basis of these General Terms and Conditions of Sale and Payment ("GTS"). These form an integral part of all contracts concluded by HEIS with its contractual partners (hereafter referred to as the "Customer") for the supplies or services offered by HEIS, in particular for solid and liquid fuels and combustible materials, as well as minerals and other ancillary services associated with them. They shall also apply to all future deliveries, services or offers to the Customer, even if not expressly agreed again.

(2) Terms and conditions of the Customer or third parties shall not apply, even if HEIS does not expressly object to their validity in each case. Even if HEIS refers to a document or correspondence that contains or refers to the terms and conditions of the Customer or a third party, this shall not be deemed to indicate acceptance of the validity of their terms and conditions.

(3) The offers submitted by HEIS are subject to change. All oral agreements, undertakings, assurances and guarantees made by employees in connection with the conclusion of the contract shall only become binding upon written confirmation by HEIS.

(4) Unless otherwise agreed in writing, the Incoterms as amended from time to time shall apply in addition and subordinate to the GTS.

### Article 2 Prices

(1) Prices are quoted ex works or ex warehouse of HEIS plus freight and statutory VAT, and in the case of export deliveries plus customs duty as well as fees and other public charges. Insofar as a Customer located outside the EU (or its representative) collects goods on which duty has been paid within the EU or transports or dispatches them to a non-EU country, the Customer must provide the required proof of export. Insofar as this is not provided, the Customer shall pay the VAT that is legally owed by HEIS for these deliveries. In the case of deliveries of EU duty-paid goods from one EU member state to other EU member states, the Customer shall disclose the VAT identification number under which it carries out the purchase taxation within the EU. Otherwise, in addition to the agreed purchase price, the Customer shall pay the VAT amount legally owed by HEIS for the deliveries.

(2) Insofar as the delivery is to be carried out more than four months after the conclusion of the contract, HEIS reserves the right to increase the agreed price for quantities that have not yet been delivered if, due to a change in the prices of raw materials or the economic situation, circumstances arise that make the manufacture and/or purchase of the product concerned more than 10% more expensive than the prices agreed at the time. In this case, HEIS' list prices which are valid at the time of delivery shall apply (less any agreed percentage or fixed discount). The Customer may withdraw from the contract within two weeks after notification of the price increase.

### Article 3 Payment and Offset

(1) Unless otherwise agreed or stated in the invoices, the purchase price shall be due and payable immediately after delivery without deduction. The costs of payment transactions shall be borne by the Customer.

(2) Insofar as the dispatch from the shipping point or the shipment itself cannot take place due to missing instructions or documents, or if delivery is delayed for other reasons for which HEIS is not responsible, the full invoice amount shall become due on the 15th day of the month following the notification of readiness for dispatch. In cases where a letter of credit has been opened, the Customer shall be obliged to amend the terms of the letter of credit accordingly.

(3) Insofar as the payment deadline is exceeded or in the event of default, HEIS shall charge interest at a rate of 8 percentage points above the base interest rate, unless a higher interest rate has been agreed. HEIS reserves the right to claim further damages caused by delay.

(4) Offsetting against counterclaims of the Customer or the retention of payments due to such claims shall only be permissible insofar as the counterclaims are undisputed or have been legally established or arise from the same order under which the delivery in question was carried out.

(5) HEIS is entitled to perform or render outstanding deliveries or services only in return for advance payment or the provision of security if, after the conclusion of the contract, circumstances become known that cast doubt on the creditworthiness of the Customer and as a result of which payment appears to be at risk.

(6) Generally, no cash discount shall be granted. A cash discount that has nevertheless been agreed in writing shall strictly relate to the invoice value excluding freight, fees or charges and shall presuppose the full settlement of all due liabilities of the Customer at the time of the discount.

### Article 4 Execution of Deliveries, Delivery Periods and Delivery Dates

(1) The notified delivery date shall always be approximate unless it has been guaranteed in writing as binding. It shall be subject to factors such as correct and timely self-delivery, unless the incorrect or delayed self-delivery has been caused by HEIS.

(2) Delivery periods shall commence on the date of order confirmation and shall only apply subject to the condition that all details of the order are clarified in good time and that all obligations of the Customer are fulfilled in good time, e.g. provision of all official certificates, letters of credit and guarantees or the payment of deposits.

(3) Force majeure events shall entitle HEIS to postpone delivery for the duration of the hindrance and a reasonable start-up period thereafter. This shall also apply if such events occur during an existing delay. Force majeure shall include monetary, trade policy and other sovereign measures, strikes, lockouts, operational disruptions for which HEIS is not responsible (e.g. fire, machine or roller breakage, a shortage of raw materials or energy), obstruction of the transport routes, delays in import/customs clearance, official closure orders/restrictions and all other circumstances which, through no fault of HEIS, make deliveries significantly more difficult or impossible. It is irrelevant whether these circumstances occur at HEIS, the supplying plant or a sub-supplier. Insofar as the execution of the contract becomes unreasonable for one of the contracting parties due to the aforementioned events – and in particular if the execution of the contract is delayed in essential parts by more than 6 months – either party may declare its withdrawal from the contract.

(4) HEIS shall be entitled to make partial deliveries if

- the partial delivery can be used by the Customer within the scope of the contractually intended purpose,
- the delivery of the remaining ordered goods is assured, and
- the Customer does not incur any significant additional work or costs as a result (unless HEIS declares its willingness to assume these costs).



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(5) Insofar as HEIS is in default with a delivery or service or a delivery or service becomes impossible, irrespective of the reason, HEIS' liability for damages shall be limited in accordance with the following Article 11 of the GTS.

### **Article 5 Reservation of Title**

(1) The following agreed reservation of title serves as security for all current and future claims of HEIS against the Customer that arise from the supply relationship which exists between the contracting parties (including balance claims from a current account relationship that is limited to this supply relationship).

(2) The goods delivered by HEIS to the Customer shall remain the property of HEIS until the full payment of all secured claims. The goods referred to above, as well as the goods covered by the retention of title which take their place in accordance with the following provisions are hereafter referred to as the "goods subject to retention of title".

(3) The Customer shall store the goods subject to retention of title free of charge on HEIS' behalf.

(4) The Customer shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business until the occurrence of the enforcement event (para. 9). Pledges and transfers by way of security are not permitted.

(5) Insofar as the goods subject to retention of title are processed by the Customer, it is hereby agreed that the processing shall be carried out in the name and for the account of HEIS as the manufacturer and that HEIS shall acquire direct ownership or – if the processing is carried out using materials belonging to more than one owner or the value of the processed item is higher than the value of the goods subject to retention of title – co-ownership (fractional ownership) of the newly created item in the proportion of the value of the goods subject to retention of title to the value of the newly created item. In the event that no such acquisition of ownership by HEIS should occur, the Customer hereby assigns its future ownership or – in the above-mentioned proportion – co-ownership of the newly created item to HEIS as security. Insofar as the goods subject to retention of title are combined or inseparably mixed with other items to form a single item and one of the other items is to be considered the main item, HEIS shall – to the extent that the main item belongs to HEIS – transfer pro rata co-ownership of the single item to the Customer in the proportion specified in paragraph 1.

(6) In the event of the re-sale of the goods subject to retention of title, the Customer hereby assigns to HEIS by way of security the resulting claim against the purchaser – and in the event of HEIS' co-ownership of the goods subject to retention of title – in the proportion of the co-ownership share. The above shall also apply to other claims that take the place of the goods subject to retention of title or otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims in tort in the event of loss or destruction. HEIS hereby revocably authorises the Customer to collect the claims assigned to HEIS in its own name. HEIS shall only revoke this collection authorisation in the event of enforcement.

(7) Insofar as third parties gain access to the goods subject to retention of title, in particular by way of seizure, the Customer shall immediately draw their attention to HEIS' ownership and inform HEIS thereof. The Customer shall indemnify HEIS for any judicial or extrajudicial costs incurred by HEIS in this connection upon first request.

(8) HEIS shall release the goods subject to retention of title as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. The selection of items to be released accordingly shall be at HEIS' discretion.

(9) Insofar as HEIS withdraws from the contract in the event of a breach of contract by the Customer (event of enforcement) – in particular default of payment – HEIS shall be entitled to demand the return of the goods subject to retention of title.

### **Article 6 Quality, Dimensions and Weights**

(1) All information such as dimensions, weights, illustrations, descriptions, assembly sketches and drawings in sample books, price lists and other printed matter are only approximate – albeit determined to the best of HEIS' ability – but shall not be binding on HEIS in this respect. The above shall also apply to details of the works. Models and drawings shall remain the property of HEIS. The quality and dimensions shall be determined in accordance with the DIN/EN/UIC and DB standards or material specifications applicable at the time of conclusion of the contract or, in the absence of such, in accordance with commercial practice. References to standards, factory standards, material specifications or test certificates, as well as information on goods, dimensions, weights and usability are not assurances or guarantees. This shall also apply to declarations of conformity, manufacturer's declarations and corresponding marks such as CE and GS (geprüfte Sicherheit – tested for safety).

(2) The weighing process carried out by HEIS or its sub-suppliers shall be authoritative with respect to the weights. Proof of weight shall be provided by presentation of the weighing slip. Insofar as this is legally permissible, weights can be determined without weighing according to standard. The surcharges and discounts (commercial weights) which are customary in the steel trade of the Federal Republic of Germany shall remain unaffected. The quantities, bundle numbers or the like stated on the dispatch note are non-binding. Unless individual weighing is customary, the total weight of the consignment shall apply in each case. Differences compared to the calculated individual weights shall be distributed proportionately among them.

### **Article 7 Acceptance**

Insofar as acceptance is required, the purchased item shall be deemed to have been accepted if

- the delivery and – if HEIS is also responsible for installation – the installation has been completed,
- HEIS has notified the Customer of this and requested acceptance,
- twelve working days have passed since delivery or installation or the Customer has started to use the purchased item (e.g. has re-sold or consumed the delivered goods) and in this case seven working days have passed since delivery or installation, and
- the Customer has failed to carry out the acceptance procedure within this period for a reason other than a defect notified to HEIS which makes the use of the purchased item impossible or significantly impairs it.

### **Article 8 Shipment, Transfer of Risk, Packaging, Partial Delivery**

(1) HEIS shall determine the method of dispatch.

(2) Insofar as the dispatch by the intended route or to the intended destination within the intended time is more than insignificantly hindered, HEIS shall be entitled to deliver by another route or to another location; the additional costs incurred shall be borne by the Customer, unless HEIS is responsible for the hindrance. The new shipping modalities shall be agreed between the parties.

(3) The risk, including the risk of seizure of the goods, shall pass to the Customer for all transactions, including carriage paid and free domicile deliveries, when the goods are handed over to a forwarding agent or carrier, but no later than at the time the goods leave the warehouse or the supplying plant. The goods shall only be insured at the instruction and expense of the Customer.



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(4) The goods shall be delivered unpacked and not protected against rust, unless they are packaged in a manner which is customary in the trade. We shall provide packaging, protective and/or transport aids at the Customer's expense; these shall be taken back at the delivery warehouse. The costs for return transport or our own disposal of packaging shall be borne by the Customer.

### **Article 9 Call-off Orders**

(1) In the case of call-off orders, goods which have been reported as ready for dispatch must be called off without delay. In the event of delayed call-off, HEIS shall be entitled to dispatch goods at the expense and risk of the Customer or to store them at the Customer's expense.

(2) In the case of contracts with continuous delivery, call-offs and grading for approximately equal monthly quantities shall be ordered; otherwise, HEIS shall be entitled to determine such aspects itself at its reasonable discretion.

(3) Insofar as the individual call-offs exceed the contractual quantity overall, HEIS shall be entitled – but not obliged – to deliver the excess quantity. Excess quantities shall be invoiced at the prices that apply at the time of call-off or delivery.

### **Article 10 Liability for Material Defects**

(1) Any delivery of used items agreed with the Customer shall be carried out to the exclusion of any warranty for material defects. For all other items, the Customer shall have warranty claims according to the following conditions.

(2) The warranty period shall be one year from the time of delivery or, if acceptance is required, from the time of acceptance. This period shall not apply to claims for damages by the Customer due to injury to life, body or health or due to intentional or grossly negligent breaches of duty by HEIS or its vicarious agents. The statutory time limits shall apply to these.

(3) Goods shall be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer. The goods shall be deemed to have been approved by the Customer with regard to such defects that would have been identifiable upon immediate, careful inspection if HEIS does not receive any written notice of defect within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer if HEIS does not receive a notice of defect within seven working days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier time during normal use, this earlier time shall be decisive for commencement of the period for notification of the defect. Upon request, a defective delivery item shall be returned to HEIS carriage paid. In the event of a justified complaint, HEIS shall reimburse the costs of the most favourable shipping route; this shall not apply insofar as the costs increase because the delivery item is located at a place other than the place of intended use.

(4) In the event of material defects, HEIS shall initially be obliged and entitled to rectify the defect or to carry out a replacement delivery within a reasonable period of time. In the event of impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the Customer may withdraw from the contract or reduce the purchase price to a reasonable extent.

(5) Insofar as a defect is due to a fault on the part of HEIS, the Customer may claim damages under the conditions set out in this Article 11.

(6) In the event of defects in components of other manufacturers which HEIS cannot remedy for licensing or factual reasons, HEIS shall, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. In the event of such defects, warranty claims against HEIS shall exist according to the other preconditions and in accordance with these GTS only if the legal enforcement of the aforementioned claims against the manufacturer and supplier has been unsuccessful or is futile, e.g. due to insolvency. During the period of the legal dispute, the limitation period for the relevant warranty claims of the Customer against HEIS shall be suspended.

(7) The warranty shall not apply if the Customer modifies the delivery item or has it modified by a third party without the consent of HEIS and the rectification of the defect(s) becomes impossible or unreasonably difficult as a result. In all cases, the Customer shall bear the additional costs of remedying the defect(s) resulting from the modification.

### **Article 11 Liability for Damages due to Fault**

(1) HEIS' liability for damages, irrespective of the legal grounds, but in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, a breach of obligations during contractual negotiations and tort, shall be limited in accordance with the provisions of this Article 11, to the extent that fault is relevant in each case.

(2) HEIS shall not be liable in the event of simple negligence on the part of its bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in due time, its freedom from defects of title and from material defects that impair its functionality or fitness for use more than insignificantly, as well as advisory, protective and custodial obligations that are intended to enable the Customer to use the delivery item in accordance with the contract or are intended to protect the life and limb of the Customer's personnel or protect the Customer's property from significant damage.

(3) Insofar as HEIS is liable on merits for damages, this liability shall be limited to damage which HEIS foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which HEIS should have foreseen when exercising due care and attention. Indirect damage and consequential damage resulting from defects to the delivery item shall also be eligible for compensation only insofar as such damage is typically to be expected when the delivery item is used as intended.

(4) In the event of liability for simple negligence, HEIS' liability to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to the order value for each case of damage, even if this involves a breach of material contractual obligations.

(5) The above exclusions and limitations of liability shall apply to the same extent in favour of HEIS' bodies, legal representatives, employees and other vicarious agents.

(6) Insofar as HEIS provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by HEIS, this shall be carried out free of charge and to the exclusion of any liability.

(7) The limitations of this Article 11 shall not apply to liability due to wilful conduct, to guaranteed characteristic features, to injury to life, limb or health or under the German Product Liability Act (ProdHaftG).



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### **Article 12 Place of Jurisdiction, Applicable Law, Written Form**

(1) Insofar as the Customer is a merchant, a legal entity under public law or a special fund under public law or if the Customer has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between HEIS and the Customer shall, at the option of HEIS, be Duisburg or the registered office of the Customer. However, Duisburg shall be the exclusive place of jurisdiction for legal action taken against HEIS in such cases. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relationship between HEIS and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The "Provisions of the Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG)" shall not apply.

(3) Insofar as these GTS require declarations by the contracting parties to be in writing, the text form shall suffice in each case.

### **Article 13 Severability Clause**

Insofar as individual provisions of these GTS are invalid in whole or in part, the remaining provisions hereof shall remain in full force and effect. The parties are hereby in agreement that the invalid provision shall be replaced by a valid provision which is reasonable for both contracting parties and which comes as close as possible in economic terms to the purpose intended by the invalid provision.