

General terms and conditions of Heizomat - Gerätebau + Energiesysteme GmbH, Maicha 21, 91710 Gunzenhausen

- 1. Validity**
- 1.1 Our deliveries, services and offers take place exclusively according to these general terms and conditions. Deviations from our terms and conditions only become a contractual object if these deviating terms and conditions are recognised and confirmed by us in writing. Moreover, we are not obligated by deviating terms and conditions of contracting parties; inclusion in a contractual relationship is hereby explicitly contradicted.
- 2. Offers/order acceptance**
- 2.1 The offers of the user are non-binding.
- 2.2 A purchase order made to the user is only considered as accepted by the user after sending of the written order confirmation by the user and assigning of an order number.
- 2.3 When signing a purchase agreement it remains subject to alterations for the user that are necessary due to the actual and/or technical options deviating from the purchase agreement and were not known at the time of the signing of the purchase agreement. The order confirmation sent by the user is decisive for the order execution.
- 2.4 The buyer/orderer is bound to their order until the answer by the user. If they do not receive an order confirmation within a reasonable period, they can demand this under an extension of time of 14 days or otherwise withdraw from the order.
- 2.5 The buyer/orderer is obligated to return the drawing approval after it is sent by the user, signed within 14 days of receipt to the user. Sending of the signed drawing approval does not obligate the user to manufacture the purchased item within a certain period.
- 2.6 If the buyer does not meet their obligation to sign, the user can withdraw from the contract after the passing of a further unsuccessful deadline for the drawing approval to be signed. The user can demand all costs created by the order placement be replaced for them by the buyer/orderer. Without proof of a lower loss by the buyer/orderer or a higher loss by the user, 20% of the purchase price can be demanded as compensation.
- 2.7 Upon cancellation/termination of the order by the buyer/orderer, the user can make use of their legal rights, including according to § 648 S. 2 of the German Civil Code, and demand reimbursement of expenses for the costs already incurred. Without proof of a lower expense by the buyer/orderer or a higher expense by the user, 20% of the purchase price can be demanded as reimbursement of expenses.
- 3. Prices**
- 3.1 Our prices are in euros ex factory, excluding packaging and transport insurance, plus the respectively valid legal value added tax.
- 3.2 For contracts regarding goods deliveries and other services, the user is bound to the price agreed upon in the order confirmation for four months after sending of the order confirmation. If delivery is only intended after four months after sending of the order confirmation or the delivery only takes place after four months for reasons for which the buyer/orderer is responsible, a price adjustment is possible if the relevant factors for the calculation of costs, i.e. the price list corresponding to the contract as well as the relevant manufacturing costs, have significantly changed since the conclusion of contract. In the event of a significant price increase of more than 5% of the originally agreed upon price the buyer/orderer is granted the right to withdraw from the contract. Both price-decreasing and price-increasing positions are taken into account in the price adjustment.
- 4. Delivery/performance period and transfer of risk**
- 4.1 The delivery and assembly periods named by us are non-binding, unless otherwise explicitly agreed in writing.
- 4.2 Delivery and performance delays due to force majeure (e.g. war, fire, strike, operating faults at sub-suppliers or with us etc.) as well as unforeseen official measures allow us to delay the delivery or performance by the duration of the hindrance in addition to a reasonable start-up period or to fully or partially withdraw from the contract due to the part not yet fulfilled. The right to make partial deliveries is explicitly allowed. Such events do not represent a default due to shortage. The user is obligated to inform the orderer of the delay and the reason for delay immediately.
- 4.3 If the hindrance persists for longer than three months, our contractual partner is entitled to withdraw from the contract after a reasonable extension of time of a further three weeks due to the part yet to be fulfilled. The partial performance already rendered up to that point is to be reimbursed.
- 4.4 The risk of the goods is transferred to the buyer/orderer upon sending of the goods ex factory or ex store, if there is no further delivery obligation of the user. If the shipment is delayed due to facts that are in the area of responsibility of the buyer/orderer, then the risk is already transferred from the day of readiness for shipment. The buyer/orderer must then bear all costs created due to the delay in acceptance. The shipment takes place at the expense and risk of the buyer/orderer, unless otherwise agreed. Shipping agreements are to be placed with the order. No liability for damage during transport is accepted if this is not within the area of responsibility of the user.
- 5. Duty of cooperation of the buyer/orderer**
- 5.1 The buyer/orderer is obligated to meet all required on-site conditions for the installation of the performance (system) to be provided by us before the assembly date indicated by us at their own costs. If the buyer/orderer is unable to meet this obligation, then the delivery/performance/assembly and production/commissioning deadlines set by us apply.
- 5.2 The buyer/orderer is obligated to provide machinery and/or auxiliary resources including suitable operating personnel as available at the assembly location at its own costs in order to ensure proper unloading and transportation of the system to the respective installation location for the delivered system. The buyer/orderer must ensure proper access to the assembly site by truck, mounted crane etc. at its own cost. The buyer/orderer shall provide electricity for assembly and a suitable, uninterrupted power supply for the system at its own cost. The same applies to proper water supply to be made available on site.
- 5.3 The buyer/orderer is obligated to guarantee that in the event of a cooperation or due to the dependence of existing units and units newly installed by us the compatibility between the existing system and new systems and units delivered by us is technically sound. If faults, defects or damages occur that can be traced back to the fact that existing systems and units made available by the buyer/orderer are not compatible with the systems and units that were to be delivered and assembled by us, then liability on our part is excluded.
- 5.4 As part of the duties of cooperation the buyer/orderer is obligated to provide suitable and unencumbered working conditions for the installers of the user in advance. In particular, this includes silo emptying, disposal of chips and other materials as well as the replacement of raw, operation and auxiliary materials including chips, which were removed beforehand as part of work that we had to carry out on the site of the buyer/orderer, at the cost of the buyer/orderer.
- 6. Notices of defects/warranty**
- 6.1 Notices of defects due to apparent faults are to be communicated in writing without undue delay no later than within a calendar week after receipt of the goods. If the buyer/orderer is a legal entity under public law, a special fund under public law or a business person to whom the ordered item belongs for the operation of a commercial enterprise, this applies due to every discernible defect and the complaint of which due to incomplete or incorrect delivery. Otherwise the warranty is excluded. For the delivery and installation of heating systems, in particular the respective delivery receipt leaflet as well as the inspection and transfer report apply! With their signature on the leaflet as well as the inspection and transfer report, the buyer/orderer recognises the freedom from defects and contractual and scheduled implementation of the boiler system including control cabinet and ancillary processes at the point in time of the signature. Non-achievement to meet the requirements for obtaining funding does not constitute a material defect. In particular, the user does not guarantee that the requirements for funding from the European Union or a country will be met. The customer / buyer is solely responsible for checking compliance with the respective funding requirements.
- 6.1.1 Faults not recognised are also to be complained in writing about immediately after their detection.
- 6.2 The warranty for our goods and services is one year if the buyer/orderer is not a consumer (to be equated to a commercial use). The legal warranty period of two years applies to end users. In the case of used goods the warranty period is one year if the buyer/orderer is an end user. If the buyer/orderer is not an end user, the sale of used goods takes place excluding any liability for material defects.
- 6.2.1 A reference to technical standards does not represent an assurance.
- 6.2.2 Only once corrective action has finally failed after repeated repair can the buyer/orderer demand reduction or remuneration or annulment of the contract.
- 6.2.3 Parts replaced as part of the warranty are transferred to our property.
- 6.2.4 The warranty is excluded:
 - a) In the event of natural wear and tear
 - b) If the delivery item was changed to such an extent that the cause of the defect can no longer be detected or if the buyer/orderer undertakes or has improvement work undertaken after installation and repairs, or if the buyer/orderer violates the warranty and operation regulations valid for the delivery item and the defect has arisen for this reason, or the customer / buyer does not have original Heizomat spare parts such as e.g. replica parts or parts with a different quality or grade used.
 - c) In the event of damage due to climatic influences.
 - d) In the event of improper assembly and commissioning by the customer/ordering party or a third party.
- 6.2.5 The warranty is also dependent upon the delivered goods (e.g. system etc.) being properly maintained and operated.
- 6.2.6 In the event of the use of unsuitable heating or shredding materials for any form of chipper, i.e. for example the inclusion of metallic foreign bodies in particular, any warranty claim is excluded. This also applies where the cause of the error or defect is that an inadequate power supply or unsuitable fuel has led to excessive contamination of the boiler system.
- 6.3 In the case of the warranty, unless otherwise agreed, mobile devices (e.g. chippers) must be brought by the buyer/orderer to the user for repair at their own costs.
- 6.4 The user expressly does not assume the costs for the failure of the machine or the system in the event of repairs, and the costs for a replacement machine or system.
- 6.5 Repairs to the delivered goods and spare parts deliveries for sold goods, which are carried out after the agreed warranty period in accordance with number 6 of the general terms and conditions, are provided by the user solely of goodwill and without acknowledging any claims for defects of the buyer.
- 7. Information obligation according to the Consumer Dispute Resolution Act**
- 7.1 If you as a consumer have objectively entered into a contract with us via the internet, you can call up the online dispute resolution as follows "Online dispute resolution according to Art. 14 Paragraph 1 ODR Regulation". The European Commission maintains a platform for online dispute resolution (OS), which you can find at <http://ec.europa.eu/consumers/odr>.
- 7.2 Due to the Consumer Dispute Resolution Act we expressly inform you that we do not participate in the dispute resolution process before a consumer arbitration board according to the Consumer Dispute Resolution Act.
- 8. Liability of the user**
- 8.1 The user is only liable, irrespective of Section 6 for damages – regardless of the legal reason – if an assured property is missing or they, their legal representatives or their vicarious agents are at fault. The liability of the legal representatives, vicarious agents and other employees of the user is excluded towards the buyer/orderer, except in cases of intent and gross negligence, injury to life, limb and health. Sub-suppliers are not our vicarious agents.
- 8.2 The user's liability is excluded if the customer/purchaser or a third party operates the installation remotely.
- 9. Retention of title**
- 9.1 All our deliveries and services, including assembly, take place under retention of title. The title is transferred to the buyer/orderer once they have settled all of their obligations from their business relationship with us. This also applies if the purchase price for certain goods deliveries designated by our buyers/orderers has been paid. In the event of an open account the retained title is considered as a security for our outstanding balance. If bills of exchange or cheques are given in payment, only the unreserved redemption is considered as payment. The retained title of the user also remains for such systems that are processed by the installation. In case of doubt, the retained goods do not represent an essential component. A processing or restructuring of the retained goods is always undertaken for the user. If the retained goods are processed with other goods that do not belong to the user, then the user acquires co-ownership of the new goods in proportion of the value of the retained goods to the other processed goods at the time of processing. If the retained goods are processed with other goods that do not belong to the user, inseparably combined or merged, then the user acquires co-ownership of the new goods in proportion of the value of the retained goods to the other combined or merged goods at the time of combining/merging. If the retained goods are combined or merged in such a way that the goods of the buyer/orderer are viewed as the main goods, the buyer/orderer and the user are already in agreement that the buyer/orderer is to transfer pro rata co-ownership of the goods to the user. The user accepts this transfer.
- 9.2 If third parties access our (co-)ownership, the buyer/orderer will indicate our title and immediately notify us of this access in writing. This particularly applies to seizures, chattel mortgaging, mortgage liability etc. pp. Costs and damages are borne by the buyer/orderer.
- 9.3 In the event of behaviour of the buyer/orderer contrary to the contract, particularly default of payment, we are entitled to take back the goods delivered by us (e.g. systems etc.) at the cost of the buyer/orderer and, if necessary, demand the claims of the buyer/orderer against third parties.
- 9.4 As long as our ownership of the delivered goods (e.g. systems etc.) persists, the buyer/orderer is obligated to insure it against loss, depreciation, damage, theft and transportation risk. Claims from the insurance contract in the event of damages are to be assigned to us on account of payment. Our (co-)ownership also continues in the event of disposal by the buyer/orderer in proportion to the buyer/orderer.
- 9.5 If the value of the existing securities exceeds the overall insured claims by more than 20%, we are obligated to the release of securities upon the demand of our customer at our own discretion.
- 10. Payment conditions and document dispatch**
- 10.1 The documents and invoice submission is to be executed electronically. The customer will state an email address for the purpose of receiving electronic documents and invoices. The customer hereby undertakes to create the technical prerequisites which are required for them to be able to call up the invoice and additional documents in a proper manner. The customer will immediately notify the user of any amendment to the email address designated for electronic document and invoice dispatch. In the event of a culpably omitted or erroneous notification of an amendment to the email address which was designated for electronic invoices or document dispatch, the customer will reimburse the user for the damage caused by the determination of the address. The electronic invoice shall be deemed to have been received upon receipt of the email in which the electronic invoice is attached. The customer can revoke consent to the electronic invoice dispatch at any time in writing.
- 10.2 Our invoices are due and payable immediately, unless otherwise stated on our order confirmation or invoice. If the target is exceeded, the usual bank interest and expenses are to be borne in full. Changes require written confirmation by the user.
- 10.3 If the buyer/orderer does not meet its payment obligations or does not meet them in an orderly manner, particularly in the event that a cheque transferred for fulfillment is not redeemed or the buyer/orderer ceases their payments or if other conditions become known that put the creditworthiness of the buyer/orderer into question, then we are entitled to immediately declare the remaining debt due for payment. Furthermore, we are entitled to demand an advance payment or security (e.g. bank guarantee) in these cases.
- 10.4 Offsetting with disputed or counter claims that are not legally determined is excluded. No right of retention can be made valid for business persons in these cases either.
- 10.5 The discount deduction can only be effectively agreed upon as part of an individual agreement according to paragraph 10.3. A discount deduction by the buyer/orderer is only possible if there are no other claims due against them.
- 10.6 Default interests can be enforced in the event of default of payment. These are at 5% above the respective base rate for end consumers and at 9% above the respective base rate of the European Central Bank for companies and business people. The user is entitled to demand higher rates of interest for other legal reasons.
- 11. Changes to construction**
- 11.1 We reserve the right to undertake changes to construction at any time if this corresponds to the technical requirements. However, there is no obligation to do so.
- 12. Court of jurisdiction and place of fulfilment, partial invalidity**
- 12.1 For all claims from the business relationship with registered traders, including demands for bills of exchange and cheques, the exclusive court of jurisdiction is the competent civil court for the user. The same court of jurisdiction applies if the buyer/orderer has no general court of jurisdiction in the national territory, changes their place of residence or permanent address from the national territory or their place of residence or permanent address is not known at the time of the institution of proceedings.
- 12.2 The place of fulfilment for all services and deliveries from contracts is the registered office of the user.
- 12.3 German law is applied to the contractual relationship with the exclusion of the United Nations Convention on Contract for International Sale (CISG).
- 13. Severability clause**
- 13.1 Should a condition of this contract be ineffective, the effectiveness of the remaining conditions are not affected by this. The parties obligate themselves to replace it with a provision that reflects this condition as closely as possible.