

1 General terms

These conditions shall form an integral part of all offers and agreements for the sale of goods entered into by HPI – High Performance Industrietechnik GmbH. Any condition put forward by the Buyer in its order or otherwise will only have effect if accepted by HPI in writing.

1.1 Offer and Conclusion of contract

The documents, such as illustrations, drawings, weights and dimensions specified are only approximately relevant unless they have been expressly deemed binding.

The right of ownership and copyright in respect of cost estimates, drawings and other documents shall remain with us; these may not be used or made available to third parties without our express approval. The same shall apply to other technical details which are obtained from our delivery or which we reveal to the customer in the quotation, in other correspondence or during negotiations.

All our quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for us only when we have confirmed acceptance in writing.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with our written confirmation.

1.2 Payment and Security

Payments must be made within a period of 30 days without deductions from date of invoice.

The ordering party is under no circumstances entitled to exercise a right of retention, not even if he has objections to the delivery item. If the agreed payment dates are exceeded, we can without the need for a special notice of default demand interest and commissions according to the legal bank rates for short term loans. This shall not exclude the assertion of a further claim for damages in the event of delay on the part of the Buyer. We can withdraw from the contract soon after an appropriate grace period set by us has also expired unsuccessfully.

We have the right to request security from the ordering party at all times for our demands, insofar as sufficient security has not been provided or is no longer available.

1.3 Duties, taxes, etc.

Our prices do not allow for any local taxes, import duties, fees, levies or other charges which may be brought on by authorities in the buyers country or any transit country. Such charges shall be borne and paid for by the buyer. All taxes and duties imposed by the government of the buyer has to be born and paid by the buyer.

1.4 Delivery

The agreed delivery clauses shall be interpreted in line with the INCOTERMS valid at the time of conclusion of the contract.

Should the contract not contain any specific delivery clauses, the subject of delivery shall be deemed to have been delivered “ex works” (EXW). Cost for packing will be paid by ordering party.

Part deliveries are unless otherwise agreed permitted.

The delivery period depends on the agreements among the contracting parties.

The prerequisite for meeting the delivery dates is that all commercial and technical queries between the contracting parties must be clarified. If this is not the case, the delivery period shall be extended accordingly.

The delivery period commences with the dispatch of the order acknowledgement, however not before the furnishing of the documents and approvals to be provided by the ordering party, furthermore, not before receipt of the agreed downpayment. The delivery dates are deemed met according to agreement if the delivery item has left the works or notification of readiness for shipment has been submitted by the time of expiry of the delivery period.

The delivery period shall be extended accordingly in the event of unforeseeable hindrances occurring which are beyond our control, regardless of whether they occur in our works or in the works of our supplier, e.g. operating malfunctions or delays in the supply of essential raw and construction materials, insofar as such hindrances influence the completion of delivery of the delivery item. We shall also not be responsible for the aforementioned circumstances if and when they occur during a delay that has already occurred. Events that adequately extend the delivery period are also measures within the scope of industrial action, in particular strikes and lockouts.

1.5 Passage of risk and receipt

The risk shall be passed to the ordering party at the latest with placing the parts at the ordering party's disposal of the delivery parts and also if partial shipments are made or if we take on other services, e.g. the shipment costs or transportation and erection/assembly. At the ordering party's request, we shall insure the consignment at his expense against damage caused by breakage, transport, fire and water.

If shipment is delayed as a result of circumstances attributable to the ordering party, we have the right to store the delivery item or have it stored by others at the ordering party's expense and risk at our discretion. Payment milestone dates shall not be affected by a delay in shipment. We have the right to set the ordering party a grace period by acceptance and, in the event of unsuccessful expiry of said grace period to withdraw from the contract or, to use the delivery item for other purposes. The ordering party must reimburse the damage hereby incurred. The ordering party has to take delivery of the goods, even if they have defects.

A special examination or acceptance can be demanded by both parties only on the basis of an agreement in this respect. The ordering party shall bear the costs of the test of acceptance. Incidentally passage of risk and receipt shall be effected according to Incoterms 2010 as well as to the valid rules for uniform interpretation of contract clauses of the International Chamber of Commerce Paris, 2010

1.6 Reservation of ownership

Ownership of the delivery of goods shall pass to the ordering party only after receipt of all payments from this contract with the ordering party.

From the time of delivery to the transfer of ownership, the ordering party must insure the delivery items against any infringement up to the full value. The ordering party shall inform us immediately in case of seizure or any other infringement of our rights by third parties.

Insofar as the validity of the reservation of ownership is linked to formalities or other preconditions or is legally not possible outside the Republic of Austria, the ordering party shall ensure that a corresponding security is granted to us.

1.7 Commissioning

HPI shall carry out and complete commissioning of equipment, followed by a commissioning / acceptance certificate, to be issued by the company in due course.

Commissioning and delivery shall also be understood to have been effected whenever the equipment has first been put into production (has actually started to run production) resp. with first sellable product.

Minor shortcomings, which do not seriously impede operation of the plant shall not be a valid reason for refusing to sign the takeover/acceptance protocol. Such shortcomings shall be listed in a punch list, attached to the protocol, to be rectified by the seller in due time.

Delay in Acceptance Test:

If the Works comply in all respects with the Contract except for punch list Items, and:

- (a) if Indemnities of the ordering party or other contractors employed by the ordering party, prevent HPI from performing the Acceptance Test either in whole or in part; and
- (b) a period of 6 months has passed since the act of prevention first affected the Supplier (HPI)

then the ordering parties representative will issue the takeover/acceptance certificate effective as at the date upon which the Acceptance Test would have been completed but for such active prevention.

1.8 Warranty

a) We warrant that we have used first class materials in the delivery and that any work executed satisfies the customary requirements of proper workmanship. Consequently we warrant the equipment to be free of defects which would impair its functionality.

b) The warranty period begins when the equipment has started production. Duration of warranty period is 12 months from start of production but ends at the latest 18 months from day of shipment.

c) Of the direct expenses incurred by the rectification and/or substitute delivery, we shall bear – insofar as the objection proves to be justified – the costs of the replacement item, including shipment, as well as the appropriate costs of dismantling and installation; furthermore, we shall also bear the costs of providing fitters if necessary, if this can be reasonably demanded in the individual case. In all other cases, the ordering party shall bear the costs, in particular for auxiliary personnel, lifting equipment etc.

d) During the entire warranty period no changes to the control program software must be made by the buyer. The control program software is therefore protected by a password of the seller, which will promptly be supplied to the buyer at the end of the warranty period. Program changes desired by the buyer during the warranty period need to have the sellers consent, in order for the seller to assume its responsibilities under “Warranty”.

e) In case that the accomplishment of the warranty requires the presence of people from HPI on plant site HPI will supply these experts free of charge. The buyer will cover the cost for travel and accommodation.

f) Excluded from warranty are:

- ⇒ Parts exposed to special wear and consumables
- ⇒ All defects caused by mistakes on operation of the equipment or by wrong or insufficient maintenance.

Note:

For HPI to consider claims under warranty, any defects must be reported without undue delay of first occurrence.

1.9 Liability

Liability of HPI for indirect or consequential damages such as, but not limited to loss of production, loss of use, loss of profit, shutdown costs, loss of interest or other indirect costs and any resulting claims for damages, shall be excluded irrespective of the legal basis of the claim.

This exclusion of liability does not apply to illegal intent or gross negligence; however, it applies to illegal intent or gross negligence on the part of auxiliary personnel.

1.10 Force majeure

Neither party shall be liable to the other party for delay in performing or failure to perform its obligations if the delay or failure results from events or circumstances outside their reasonable control such as war, fire, labour disputes (including those initiated by a party of this agreement), trade disputes, refusals to grant licenses, with the exception for due payment. Such delay or failure shall not constitute a breach of this agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

If such a delay or failure persists for more than three months, either party shall be entitled to terminate this agreement to the extent of goods not yet delivered to the Buyer. In the event of such a termination, neither party will be entitled to any compensation, but any prepayment for goods not delivered shall be refunded and goods in transit not delivered shall be reverted.

1.11 Right to rescission

We can rescind the contract in full or in part, if it subsequently turns out that execution is impossible. A partial rescission is only possible if the ordering party is interested, solely for his own purposes, in that part of the agreed delivery that is not affected by the aforementioned circumstances.

The ordering party is not entitled to claim damages on account of such a rescission.

We shall, should we wish to make use of the right to rescission, inform the ordering party hereof immediately after finding out about the implications of the event, also if an extension of the delivery period had initially been agreed upon with the ordering party. The right to rescission is possible as well.

1.12 Secrecy agreement

The Buyer shall use the information and Know How received from the Seller in the form of technical drawings and documentation, in the form of instructions given by the Seller's personnel as well as in the form of the equipment purchased under this contract only for operation of the single plant that is subject of this contract. The Buyer confirms that he will keep all information and Know How obtained secret and not make it available to others. The Buyer confirms that in the future he will not design or manufacture or sell any HPI Plant and will take care that through him no other party may obtain the information and know-how necessary to design or manufacture or operate an HPI Plant.

1.13 Photographic and Video documentation

HPI has the right (in accordance with ordering party) to make photographs and video recording of the equipment supplied by HPI being in operation after commissioning.

1.14 Technical design of the equipment according to the latest technical know-how

HPI reserves the right to amend the technical design of the equipment, also after contract signature, according to latest technical know-how / developments / improvements, and to supply the modified equipment.

The guaranteed performance of the equipment is thereby not negatively affected.

1.15 Applicable law, Arbitration

In the event of different opinions or disputes out of or in connection with this contract or the equipment and services rendered thereunder the parties shall try to reach an amicable settlement.

If the parties cannot reach an agreement regarding a dispute within 4 weeks after notice of settlement, the parties hereby agree that any disputes, controversies or claims arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these rules. The arbitration court shall consist of a sole arbitrator. The seat of the arbitration shall be in Zurich. The language of the arbitral proceedings shall be English. Swiss substantive law (without recourse to any international private law rules or conflict of laws rules) shall be applicable.

1.16 Export control

This quotation is issued subject to assessment for clearance by the Austrian Federal Ministry of Economy in terms of export to your country of the quoted scope of supply (export control).

In the event that individual terms become effective, any remaining terms shall remain binding.