

1 General Terms and Conditions

HEINKEL Process Technology GmbH
Ferdinand-Porsche-Str. 8
D-74354 Besigheim, Germany

- hereinafter referred to as HEINKEL -
General Terms and Conditions / Terms of Delivery 09/2020

1. Validity, Scope

1.1

The following General Terms and Conditions shall apply to all supplies and services provided by HEINKEL as seller and supplier to companies and/or legal entities under public law (hereinafter also referred to as **Purchaser**). They also apply to ongoing contracts without express agreement.

1.2.

Unless expressly agreed otherwise in an individual contract, goods are supplied by HEINKEL exclusively on the basis of the following conditions. Deviating and/or supplementary General Terms and Conditions of Customers/Purchasers shall not apply. HEINKEL hereby expressly vetoes these. Even the unconditional delivery of goods by HEINKEL does not constitute an acknowledgement of the General Terms and Conditions of the Customer/Purchaser which deviate from or supplement these General Terms and Conditions.

1.3.

HEINKEL reserves the right to amend or supplement the following General Terms and Conditions at any time. Modifications and/or additions shall have no influence on existing legal transactions and are therefore only valid for contracts concluded from the time of updating/amendment.

2. Offer by HEINKEL and the Purchaser, conclusion of contract

2.1.

Offers by HEINKEL shall be made without obligation pending acceptance. If the offer is not accepted by the Purchaser within 14 days, this shall also be deemed a rejection of the offer. In this case, HEINKEL is no longer bound by the offer. If the offer is submitted on the basis of documents issued by HEINKEL (illustrations, drawings, including dimensions), such documents shall only be deemed to be binding if this is explicitly stated in the offer. HEINKEL expressly 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 HEINKEL.

2.2.

Offers or enquiries from **Purchasers** for the preparation of an offer by HEINKEL are not binding. HEINKEL submits a binding offer to the Purchaser in text form, which the Purchaser can accept with binding force within 14 days of the offer being sent. If the offer from HEINKEL is not accepted by the Purchaser within the term specified, this shall also be deemed a rejection of the offer. In this case, HEINKEL is no longer bound by its offer.

2.3.

Unless otherwise agreed, a contract shall be formed upon written confirmation of order by HEINKEL or the Purchaser's acceptance of the offer.

2.4.

HEINKEL 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. This does not constitute a defect.

3. INCOTERMS

References to INCOTERMS always refer to INCOTERMS 2020, whereby in the event of a conflict with these conditions, these conditions alone shall prevail.

4. Price and payment

4.1.

Prices are non-binding. Prices are stated in euros ex HEINKEL's works, inclusive of loading at the works but exclusive of packaging, transport insurance and statutory value-added tax. Irrespective of this, HEINKEL's prices **never** include value-added tax, customs duties, levies or other taxes and charges in the country of destination. Partial deliveries shall be invoiced separately. The performance of installation work is not included in the price and 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 6.7.

4.2.

Payment may only be withheld or offset against claims which are uncontested or against which no legal recourse is possible.

4.3.

Unless expressly agreed otherwise in an individual contract, 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 and confirmation by separate invoice,

40% of the full contract price after receipt of major parts at HEINKEL's production facilities on proof of delivery, 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 from HEINKEL's production facilities, by separate invoice.

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

4.4.

a)

If the Purchaser defaults on payment, HEINKEL shall – notwithstanding further claims – be entitled to demand interest on arrears at a rate of 10% per annum. The rate of interest on arrears shall be higher or lower if HEINKEL has suffered higher costs or the Purchaser is able to demonstrate lower costs.

b)

Should the Purchaser fail to honour its payment obligations in whole or part or should HEINKEL 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 HEINKEL to require advance payment or provision of collateral for the performance of any outstanding supplies and services or to withdraw from the contract.

5. Dispatch

5.1.

If the Purchaser wishes the ordered goods to be shipped, this shall be done from the registered office of HEINKEL at the expense and risk of the Purchaser. In the absence of special agreements, HEINKEL shall be free to choose the transport company and the means of transport. The risk shall also pass to the Purchaser upon dispatch from the registered office of HEINKEL, even if carriage paid delivery has been agreed.

5.2.

If dispatch is delayed due to circumstances for which the Purchaser is responsible, the risk shall pass to the Purchaser as soon as the goods are ready for dispatch. The costs arising from the delay (in particular storage costs) shall be borne by the Purchaser.

5.3.

Unless agreed otherwise in an individual contract, HEINKEL shall not be obliged to insure the consignment or have it insured against transport damage, unless a corresponding obligation has been assumed by HEINKEL in writing.

6. Delivery period

6.1.

The delivery period shall be agreed separately by the contracting parties and presupposes the timely and proper fulfilment of the obligations of the Purchaser, such as the provision of the documents and approvals to be procured by the Purchaser, the timely provision of any necessary sample material, approvals and the payment of an agreed advance payment. HEINKEL expressly reserves the right to the defence of non-performance of the contract.

6.2.

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 of the goods 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.

6.3.

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 as well as delivery delays or wrong deliveries due to sub-suppliers, the delivery period shall be extended accordingly. HEINKEL shall notify the Purchaser of the onset and termination of such circumstances as soon as possible.

6.4. Definition of force majeure and its consequences for the delivery:

a)

All foreseeable and unforeseeable events which are beyond the reasonable control and influence of the parties and which affect the execution of the contract through no fault of the parties, such as official measures, changes in the law, strikes, lock-outs or other industrial action, terrorism, wars, riots, civil disturbances, epidemics, pandemics (in particular pursuant to the currently valid infection protection law), lightning, earthquakes, fire, storms, natural forces, floods, sabotage, delays caused by transport for which HEINKEL is not responsible, non-availability of means of transport, non-availability of loading or unloading facilities, impossibility of obtaining labour or materials from the usual sources, serious accidents at the company HEINKEL or its subcontractors, theft, explosions, etc shall be considered as cases of force majeure.

b)

Each party is entitled to interrupt or restrict its activities to the extent that it is hindered or impaired in its performance due to force majeure (with the exception of the obligation to make payments), provided that the impaired party has immediately informed the other party of this delay in writing (e.g. e-mail or fax). The obligations of the affected party will then be interrupted or limited for the duration of the force majeure and for the time necessary to resume work.

The schedules shall be adjusted accordingly as a result of these delays. Should the delay or reduction of the contractual obligations continue for a period of more than ninety (90) days, the parties shall discuss how to proceed and shall attempt to reach an agreement within thirty (30) days.

If such interruption or restriction of activities exceeds 180 consecutive days or a total of more than 6 months within a 12-month period, both the Buyer and the Seller are entitled to terminate the agreement in writing. No claims can be made for breach of contractual obligations caused by force majeure. All claims and costs incurred prior to the occurrence of force majeure shall be maintained and may be offset against any existing obligations.

The total price and delivery dates in this contract do not take into account the impact of a pandemic (in particular the COVID 19 pandemic) or government measures in reaction to such. Should such effects or government measures at HEINKEL result in additional costs or delays in the execution of the contract, HEINKEL shall immediately inform the Purchaser of such effects and take all reasonable measures to minimize such effects as far as possible. As soon as information is available, HEINKEL shall provide the Purchaser with a detailed statement of all additional costs and effects on the delivery time. The parties shall agree in good faith on reasonable compensation and extension of the delivery time.

Furthermore HEINKEL is entitled to additional costs and/or delivery time extensions, which

- (a.a) are caused by the default of the Purchaser and/or
- (b.b) arise as a result of a change in the law, including any instructions / restrictions due to governmental measures, from the date of HEINKEL's offer and influence the execution of the contract.

Should an extension of the delivery period due to force majeure become unreasonable for the Purchaser and should partial deliveries be of no interest to the Purchaser, the Purchaser shall have the right to withdraw from the contract, provided that the Purchaser shall bear the costs incurred by HEINKEL as a result of the withdrawal from the contract or shall reimburse it for such costs.

Claims for damages cannot be asserted against HEINKEL in cases of force majeure.

6.5.

In all other cases, in the event of a delay in delivery for which HEINKEL is responsible, the Purchaser shall only be entitled to assert claims for damages caused by delay after a period of grace of at least three weeks set by the Purchaser in writing after the occurrence of the delay has expired without result.

6.6.

In the event of default of acceptance or other culpable breach of duties to cooperate on the part of the Purchaser, HEINKEL shall be entitled to compensation for the resulting damage. Further claims are expressly reserved. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser at the time of default of acceptance.

6.7 Special conditions for deliveries with assembly obligation of HEINKEL

a)

The costs incurred by HEINKEL 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

also be reimbursed by the Purchaser. HEINKEL shall choose the most economic means of transport available in each individual case.

b)

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 lit and adequately heated.

c)

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.

d)

Unless agreed otherwise in writing in an individual contract, the Purchaser shall provide the following at its own expense and make it available in good time:

- (a.a) sufficient numbers of ancillary personnel and skilled workers as assessed by HEINKEL and previously communicated to the Purchaser;
- (b.b) the equipment and auxiliary materials required for the purpose of assembly/installation and commissioning;
- (c.c.) loading and unloading of transport vehicles and the transport of items from the delivery location to the assembly/installation location.

7. Transfer of risk

Unless agreed otherwise in writing in an individual contract, the risk shall pass to the Purchaser upon dispatch of the goods to the Purchaser at the latest, including in those cases in which partial deliveries, i.e. partial shipments, are made or in which HEINKEL 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 the date of acceptance. At the request and cost of the Purchaser, the delivery shall be insured by HEINKEL against theft, breakage, transport, fire and water damage and other insurable risks.

Should dispatch be delayed for reasons for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day on which the Purchaser was notified in writing of the readiness for dispatch; however, HEINKEL shall obtain requisite insurance cover at the request and cost of the Purchaser. Without prejudice to the rights in Clause 8, delivered items shall be accepted by the Purchaser even if they have immaterial defects. Partial deliveries shall be allowed.

The conditions of Clause 6.6. in the event of default of acceptance by the Purchaser remain unaffected.

8. Warranty

8.1.

Prerequisite for any warranty rights of the Purchaser is the Purchaser's proper fulfilment of all inspection and complaint obligations owed pursuant to § 377 HGB (German Commercial Code).

Notices of defects are only recognised as such by HEINKEL if they have been notified in writing. Complaints made to field staff or transporters or other third parties do not constitute complaints in due form and time.

Furthermore, warranty rights are excluded if:

- a) the delivery item was not operated and maintained with **Heinkel Process Technology GmbH** original spare and wear and tear parts;
- b) the Purchaser has failed to have the delivery item operated and maintained by qualified and trained personnel or in accordance with the operating and maintenance instructions of HEINKEL handed over to the Purchaser;
- c) the delivery item has been operated in connection with a mixture, substance or under deviating operating conditions for which the scope of delivery was not developed;
- d) the Purchaser has continued to operate the plant/machine despite the obvious defect and thereby aggravated the defect;
- e) the delivery item has been repaired by a third party without prior notification of the defect to HEINKEL and without granting HEINKEL the right to rectify or repair the defect;
- f) defects have arisen solely as a result of the material or design provided or prescribed by the Purchaser;
- g) the delivery item is a used part ("used machine") purchased on the condition "bought as seen".

Deterioration of the delivery item due to erosion, corrosion, wear and tear is excluded from the warranty in any case; wearing parts as well as reused or reconditioned parts are completely excluded from the warranty.

8.2.
Should it be necessary to return the goods in the event of a defect, this can only be done with the prior consent of HEINKEL, otherwise the return shipment need not be accepted by HEINKEL. Furthermore, in this case the Purchaser shall bear the costs of return.

8.3.
In the event that a justified notice of defect is followed by rectification or replacement delivery, the provisions on delivery time shall apply accordingly.
In the case of an established defect and its effective notice of defect, the Purchaser is entitled to the following legal claims:

- a) in the event of defective goods, the Purchaser shall initially have the right to demand subsequent performance from HEINKEL, whereby the right to choose whether a new delivery of the goods or a rectification of the defect shall take place shall be at the discretion of HEINKEL;
- b) furthermore, HEINKEL has the right, in the event of a first unsuccessful attempt at subsequent performance, to undertake repeated subsequent performance, again at its own discretion. Only if the repeated subsequent performance also fails does the Purchaser have the right to withdraw from the contract or reduce the purchase price.

The Purchaser can only claim damages or compensation for futile expenses in cases of grossly negligent or intentional violation of the obligation to deliver the defect-free goods. The Purchaser must provide evidence of the reason and amount of the damage incurred. The same applies in the event of the assertion of futile expenses.

8.4.
Warranty claims can only be asserted within 12 months of the transfer of risk. In all cases, the Purchaser must prove that the defect was already present at the time of delivery.

9. Liability for breaches of duty by HEINKEL in other respects

9.1.
Without prejudice to the conditions concerning the warranty, the following shall apply in all cases of a breach of contractual obligations by HEINKEL:

- a) the Purchaser shall grant HEINKEL a reasonable period of grace for the rectification of the breach of duty, which shall not be less than three weeks. Only after an unsuccessful expiry of the period for subsequent performance may the customer withdraw from the contract and/or claim damages;
- b) the Purchaser may only claim damages in cases of gross negligence or intentional breach of duty by HEINKEL. Insofar as there is no intentional breach of contractual obligations, the liability of HEINKEL for damages shall be limited to the foreseeable, typically occurring damage;
- c) if the Purchaser is solely or predominantly responsible for circumstances which would entitle him to withdraw from the contract, or if the circumstance entitling him to withdraw from the contract occurred during the Purchaser's default of acceptance, withdrawal is excluded.

9.2.
Unless expressly regulated otherwise above, the liability of HEINKEL is excluded.

9.3.
Liability for culpable injury to life, body or health, and liability under the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

10. Retention of title

10.1
All supplies shall remain the property of HEINKEL pending full settlement of all claims against the Purchaser arising from the business relationship, regardless of their legal standing. If HEINKEL has assumed contingent liabilities in the interest of the Purchaser, all additional supplies shall remain the property of HEINKEL 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 HEINKEL's debit balance.

10.2.
If goods subject to reservation of title are joined with goods which are not the property of HEINKEL, HEINKEL 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 HEINKEL 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.

10.3.
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 HEINKEL, 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 HEINKEL. HEINKEL hereby accepts such assignment. If the resold goods are co-owned by HEINKEL, the assignment of claims shall extend to the amount which corresponds to HEINKEL'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 HEINKEL 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.

10.4.
HEINKEL shall authorise the Purchaser, subject to revocation, to collect the claims assigned to the Supplier provided that the Purchaser honours its payment obligations to HEINKEL. At the request of HEINKEL, 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 default of payment on the part of the Purchaser, HEINKEL shall be entitled to disclose such assignment to the relevant debtors itself and to exercise its right to collect such receivables.

10.5.
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 HEINKEL. HEINKEL hereby accepts such assignment.

10.6.
Should the Purchaser act in breach of contract, particularly in the event of default in payment, HEINKEL 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 HEINKEL to terminate the contract and to demand immediate surrender of the delivery item.

In the event of seizure of the goods at the premises of the Purchaser, HEINKEL is to be informed immediately, by sending a copy of the execution protocol, that the seized goods are the goods delivered by HEINKEL and are subject to reservation of title. At the same time the Purchaser shall also be obliged to disclose HEINKEL's reservation of title to its execution creditor.

11. Non-disclosure/confidentiality

The information disclosed by HEINKEL in connection with this business transaction contains confidential and protected data of HEINKEL, of both technical and commercial nature. The Purchaser undertakes not to pass on this information to third parties without the prior written consent of HEINKEL. The Purchaser shall, under no circumstances, permit third parties to manufacture the scope of supply or parts thereof on the basis of drawings and documents of HEINKEL. The Purchaser shall use the drawings and documents prepared by HEINKEL exclusively in connection with this business transaction. All drawings, know-how, documents, etc. remain the intellectual property of HEINKEL and may be reclaimed by HEINKEL at any time.

12. Other/miscellaneous

Each party shall be entitled to terminate the contract without notice in the event that the other party has become insolvent and/or has applied for the opening of insolvency proceedings or insolvency proceedings have been opened against it or the opening of such proceedings has been refused due to lack of sufficient assets.

Any software supplied by HEINKEL is provided on the basis of a non-exclusive and non-transferable software licence. The Purchaser acknowledges that HEINKEL makes partial use of third-party software products, which may be subject to further restrictions.

13. Place of jurisdiction

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

14. Applicable law, language

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

The exclusive contractual language is German. This agreement was prepared in German and this is an English translation of the original German. In the event of any inconsistency, the German version shall apply and be binding upon the parties.