

General Terms and Conditions of the Firm Heizomat Gerätebau- Energiesysteme GmbH

1. Area of Application

1.1 Our deliveries, services and offers are performed exclusively on the basis of the General Terms and Conditions. Deviations from our General Terms and Conditions only become part of the contract if these deviating terms and conditions are recognised and confirmed by us in writing. Incidentally, deviating terms and conditions of our contractual partners do not obligate us; inclusion in a contractual relationship is herewith expressly objected to.

2. Offers/Acceptance of Orders

2.1 The offers made by Heizomat are not binding.
An order placed with Heizomat is considered to have been accepted first with the despatch of the written order by Heizomat Gunzenhausen with the order number issued by Heizomat Gunzenhausen.
2.2 An order placed with Heizomat is considered to have been accepted first with the despatch of the written order by Heizomat Gunzenhausen with the order number issued by Heizomat Gunzenhausen.
2.3 The purchaser remains bound to his order until Heizomat responds. If he receives within a commensurate period no order confirmation, he can request this by setting an extension in time of 14 days, otherwise he withdraws the order.

3. Prices

3.1 Our prices are to be understood as prices in Euros ex works excluding packaging and transport insurance, plus the respective valid statutory VAT.
3.2 For contracts concerning deliveries of goods and other services, i.e. fitting and repair jobs for non-traders, we are bound for 4 months to the prices agreed with the purchaser in writing from the date of the conclusion of the contract. If it is envisaged that the delivery or the services will not have been completed in 4 months after conclusion of the contract, in the event of changes in the at that time decisive conditions the respective valid pricelist is applicable: For price increases only then if these are commensurate in relation to the changes.

4. Delivery Period/Time of Performance and Transfer of Risks

4.1 The delivery and assembly deadlines named by us are not binding insofar as something else was not expressly agreed in writing.
4.2 Delivery and performance delays due to force majeure (e.g. war, fire, strike, operational disruptions on the vendor's suppliers' premises or on ours etc.) and unforeseen public authority measures entitle us to postpone the delivery or service by the duration of the impediment plus a commensurate preparatory period or withdraw from the contract due to the unfulfilled part either in full or in part. The right to the performance of partial deliveries is expressly conceded. Such events do not substantiate delays due to a lack of blame.
4.3 In as far as the delay lasts more than three months, our contractual partner is entitled, after a commensurate setting of an extension period of a further three weeks, to withdraw from the contract with respect to the part of the contract still to be fulfilled. The to that date already complete partial performance is to be remunerated.
4.4 The risk is transferred to the purchaser with the despatch of the goods from the works or from the warehouse. If the despatch is delayed by the purchaser, the risk is transferred from the day the despatch is made ready. The despatch is performed upon the account and at the risk of the purchaser. Despatch regulations are to be consigned with the order. For transport damage, no liability is accepted.

5. Duty To Cooperate of the Purchaser

5.1 The purchaser is obliged to create all the required construction-side pre-requisites for the installation of the performance (annex) to be made by us before the assembly date notified to us at his expense. If the purchaser does not fulfil this obligation, the dates given us for delivery/performance/ assembly and completion/commissioning are no longer applicable.
5.2 The purchaser is obliged, at his expense, to provide machines/material resources at the assembly location, in order to ensure proper unloading of the delivered unit. The purchaser is obliged to ensure at his expense the pre-requisites for a proper approach to the assembly location with lorries, crane(s) etc.. The purchaser provides at his expense assembly power on the building site. The same applies to proper water supplies to be provided for the construction.
5.3 The purchaser is obliged in the event of interaction or caused by the dependence of existing aggregates and new aggregates to be installed by us that it is ensured that the compatibility between existing units and new units delivered by us is technically smooth. If errors or damage occur which can be put down to the fact that the existing units and aggregates provided by the purchaser are not compatible with those units and aggregates to be delivered and assembled by us, liability by us is excluded.
5.4 As part of the duty to cooperate, the purchaser is obliged to preliminary performance obligations for the provision of suitable and unpolluted work conditions for the Heizomat assembly staff. Included here are, in particular, the emptying of bunkers, disposal of shavings and other materials and the replacement stocking of raw, work and auxiliary materials included shavings, which previously had been transported away at the expense of the purchaser, as part of the tasks which we had to perform on the premises of the purchaser.

6. Notice of Defects/Guarantee

6.1 Notice of defects due to obvious defects are to be notified in writing, without culpable delay, at the latest, however, within one calendar week after receipt of the goods. If the purchaser is a legal entity under public law, public law special assets or a merchant for whom the object of the contract belongs to the operation of a business, this applies due to every identifiable defect and the complaint about it due to incomplete or wrong delivery. Otherwise the guarantee is excluded. For delivery and installation of heating units, what applies in particular are the respective attached sheet to the delivery note and the inspection and handover report. The purchaser recognises with his signature on the attached sheet and the inspection and handover report the absence of defects and contractual and planned performance of the heating unit including the control cabinet and auxiliaries at the point in time of the signature.
6.1.1 Also defects not recognised are to be complained about in writing immediately after they have been noticed.
6.2 The guarantee for our goods and services runs for one year, if the purchaser is not a consumer (equatable with commercial usage). For final consumers the statutory guarantee period of two years applies. For used goods the guarantee period comes to 1 year, if the purchaser is a final consumer. If the purchaser is not a final consumer, the sale of used goods is made excluding all material defects liability.

6.2.1 A reference to technical standards does not represent warranty.
6.2.2 If the elimination of defects finally fails even after repeated reworking, the purchaser can demand a reduction in price or remuneration or rescission of the contract.
6.2.3 As part of the guarantee, replaced parts become owned by us.
6.2.4 The guarantee is excluded:
a) Resulting from depreciation (wear-and-tear)
b) If the delivery object has been altered so much that the cause of the defect can no longer be identified or if the purchaser himself undertakes installation and repairs on defective parts or has them performed or if the purchaser disregards the valid maintenance and conditions regulations for the delivered object and the defect is thus caused.
6.2.5 The guarantee is further dependent on the fact that the delivered goods (unit) has been properly serviced and operated.
6.2.6 If unsuitable heating or size reduction materials are used for any form of wood chipping machines, i.e. for example, the inclusion of, in particular, metallic foreign matter, all guarantee claims are invalid. This also applies if the cause of the malfunction of the defect is that unsuitable heating material has led to excessive contamination of the heating unit.
6.3 In cases of warranty mobile devices (e.g. wood chipping machines) have to be brought back to the factory for rectification, unless otherwise agreed

7. Liability of the Firm Heizomat

7.1 The firm Heizomat is liable, irrespective of Section 6 for damages – for whatever legal reason – only if a promised characteristic is absent or to the extent that you or your legal representatives or your agents are at fault. The liability of the legal representatives, agents or other company employees of Heizomat towards a purchaser is, except in cases of intent or gross negligence, excluded. The vendor's suppliers are not our vicarious agents.

8. Retention of Title

8.1 All our deliveries and services, including assembly, take place under retention of title. Ownership is transferred to the purchaser, when he has settled all his liabilities resulting from his business relationship with us. This also applies if the purchase price for a certain goods delivery designated by our purchasers has been paid. The retained ownership applies in the case of an open invoice, where appropriate, as security for our balance claim. If bills of exchange or cheques are given in payment, the encashment without reserve applies first as settlement. Processing take places for us excluding acquisition of title in accordance with § 950 of the German Civil Code without obligating us. The processed good serves as our security in the amount of the value of the invoice of the processed reserved goods. If our (joint) ownership is erased by connection, it is herewith agreed that the (joint) ownership of the uniform matter is transferred to us proportionate to the value. The purchaser holds our (joint) ownership in safe custody.
8.2 In the event of access of third parties to our (joint) ownership, the purchaser will point out our ownership right and immediately notify us in writing of this access. This applies, in particular, to distraints, collateral assignment, and mortgage liability etc. pp. Costs and damages are borne by the purchaser.
8.3 In the event of behaviour in violation of the contract by the purchaser, in particular, payment delays, we are entitled to take back the goods delivered by us (unit) at the expense of the purchaser and where appropriate, to demand assignment of the claims for restitution of the purchaser against third parties.
8.4 The purchaser is obliged, as long as our ownership of the delivered goods exists (unit) to insure the same against loss, value reduction, damage, theft and transport risks. Claims under the insurance contract in damage instances are to be assigned to us on account of payment. Our (joint ownership) continues to exist also in the event of a sale by the purchaser in the relationship to the purchaser/entrepreneur.
8.5 If the value of the existing securities exceeds the secured claims altogether by more than 20 %, we are obliged upon request by the customer to that extent to release securities of our choice.

9. Condition of Payment

9.1 Payable within 10 days from the date of the invoice with 2 % discount or in 30 days net, in as far as nothing else was listed in our order confirmation or invoice. If the deadline is overrun, the usual bank rates of interest and expenses are to be borne in full. Changes require the written confirmation of Heizomat Gunzenhausen.
9.2 If the purchaser does not meet his payment obligations at all or not properly, in particular, in the event that a cheque on account of performance handed over is not honoured or the purchase stops payments or if other circumstances become known, which cast doubt on the creditworthiness of the purchaser, we are entitled to make the full remaining amount owed to us due immediately. In addition we are entitled in these case to demand an advance payment or security (e.g. bank guarantee).
9.3 The offsetting with disputed or not legally valid counter-claims is excluded. For business people in these cases also no right of retention can be asserted.
9.4 The deduction of discount can only be effectively agreed individually in accordance with Sub-Section 9.1. A deduction of discount by the purchaser is only possible if not other claims are due against him.
9.5 By delays in payment, interest on arrears can be asserted. These are for final consumers at 5 % above the respective basic rate of interest, for companies and business people at 8 % above the respective basic rate of interest of the European Central Bank. The firm Heizomat is entitled to demand higher rates of interest on other legal grounds.

10. Design Changes

10.1 We reserve the right to undertake design changes at any time, insofar as this matches the technical requirements. An obligation on this point does not exist.
11. Place of Jurisdiction and Place of Fulfilment, Separability
11.1 For all claims resulting from the business relationship with full business people, including bills of exchange and cheque claims, the exclusive place of jurisdiction is the civil court responsible for Gunzenhausen. The same place of jurisdiction applies if the purchaser has no general place of jurisdiction in Germany, after conclusion of the contract moves his place of residence or usual place of residence outside Germany or his place of residence or usual place of residence at the time of the submission of the legal action is not known.
11.2 The place of fulfilment for all services and deliveries to be made from contracts is Gunzenhausen.