

# General Terms and Conditions of Sale (GTCS) of HECOSOL GmbH

Note: For the sake of simplification, HECOSOL GmbH is hereinafter referred to as HECOSOL. All personal designations used refer to male, female or various sexes.

## § 1 Scope of application

(1) These GTCS apply exclusively to entrepreneurs (Section 14 BGB (German Civil Code)), legal entities under public law or a special fund under public law within the meaning of Section 310(1) BGB (hereinafter referred to as "*Customer*").

(2) These GTCS shall apply exclusively; HECOSOL shall not recognise conflicting, supplementary or deviating terms and conditions of the customer unless HECOSOL has expressly agreed to their validity in writing. Counter-confirmations of the customer with reference to the customer's terms and conditions of business or purchase are hereby rejected. These GTCS shall also apply where HECOSOL carries out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from HECOSOL's GTCS.

(3) Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCS. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation by HECOSOL.

(4) Legally relevant declarations and notifications by the customer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formalities and other evidence, in particular in the event of doubt as to the legitimacy of the declarant, shall remain unaffected.

(5) Unless otherwise agreed, these GTCS shall also apply as a framework agreement to all future purchase contracts, without us having to refer to them again in each individual case.

## § 2 Offer and conclusion of contract

(1) All offers on the part of HECOSOL are subject to confirmation and non-binding.

(2) Cost estimates for installation costs / personnel costs / travel costs / surface treatment costs are also non-binding.

(3) The customer's order constitutes a binding contractual offer. A contract is only concluded when HECOSOL accepts such contractual offer. Unless otherwise agreed, HECOSOL shall be entitled to accept such contractual offer within two weeks after receipt of the offer. Timely dispatch of the acceptance shall suffice to meet the deadline. Acceptance may be declared either in writing (e.g. by order confirmation or invoice) or by delivery of the goods to the customer.

### **§ 3 Documents provided**

HECOSOL reserves ownership rights and copyrights to all documents, such as illustrations, drawings, calculations, etc., made available to the customer in connection with the commencement of contract negotiations. This shall also apply in particular to written documents which are designated as "*confidential*". No documents may be made accessible to third parties unless HECOSOL gives its express written consent to the customer to do so. If HECOSOL does not accept the customer's offer within the period specified in Article 2(3) hereinabove, the documents provided in the course of the contract negotiations shall be returned to HECOSOL unsolicited and without undue delay.

### **§ 4 Prices and payments**

(1) Unless otherwise agreed, all prices are "*ex works*", including loading at the works/warehouse, but excluding transport and transport insurance. The latter shall be invoiced separately. Any customs duties, fees, taxes and other public charges shall be borne by the customer.

(2) Statutory value-added tax is not included in the prices of HECOSOL; it will be shown separately on the invoice at the statutory rate on the day of invoicing.

(3) Unless otherwise agreed, the prices for all delivered goods are the list prices valid at HECOSOL on the day of the order.

(4) The purchase price is due and payable within 30 days of invoicing and delivery or assembly of the goods, insofar as such assembly is included in the subject matter of the contract. The time of receipt of payment by HECOSOL shall be decisive for the timeliness of payment. The statutory provisions concerning the consequences of default in payment shall apply. Discounts may only be deducted with a separate written agreement.

(5) Even after conclusion of a purchase contract, HECOSOL shall be entitled to demand advance payment if it becomes aware of the risk of the customer's inability to perform.

### **§ 5 Rights of retention and set-off**

(1) The customer shall only be entitled to exercise a right of retention insofar as the customer's counterclaim is based on the same contractual relationship.

(2) The customer shall only be entitled to offset in cases where the customer's counterclaims are legally established, undisputed or recognised by HECOSOL.

## **§ 6 Delivery Date, Scope of Delivery, Delay in Delivery**

(1) The delivery period shall be agreed individually or stated by HECOSOL upon acceptance of the order. Unless all details of the order (including technical questions) are clarified in time by the customer and unless all advance services of the customer are provided in time, the delivery periods shall be extended accordingly. Timely dispatch of the goods is sufficient to meet the deadline.

(2) The customer shall be liable for the correctness of the documents to be supplied by the customer, in particular drawings.

(3) HECOSOL shall be entitled to make partial deliveries, insofar as these are reasonable for the customer.

(4) The customer must check and acknowledge the delivery note. Any objections/deviations must be reported to HECOSOL without undue delay. Otherwise, the acknowledged delivery quantity shall be deemed accepted, unless a possible shortage was not recognisable to the customer.

(5) All transport and other packaging shall only be taken back by HECOSOL insofar as this is stipulated by law, in particular in accordance with the German Packaging Ordinance.

(6) We reserve the right to make changes to design and/or form during the delivery period which are attributable to technical improvements and/or legal requirements, provided that the delivery item or the agreed delivery is not significantly changed and the changes are reasonable for the customer.

(7) If HECOSOL is prevented from fulfilling its obligation by the occurrence of force majeure or other unforeseeable extraordinary events which it was unable to avert despite exercising reasonable care according to the circumstances of the individual case, in particular official interventions, operational disruptions, industrial disputes or delays in the delivery of essential raw and auxiliary materials, HECOSOL will inform the customer thereof without undue delay and at the same time inform the customer of the expected new delivery period. If the service is also not available within the new delivery period, HECOSOL shall be entitled to withdraw from the contract in whole or in part without the customer being entitled to compensation for damages. Any consideration already rendered by the customer will be refunded by HECOSOL without undue delay.

(8) If the customer is in default of acceptance, fails to cooperate or delays delivery for other reasons for which the customer is responsible, HECOSOL shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). Further claims remain reserved. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time of default in acceptance or other breach of cooperation obligations.

## **§ 7 Transfer of risk in case of dispatch**

If the goods are dispatched at the customer's request, the risk of accidental loss, accidental deterioration of the goods and the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the dispatch. This shall apply irrespective of whether the goods are dispatched from the place of performance or who bears the freight costs.

## **§ 8 Retention of title**

(1) HECOSOL reserves ownership of the sold goods until complete receipt of all present and future payments from the current business relationship with the customer. If the customer acts in breach of contract, in particular in the event of default in payment or breach of other material obligations pursuant to Article 8(2) hereinbelow, HECOSOL shall be entitled to withdraw from the respective purchase contract and demand the return of the reserved goods. HECOSOL shall be entitled to sell the reserved goods after taking them back; the proceeds from the sale shall be set off against the customer's liabilities - less reasonable selling costs.

(2) The customer shall be obligated to treat the goods with care as long as ownership has not yet passed to the customer. In particular, the customer shall be obligated to insure the goods at the customer's own expense against theft, fire and water damage at replacement value. If maintenance and inspection work must be carried out, the customer must carry this out in good time at the customer's own expense.

(3) The customer shall be entitled to resell the goods in the ordinary course of business. In this case, however, the customer hereby assigns all claims against the customer's customers or third parties arising from the resale, irrespective of whether the goods have been resold without or after processing. The customer shall remain authorised to collect this claim even after the assignment. However, HECOSOL undertakes not to collect the claim as long as the customer meets the customer's payment obligations from the proceeds received, is not in default of payment and, in particular, no application has been made for the opening of composition or insolvency proceedings or payments have been suspended. If such is the case, however, HECOSOL may demand that the customer informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment. In addition, HECOSOL shall be entitled to revoke the customer's authority to further sell and process the goods subject to retention of title in such event.

(4) As long as ownership has not yet been transferred, the customer must inform HECOSOL in text form without undue delay if the delivered item is seized or subjected to other interventions by third parties, so that HECOSOL can bring an action pursuant to Section 771 ZPO (German Code of Civil Procedure). If the third party is not in a position to reimburse HECOSOL for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred by HECOSOL.

(5) HECOSOL undertakes to release the collateral to which it is entitled at the customer's request insofar as the realisable value of its collateral exceeds the claims to be secured by more than 10%; HECOSOL shall be responsible for selecting the collateral to be released or who bears the freight costs.

## **§ 9 Warranty for defects**

(1) Warranty rights of the customer require that the customer has duly fulfilled the customer's obligations to inspect and give notice of defects in accordance with Section 377 HGB (German Commercial Code). If a defect becomes apparent upon delivery, inspection or at any later point in time, HECOSOL must be notified thereof in writing without undue delay. In any case, obvious defects must be reported in writing within five working days of delivery and defects not recognisable during the inspection within the same period as of discovery. If the customer fails to properly inspect the goods and/or report the defect, HECOSOL's liability for the defect not reported or not reported in a timely manner or not properly reported shall be excluded in accordance with the statutory provisions.

(2) If, despite all the care taken, the delivered goods show a defect which already existed at the time of the transfer of risk, HECOSOL will, subject to timely notification of defects, repair the goods at its discretion or deliver replacement goods. However, material defects which are attributable to improper use or faulty installation of the goods by the customer are not covered by the warranty. HECOSOL must always be given the opportunity to remedy the defect within a reasonable period of time. In the event of a replacement delivery, the customer must return the defective item to HECOSOL in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obligated to install it.

(3) HECOSOL shall bear or reimburse the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists and insofar as the expenses are not increased by the fact that the goods have been taken to a location other than the place of performance. Otherwise, HECOSOL may demand reimbursement from the customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the customer was not aware of the defect.

(4) Warranty claims are generally subject to a limitation period of twelve months from the passing of risk.

## **§ 10 Liability**

(1) In the event of intent or gross negligence on the part of HECOSOL or its vicarious agents, HECOSOL shall be liable in accordance with the statutory provisions; the same shall apply in the event of breach of material contractual obligations. Unless the breach of contract is based

on intent, HECOSOL's liability for damages shall be limited to the foreseeable, typically occurring damage.

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

(3) Unless otherwise expressly stipulated above, any liability of HECOSOL is excluded.

## **§ 11 Applicable Law, Jurisdiction, Partial Invalidity**

(1) These GTCS and the entire legal relationship between the customer and HECOSOL shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance shall be the registered office of HECOSOL, unless otherwise agreed.

(3) In favour of HECOSOL, the place of business is the place of jurisdiction for HECOSOL for all disputes arising from the contractual relationship. HECOSOL shall, however, be entitled to sue the customer at another place of jurisdiction.

(4) Should a provision in these terms and conditions be or become ineffective, the effectiveness of all other provisions and agreements between HECOSOL and the customer shall remain unaffected.