

# General Terms and Conditions

## for products and services of HEKATRON Technik GmbH

- Last changed November 2016 -

### I. General Provisions

- These General Terms and Conditions apply exclusively to all legal relationships - including future relationships - between our company and Customer associated with offers, deliveries, and / or services from us (hereinafter referred to as deliveries), insofar as Customer is a business owner, a legal person under public law, or a special fund under public law. General Terms and Conditions of Customer shall apply only insofar as we have expressly agreed to them.

### II. Offer and Conclusion of Contract

- Offers shall be prepared based on the documents and information provided by Customer. Customer is responsible for the correctness and precision of the information it submits. Customer must provide us with all necessary information related to the ordered goods in a prompt manner.
- Our offers are non-binding, if not otherwise expressly stated. Binding offers must be accepted by Customer within 20 business days.
- An agreement will only come into force if we provide our express order confirmation or upon delivery. Our written order confirmation shall be used to determine the scope of the delivery or service.
- We reserve the right to change construction, design, and assembly if this does not significantly change the contractual object or improves its quality, and if the changes are reasonable for Customer.
- Rights resulting from Agreements concluded with us may only be assigned to other parties with our approval.

### III. Prices and Payment Conditions

- All prices indicated are ex works, not including costs for packaging, freight, duties, shipping, insurance, and postage, as well as applicable statutory VAT.
- If we have accepted responsibility for set-up or assembly, all required ancillary costs such as travel costs, transportation costs, and activation shall be borne by Customer, in addition to the agreed compensation. Time spent in preparation, travel, and communication shall be deemed work time.
- Invoices are due immediately, and must be paid without discount within 10 days of issuance.
- If we feel that our claims are endangered due to the threat of or occurrence of a significant deterioration in Customer's financial circumstances, we are entitled to withdraw from the Agreement. If Customer is in default of payment, we may demand payment for our entire claim immediately. In such cases, we are furthermore entitled to make the completion of all Customer orders dependent upon advance payment or a security deposit.
- If we have agreed to installment payments, and if Customer falls into default with two successive installments either in whole or in part, and if the total amount due is at least 10% of the agreed price, the entire remaining claim will be due.
- If the delivery or assembly is completed later than 6 weeks after the contract is concluded, and if no fixed prices have been agreed, we reserve the right to make reasonable price adjustments due to changed wage, material, or distribution costs.
- Customer accepts excess or reduced deliveries such as those typical for the industry. The effective delivered quantity is invoiced.

### IV. Offsets and Right of Retention

- Customer can only offset payments with claims that are uncontested or have been established in a court of law. Customer is only entitled to exercise its right of retention insofar as its counterclaims are uncontested or have been established in a court of law.

### V. Delivery Conditions, Default

- EXW our factory (Incoterms 2010) is agreed as a delivery condition. The delivery time shall be determined from our written order confirmation.
- In order for us to adhere to the agreed delivery deadlines, we must receive all documents, required permits and approvals, in particular approvals of plans, in due time, and we require adherence to the agreed payment conditions and other obligations by Customer. If Customer does not properly fulfill its cooperation obligations, deadlines will be extended accordingly.
- The delivery deadline shall be deemed fulfilled
  - For deliveries without set-up or assembly, if the shipment is delivered to the shipping company or picked up ready for delivery within the agreed delivery or service period;
  - For deliveries with set-up or assembly, if this is completed within the agreed term.
- If we are not able to adhere to the agreed delivery deadlines for reasons for which we are not responsible (operational interruption, strike, lockout, energy supply fluctuations, self-deliveries not on time, etc.), Customer shall not be entitled to withdraw from the Agreement.
 

If it is not likely that we will be able to complete our services within an appropriate time period, and at the latest within three months, both Contractual Parties shall be entitled to withdraw from the Agreement. The same applies if these reasons continue to exist after three months since our notification. If the reasons were foreseeable to us upon conclusion of the Agreement, then we are not entitled to withdraw from it.
- If no delivery deadline has been agreed, Customer must accept the delivery within a term of one month after notification that it is ready for delivery; Customer must allow us to complete work (assembly) within a term of 3 months.
- If Customer falls into default of acceptance, we are entitled to withdraw from the Agreement after an appropriate length of time, and to demand claims for damages instead of payment. We can assert 20% of the gross delivery price or - for assembly orders - 30% of the gross order amount as a flat-rate claim for damages. Customer shall

have the opportunity to prove that no damages occurred, or that they were significantly lower than the flat-rate.

- If shipment or delivery is delayed by more than 1 month after notification that the delivery is ready to ship upon request by Customer, we can charge Customer a storage fee amounting to 0.5% of the price of the delivered object for each month or partial month, and at the most 5% of the delivery.
- If the delivery is agreed to be on-call or depending on the progress of constructions, Customer must inform us of the delivery or service time at the latest 3 weeks in advance.
- We are entitled to provide partial deliveries or services.

### VI. Transfer of Risk

- Risk shall be transferred to Customer for freight-paid deliveries as follows:
  - For deliveries without set-up or assembly (sales shipment) with provision / separation of the delivered object for pick-up by Customer or the freight company. Upon request and at Customer's cost, we will insure deliveries against common transport risks.
  - For deliveries with set-up or assembly, upon delivery of the object to the agreed set-up or assembly location.
- If the process determining the transfer of risk is delayed due to reasons that are the fault of Customer, or if Customer falls into default of acceptance for some other reason, the risk shall be transferred to Customer.

### VII. Retention of Ownership

- Objects in the delivery (reserved goods) shall remain our property until all claims from the business relationship with Customer are fulfilled.
- Customer is prohibited from taking pledges or transferring goods by way of security. Customer shall be entitled to resell the reserved goods as part of its normal business activities, and hereby already assigns all claims against its buyer from the resale to us as a precaution. We hereby accept said assignment. We hereby entitle Customer to collect claims assigned to us on our behalf in its own name, subject to revocation. We will only make use of our right of revocation if we become aware of circumstances that would lead to a significant deterioration in Customer's ability to pay that would endanger our claim for payment. Insofar as Customer acts in a manner contrary to this Agreement - in particular by falling into default with a due payment - we can demand that Customer disclose the assignment and provide us with the information and documents necessary for us to collect the claim.
- Processing, reworking, or restructuring the delivered goods is always performed by Customer in our name and on our behalf, without subjecting us to any obligations. Processed or reworked goods shall be deemed reserved goods in the sense of clause VII.1. If the delivered goods are processed using objects that do not belong to us, we will obtain co-ownership in the new object in relation to the ratio of the invoice value of the delivered good to the invoice value of the other processed object. The same shall be true of any mixtures. If ownership lapses due to combination or mixing, Parties hereby agree that Customer will assign us a proportionate share of co-ownership in the new object, to the extent of the invoice value of the reserved good. Customer shall also assign us claims against third parties to which it is entitled due to combining the reserved good with a property to the same extent. We hereby accept this assignment upon conclusion of the Agreement. Customer shall store the reserved goods for us free of charge.
- Customer must inform us promptly regarding any liens, seizures, or other actions by third parties affecting the reserved goods. Customer shall bear all costs associated with recovering seized goods or repurchasing goods delivered by us.
- If the realizable value of the securities given exceeds our claims by more than 10%, we are obligated to release the excess amount from securities.

### VIII. Set-Up and Assembly

- The General Contractual Conditions for Performing Construction Services (VOB, part B, C) apply to set-up and assembly performed by us.
- Customer shall complete the following at its own cost and in a prompt manner:
  - All earth moving, construction, and other ancillary work outside of our industry, including the required workers, technicians, construction materials, and tools,
  - The objects and ancillary materials required for assembly and commissioning, such as scaffolding, hoisting equipment, transportation equipment, fuel, and lubricants,
  - Energy and water at the assembly location, including connections, heating, and lighting,
  - Rooms of sufficient size which are suitable, dry, and equipped with locks at the assembly location to store machine components, apparatuses, materials, tools, etc., and work and break rooms appropriate for assembly personnel, including sanitary facilities appropriate for the circumstances; in addition, Customer must take at least the measures to protect our assembly personnel on the construction site it would take for its own personnel,
  - Protective clothing and safety equipment required due to special circumstances at the assembly location.
- Before beginning assembly work, Customer must provide required information on the locations of buried or hidden electricity, gas, water lines, and similar facilities, as well as required structural information without request.
- Before beginning assembly, the supplies and objects required to begin work must be available at the set-up or assembly location, and all preliminary work to be completed before starting construction must be far enough along as to ensure we can start with set-up or assembly in accordance with the Agreement. Access roads and the set-up or assembly location must be even and cleaned out.
- Customer shall provide us with weekly certification of assembly personnel work hours, as well as the completion of set-up, assembly, or commissioning promptly and in writing.
- Customer must obtain all registrations and permits for set-up and assembly at its own cost.

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### ix. Acceptance / Claims for Defects

1. Customer may not deny acceptance of deliveries for insignificant defects.
2. Customer's claims for defects shall be governed under the law, with the reservation that we may either repair or replace defective components at our own discretion when providing supplementary performance.  
Customer can only make claims for damages caused by defects in accordance with the provisions of clause X.
3. The warranty period for material defects in our deliveries and services is 24 months from delivery or, if acceptance is required, from acceptance. If we complete work at a building or complete planning and monitoring services associated with a building, or if our deliveries are used according to their typical intended purpose for a building, and if they have damaged the building, the statutory warranty periods apply. Claims for damages shall remain unaffected in accordance with clause X.
4. We are entitled to assign our warranty claims against sub-suppliers to Customer, if defects were caused by a faulty third-party product. In this case, we may only make a claim under the provisions above if Customer has asserted the assigned claims against sub-suppliers in a court of law. Customer hereby undertakes to inform us promptly of all assertions of assigned claims in a court of law, and to obtain our approval for all agreement with sub-suppliers related to assigned claims. During the term of the legal dispute with the sub-supplier, the statute of limitations for Customer warranty claims against us shall be suspended.

### x. Liability

1. We are liable for violations of our obligations – including violations by our senior employees and other agents – in case of malicious intent and gross negligence.
2. We are also liable for damages resulting from the violation of cardinal contractual obligations, which are contractual obligations whose fulfillment defines the character of the Agreement and in whose proper fulfillment the Contractual Partners should regularly be able to trust, even in cases where we are guilty of simple negligence.
3. If we are not guilty of any malicious behavior in the cases of clause X.1 and X.2, we are, however, only liable for typical and foreseeable damages.
4. If we provide a warranty, or in the case of death, bodily injury, or injury to health, we shall be liable in accordance with the law. Liability under the Product Liability Act remains unaffected.
5. All other claims for damages resulting from violations of our obligations are hereby excluded.
6. Claims for damages under the above clauses X.1 to X.5 shall expire within statutory terms.

### xi. Protective and Copyrights

1. We hereby reserve all ownership and copyrights to all of our cost estimates, offers, drawings, and other documents (hereinafter referred to as: documents). Documents must be treated as confidential, may not be made accessible to third parties and, if the order is not granted, must be returned to us promptly upon request.
2. If we perform our services based on Customer drawing, models, or information, Customer shall indemnify us against all third party claims due to copyright violations.
3. Customer shall have a non-exclusive right to use for standard software, with the agreed performance characteristics, in unchanged form on the agreed devices. Customer may not create any back-up copies.
4. Customer is prohibited from modifying, amending, adjusting, or decrypting the software and data or the associated documentation in whole or in part in any manner, if such activities go beyond the limits of sections 69 d para. 3 and 69 e UrhG (Copyright Act).
5. If our programs assert copyright violations by third parties, we are entitled to complete the required software modifications for Customer at our own cost. Customer hereby undertakes to send us a prompt written notification if claims for damages due to the violation of industrial property rights or copyrights are asserted by third parties.

### xii. Reservation of Fulfillment

1. Fulfillment of this Agreement for deliveries for which the final or an intended destination in the supply chain is located abroad shall be subject to the reservation that there are no impediments due to German, US, or other national, EU, or international import or export regulations.
2. Customer shall be obligated to provide all information and documents necessary for import and export.

### xiii. Data Privacy

1. We are entitled to save Customer's information in accordance with the provisions of the Federal Data Protection Act.
2. We will only use Customer data for our own purposes and will not transmit it to third parties.

### xiv. Final Provisions

1. German law applies, excluding the UN-Convention on the International Purchase and Sale of Goods (CISG).
2. The place of jurisdiction for all disputes arising from the contractual relationship is our headquarters. We are also entitled to raise a claim against Customer at their domicile, at our discretion.
3. If a provision of this Agreement shall be or become invalid, this shall not affect the validity of the remaining content of the Agreement or its conditions.

4. The regulation described in clause 3 does not apply if adhering to the Agreement would represent an unreasonable hardship for one of the Parties.