

General Terms and Conditions**OU: QMB of HEGUtechnik GmbH & Co. KG HEGU-FB 109****§ 1 Scope of application**

1. These General Terms and Conditions exclusively apply to companies, legal persons under public law or special funds under public law pursuant to § 310 section 1 *BGB* [German Civil Code]. These Terms and Conditions shall not apply to consumer contracts.
2. HEGUtechnik performs the works that were assigned to it – including works in the future – solely on the basis of these General Terms and Conditions. The Customer expressly accepts these Terms and Conditions by placing an order with HEGUtechnik; no sales, delivery and service terms and conditions of the Customer of any kind shall be accepted. The General Terms and Conditions of HEGUtechnik shall apply to the full term the business relationship, even if their inclusion is not expressly agreed upon again.
3. Clause 2 shall not apply to those Terms and Conditions that have been individually agreed upon with the Customer regarding the delivery/performance.

§ 2 Offer and conclusion of contract

1. Offers by HEGUtechnik are non-binding.
2. A contract shall only be deemed concluded by express written order confirmation or implementation of the assigned work by HEGUtechnik.
3. Specifications, drawings, illustrations, technical data, descriptions of weight, dimension and performance referred to in brochures, catalogues, advertisements, pricelists or documents belonging to the offer shall solely be relevant as approximate values unless they have been expressly agreed upon as binding.
4. Specified information and technical advice whether spoken, written or by trial shall be provided in good faith by HEGUtechnik and shall solely be applicable as non-binding also regarding any property rights of third parties, unless expressly guaranteed. The given advice shall not relieve the Customer from its obligation to verify the current advisory information provided by HEGUtechnik – including but not limited to data sheets and technical information from HEGUtechnik and the products in terms of their suitability for the intended procedures and purposes. The application, use and processing of the products manufactured by HEGUtechnik by the Customer is beyond the control of HEGUtechnik and shall therefore be the exclusive responsibility of the Customer.

§ 3 Prices

1. Unless agreed otherwise, the prices are "ex works" plus packaging and value added tax as applicable.
2. The prices shall apply to the scope of supply and performance stated in the order confirmation. Additional or special performances shall be charged for separately.
3. The price for tools generally shall neither include one-off sampling costs nor costs for testing and processing appliances or modifications initiated by the Customer.

§ 4 Terms of payment

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1. All payments shall be made to HEGUtechnik exclusively in € (euros). Remuneration shall be due fully upon delivery or acceptance.
2. If the Customer effects payment within 14 days from the invoice date, it shall be entitled to deduct a discount of 2 %. Otherwise, payments shall be made no later than 30 days after the invoice date. If the Customer has not paid after expiration of this period, it shall be in default without further notice. HEGUtechnik reserves the right to charge interest of 8 % annually above the base lending rate during the period in delay. HEGUtechnik reserves the right to assert higher damages caused by late payment.
3. In the event of late payment, HEGUtechnik shall be entitled to withhold performance / delivery.
4. HEGUtechnik shall be entitled to demand and invoice reasonable partial payments for completed partial performances.

§ 5 Rights of offset and retention

1. The Customer shall be entitled to offset only if its counterclaims have been effectively declared enforceable or are undisputed. The Customer shall only be entitled to exercise its right of retention if its counterclaim is based on the same contractual relationship.

§ 6 Period of delivery and delays in delivery, force majeure

1. The start of the period of delivery determined by HEGUtechnik shall require that the Customer meets its contractual accessory obligations timely and properly.
2. If the Customer is in default with the acceptance of the performance or delivery or if it culpably breaches other obligations to cooperate, HEGUtechnik shall be entitled to claim damages incurred including any additional expenses. Delivery periods only commence after all details of the order, including technical data of the delivery item, have been agreed upon. The delivery time shall be reasonably extended if the aforementioned requirements have not been met.
3. HEGUtechnik undertakes to carry out all assigned works in due time according to the contractual agreement.
4. Delays in delivery and performance due to force majeure and due to other events, which essentially complicate the fulfilment of the delivery / performance obligation of HEGUtechnik or make it impossible not only temporarily - including but not limited to strikes, lockouts, official orders, acts of God, lack of raw materials, even if they occur to the supplier of HEGUtechnik, shall extend the delivery period to a reasonable extent.
5. If the delivery or performance becomes impossible or unreasonable due to the aforementioned circumstances, HEGUtechnik shall be exempted from its delivery / performance obligations. If the delay in delivery takes longer than 2 months, the Customer shall be entitled to withdraw from the contract. The Customer may also withdraw earlier if the delay in delivery is unreasonable to it.
6. If the delivery period is extended due to force majeure or if HEGUtechnik is exempted from its obligation to deliver, the Customer may not derive any claims for compensation therefrom. HEGUtechnik may only invoke the aforementioned circumstances if it has notified these to the Customer immediately.

§ 7 Acceptance

1. In the event of work contracts or if acceptance is contractually agreed upon, HEGUtechnik shall notify the readiness for acceptance to the Customer in writing. Thereafter, the Customer is obligated to accept promptly. Minor defects shall not entitle the Customer to refuse acceptance.
2. Acceptance shall be deemed to be declared if the Customer has not declared acceptance or notified any major defects in writing within 2 weeks after HEGUtechnik has notified its readiness for acceptance, provided that HEGUtechnik has informed the Customer upon notification of its readiness for

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acceptance about these consequences. If such information has not been provided, § 640 para. 1 sentence 3 BGB shall apply. The use of the delivery / performance to be accepted by the Customer, whether full or in part, shall be deemed to be a formal acceptance.

3. Even with the acceptance requirement of the deliveries / performances owed by HEGUtechnik, §§ 8 and 9 of these General Terms and Conditions shall apply to the Customer's rights derived from defects and the joint liability.

§ 8 Warranty and notice of defects

1. Obvious defects shall be notified with detailed description in writing immediately, no later than 8 days from receipt of the delivery items to HEGUtechnik. In the case of latent defects, the notice of defects shall be made immediately upon their discovery. The Customer agrees to immediately prepare a *8D* [Eight disciplines problem solving] report with each report of defects; a corresponding form is enclosed to the General Terms and Conditions as Annex 1. A notification that has not been made timely shall exclude any claim of the Customer.
2. Upon the commencement of the partial or full processing or use of the delivery item, the delivered goods shall be deemed to be accepted by the Customer as being in line with the contract.
3. Differences in quantity shall only be acknowledged if they have been confirmed by the carrier upon receipt of the delivery items.
4. The existence of a defect discovered or effectively notified by a notice of defect shall constitute the following rights of the Customer:
 - 4.1. If the delivery item has a defect, HEGUtechnik shall be entitled to supplementary performance in the form of the remedial action or the delivery of a new, faultless item; HEGUtechnik shall have the corresponding right to choose. Claims for defects shall be deemed to not exist in the case of an insignificant deviation from the condition agreed upon or an insignificant impairment of use. If one or both types of supplementary performance are impossible or unreasonable, HEGUtechnik shall be entitled to refuse. In the event of defects, the Customer may only retain payments to an extent which is reasonable in proportion to the defects.
 - 4.2. HEGUtechnik shall bear the expenses necessary for the purpose of the supplementary performance, including but not limited to transport, travel, labour and material costs, provided that they do not increase by the fact that the delivery item has been brought to another place than the registered office of the Customer, unless such shipment is in line with its intended use.
 - 4.3. If the supplementary performance according to paragraph 1 fails or is unreasonable for the Customer or if HEGUtechnik refuses both types of supplementary performance pursuant to § 439 Abs. 3 BGB, the Customer may, at its choice, reduce the remuneration accordingly (reduction of the purchase price) or withdraw from the contract according to statutory provisions (withdrawal from the contract). Further claims, including but not limited to the reimbursement of expenses or claims for damages due to defects or consequential damage, shall only be deemed to exist according to § 9.
 - 4.4. Claims for defects become statute-barred after 12 months; the limitation of action shall commence for contracts for work and materials at the time of delivery, for contracts for work at the time of acceptance. The foregoing provision shall not apply if the law mandatorily prescribes longer periods according to § 438 para. 1 subsection 2 BGB (buildings and building materials), § 479 para. 1 BGB (right of recourse) and § 634 a para. 1 BGB (construction defects). Before the return of any defective delivery items, the prior consent by HEGUtechnik shall be required.
5. Warranties and guarantees shall only be deemed given effectively if HEGUtechnik grants them expressly and in writing.
6. No amendments of the statutory or judicial allocation of the burden of proof shall be intended by the foregoing provisions.

§ 9 General limitations of liability

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1. In all cases in which HEGUtechnik is obligated to compensate for damage or expenses due to contractual or statutory claims deviating from the foregoing provisions, HEGUtechnik shall only be held liable for intent, gross negligence or an injury to life, limb or health. Strict liability under the *Produkthaftungsgesetz* [German Product Liability Act] and the liability for the fulfilment of warranted properties shall remain unaffected. This shall neither affect the liability for culpable violation of essential contractual obligations, i.e. obligations which are in a mutual relationship with the obligations of the Customer or whose fulfilment is necessary to allow for the proper implementation of the contract and on the compliance of which the Customer may rely. The claim for damages due to the breach of essential contractual obligations shall be limited to the contract-typical, foreseeable damage, unless HEGUtechnik is liable for gross negligence or injury to life, limb or health.
2. For the rest, the liability – for whatever legal reason, including but not limited to claims for the breach of contractual principal and accessory obligations, tortious acts or any other tortious liability – shall be excluded.
3. An exclusion or a limitation of liability of HEGUtechnik shall also apply to employees and vicarious agents (Erfüllungs- und Verrichtungsgehilfen) of HEGUtechnik.
4. The foregoing provisions shall not cause any change in the burden of proof to the detriment of the Customer.

§ 10 Dispatch, passing of the risk

1. Unless otherwise agreed, it shall be at the discretion of HEGUtechnik to choose packaging, mode and route of dispatch.
2. If the delivery items are delivered to the Customer upon the Customer's request, the risk of accidental loss and accidental deterioration shall pass on the Customer upon the dispatch or at the latest when leaving the premises. This shall apply regardless of whether the shipment of goods occurs from the place of performance or who bears the freight costs.
3. The delivered items shall be insured against the risks to be named by the Customer at the Customer's written request.
4. If delays in delivery occur for which the Customer is responsible, the risk shall already pass upon the notification of readiness for dispatch. The statutory provisions regarding default of acceptance shall remain unaffected.

§ 11 Retention of title

1. The delivered items remain the property (reserved goods) of HEGUtechnik until fulfilment of all claims, including but not limited to any account balance claims which HEGUtechnik is entitled to under the business relationship.
2. Treatment and processing of the reserved goods occur on behalf of HEGUtechnik as manufacturer pursuant to § 950 BGB, without any obligations on HEGUtechnik's part. The processed or manufactured goods shall be deemed to be reserved goods according to clause 1.
3. During processing, transformation or combination with other items which are not the property of the Customer, HEGUtechnik shall be entitled to co-ownership in the new item to the amount of the share that results from the ratio between the value of the processed, transformed or combined reserved good and the value of the new item. If the ownership of HEGUtechnik ceases by combining, mixing or processing, the Customer shall assign its rightful ownership and advocacy rights in the new stock or item to HEGUtechnik to the extent of the invoice value of the reserved goods, in the case of processing in the ratio between the invoice value of the reserved goods and the invoice value of the other used goods and shall store them on behalf of HEGUtechnik free of charge.
4. In the usual course of business, the Customer may only be permitted to resell the reserved goods provided that it retains the title. The Customer shall not be entitled to dispose of the reserved goods otherwise, including but not limited to pledges and security assignments. Resale within the meaning of this paragraph refers to the use of reserved goods to fulfil obligations of contracts for work.

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5. In the event of resale, the Customer shall already now assign all claims arising from the resale of receivables and other legitimate claims against its customers with all ancillary rights to HEGUtechnik until satisfaction of all claims of HEGUtechnik. If the reserved goods are resold with other goods by the Customer, the claim arising from the resale of the goods in the ratio of the invoice value of the other goods shall be assigned to HEGUtechnik. With the resale of goods in which HEGUtechnik has shares of co-ownership pursuant to clause 3, a share of the claim, corresponding to the share of co-ownership, shall be assigned to HEGUtechnik. At the request of HEGUtechnik, the Customer is obligated to immediately inform HEGUtechnik and submit documents to HEGUtechnik that are necessary for the assertion of HEGUtechnik's claims towards the client of the Customer.
6. If the Customer is in default with its payment obligation, in full or in part, if there is an indebtedness or cessation of payments on its part or if insolvency proceedings have been initiated against the Customer, HEGUtechnik shall be entitled to seize the reserved goods immediately; HEGUtechnik may also claim further rights derived from the retention of title. The same applies to any other significant deterioration of the economic situation of the Customer. The request to surrender or seizure shall not constitute a withdrawal from the contract. HEGUtechnik shall be entitled to exploit the reserved goods with the diligence of a prudent business man and to satisfy them via offsetting with the outstanding claims with the proceeds.
7. The Customer shall immediately notify HEGUtechnik of a seizure or any interference by third parties.
8. If the value of the security of HEGUtechnik's claims towards the Customer under the ongoing business relationship exceeds the value of the claims by more than 10%, HEGUtechnik shall release its rightful securities at its own discretion upon the Customer's request.

§ 12 Specifications relating to tools, appliances and other means

1. Unless otherwise agreed, HEGUtechnik shall remain the owner of the tools, appliances and special means produced on behalf of the Customer.
2. The Customer shall be charged only pro rata to the costs of the tools. The expenses incurred by HEGUtechnik for the constructive and mental performance, production, ongoing maintenance, care etc. will not be covered by the charge for the tool costs. In this regard, no claim shall arise on behalf of the Customer to transferral of the property of the tools or their surrender if the Customer pays the costs for the tools calculated pro rata to HEGUtechnik.
3. HEGUtechnik shall be entitled to use the tools also for purposes other than performances / deliveries on behalf of the Customer during the term of the contract, unless the Customer objects to it in writing and simultaneously outlines its legitimate interests. This shall also apply to tools whose costs were partially borne by the Customer.
4. The obligation of HEGUtechnik to store tools ceases 2 years after the last partial delivery deriving from these tools and prior notification to the Customer.
5. If the Customer becomes the owner of the tools and appliances according to the contract, the property will pass upon full payment of the purchase price to the Customer. The transfer of tools and appliances shall be replaced by storage on behalf of the Customer.
6. Regardless of the legal claim for actio in rem of the Customer and the service life of the tools and appliances, HEGUtechnik shall be entitled to the exclusive possession until termination of the contract. HEGUtechnik shall mark these tools and appliances as third party's property and insure them at its request and at its expense against the risks named by it.

§ 13 Provided materials

1. If materials are provided by the Customer, they shall be delivered at its expenses and risk on time and in perfect condition. HEGUtechnik shall not be obliged to carry out investigations of the materials provided and may rely on a flawless delivery.
2. If the Customer prescribes the use of certain materials or puts the materials to be used at HEGUtechnik's disposal, HEGUtechnik shall not be liable for any defects or damages arising either on the product of HEGUtechnik itself or for defects on the product to be manufactured.

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3. In case of failure to comply with these obligations, the period of delivery shall be extended accordingly. Except in cases of force majeure, the Customer shall bear the additional costs incurred also for production interruptions.
4. Materials provided by the Customer shall be treated by HEGUtechnik with the same diligence as any other delivery assigned to HEGUtechnik, distinguishing among the materials between those which are directly incorporated in the products to be manufactured by HEGUtechnik and those which are not incorporated in the products to be manufactured by HEGUtechnik. The latter shall be marked by HEGUtechnik in such a way that the external source may be identified anytime.

§ 14 Industrial property rights, copyright

1. HEGUtechnik shall be entitled to the copyright and any intellectual property rights, if applicable, including but not limited to all rights of use and exploitation of models, tools and appliances, drafts, construction drawings, technical data and all copyrightable services which are provided to the Customer.
2. If HEGUtechnik is obligated to deliver according to drawings, models, samples or use parts provided by the Customer, the Customer shall assure that no property rights of third parties will be infringed in the country of destination for the delivery items, the country of origin of the items and the country of origin of the tools. HEGUtechnik shall inform the Customer about any rights involved and known to it, an examination, however, shall not be required by HEGUtechnik. The Customer shall indemnify HEGUtechnik of any third party-claims and provide compensation for the incurred damage. If the production or delivery by HEGUtechnik is prohibited by a third party invoking the infringement of a property right (e.g. by a warning or injunction) or if such a property right was known to HEGUtechnik, HEGUtechnik shall— without an examination of the legal situation – be entitled to stop the works until the legal situation is clarified by the Customer and the third party. If the continuation of the order is not reasonable for HEGUtechnik anymore due to the delay, HEGUtechnik shall be entitled to withdraw from the contract. In this case, HEGUtechnik shall be entitled to demand remuneration reduced by expenses not incurred.

§ 15 Condition of the products, exclusion of procurement risk and guarantees

1. HEGUtechnik shall only be liable for the suitability of the delivered items for certain purposes if this quality was expressly guaranteed. Only the product description in the order confirmation or any other declared product information by HEGUtechnik shall be deemed to be agreed upon.
2. HEGUtechnik shall not assume any procurement risk and neither guarantees, unless a written agreement has been concluded on these matters with the Customer.

§ 16 Declaration of conformity – product safety, material testing

1. HEGUtechnik observes all applicable statutory provisions of the European Union and the Federal Republic of Germany, e.g. *das Gesetz über die Rücknahme und umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten (ElektroG)* [German Act on the return and sound disposal of electrical and electric equipment] as the national implementation of the Directive 2002/95/EC (RoHS).
2. Details on the conformity of HEGUtechnik products are based on the current state of knowledge and experience as well as on information received by HEGUtechnik from its suppliers. Specific examinations of raw materials used by HEGUtechnik, including but not limited to masterbatches, shall not occur.
3. For this reason, trace impurities may not be excluded entirely which might occur due to components used in the production or the production process. These trace impurities will not be considered by HEGUtechnik.
4. The details given by HEGUtechnik shall not exempt the Customer and its clients due to the fact that so many factors may affect processing and the application of HEGUtechnik products from its own examinations, inspections and trials, unless HEGUtechnik guarantees certain qualities or suitabilities for certain utilizations of the products expressly in an individual case.

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5. A legally binding guarantee of certain properties or a suitability for a certain purpose may not be derived from the details given by HEGUtechnik. Existing laws and provisions shall be observed by a recipient of HEGUtechnik products in his/her or its own responsibility. The transfer of data, recommendations and information by HEGUtechnik shall occur without the intent to be legally binding and shall not constitute a separate contract.
6. HEGUtechnik shall not enter into any obligation due to revised regulations, laws or recent results to update this declaration of conformity.

§ 17 Requirement of the written form / severability clause

1. Amendments and supplementations of these Terms and Conditions require the written form. This shall also apply to amendments of the requirement of the written form.
2. If any provision of these Terms and Conditions should become or be invalid, whether in full or in part, the validity of the remaining provisions shall not be affected. The parties undertake to agree in such cases on a new provision that comes as close as possible to the economic purpose of the invalid provision which they would have agreed upon if they had known the invalidity of the other provision.

§ 18 Governing law, place of jurisdiction

1. These Terms and Conditions and all legal relationships between HEGUtechnik and the Customer shall be governed by the law of the federal Republic of Germany subject to the exclusion of the UN-Convention on the Sales of goods (CISG).
2. The place of jurisdiction for all disputes arising from this contractual relationship shall be the place of the registered office of HEGUtechnik. HEGUtechnik shall also be entitled to file a complaint against the Customer before the Customer's general place of jurisdiction.