



Herz Energietechnik GmbH

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Conditions of business and supply for HERZ Energietechnik GmbH coming into force on 1st Jan. 2014

1. General

All deliveries, services, quotations and purchasing contracts from our company are provided exclusively on the basis of our general terms and conditions of business and supply. This also applies to future deliveries. Our contract partners agree that, in the event of using their own terms and conditions of business, or in case of doubt, our general terms and conditions always apply, even if the conditions of the contractual partner remain uncontradicted. Deviations from our general terms and conditions are effective only if confirmed in writing by us. These terms and conditions form an integral part of every quotation from Herz Energietechnik GmbH and any contract concluded. General terms and conditions, of whatever type, which contradict these terms and conditions, shall not be considered and are legally invalid. For installation work, the installation conditions also apply, modelled on those of the Austrian Machine and Metalware Industries.

2. The quotation

Our offers are not binding. We reserve the right to make modifications to goods due to technical developments. The specified weights, dimensions and technical specifications of our products are not binding. All technical documents remain our intellectual property. Any use, in particular disclosure, reproduction and publication, requires our explicit consent. Public statements by the supplier or the manufacturer or an otherwise involved third party, advertising and details appended thereto in particular, are only part of the contract if they are taken as a basis for the quotation in writing and referenced in the quotation.

3. Prices

The prices are net prices ex-factory (EXW Incoterms 2000) excluding packaging and without discount, unless otherwise stated in writing. They are only guide prices. Should material cost increases occur between conclusion of the contract and performance of the service, due to recommendations from the joint commission, or due to changes in world market prices for raw materials, or acquisition prices, or circumstances triggering additional services or costs not in the sphere of influence of the contractor, we shall be entitled to adjust the prices accordingly, except where there are fewer than 2 months between order placement and performance of the service. If the site is delivery-free, this therefore means delivery on a good road, as close as possible to the building site, but without unloading of the goods. Additional supplies and services are calculated separately.

4. Conclusion of the contract

4.1 A contract shall be deemed to be concluded if we submit a written order confirmation upon receipt of an order, or if the goods are delivered immediately after receipt of the order to the purchaser. In the latter case, the invoice is regarded as an order confirmation.

4.2 To be valid, changes and additions to the contract require the written confirmation of the seller. The costs incurred through modifications or cancellations to the contract shall be borne by the purchaser. The purchasing terms and conditions of the purchaser are only binding for the seller if acknowledged by the seller separately in writing.

4.3 We may reject the acceptance of orders without giving any reasons. In this case, any payments made by the company ordering will be refunded.

5. Delivery, delivery deadlines and dates

Delivery times are not always non-binding if a fixed date has been expressly agreed. In the event of an agreed modification to the contract, we are entitled to re-set the delivery date. We are not liable for delays in delivery caused by negligence and where we are not culpable. In such cases, the purchaser waives the right to withdraw from the purchase as well as the assertion of claims for damages. In the event of delay in performing the service or an interruption caused by the purchaser, the purchaser must bear all additional costs resulting from the delay or interruption, and we may charge for our services and outlay by means of a partial invoice. The goods are insured against transport damage, transport loss or breakage only on the written request of the customer at their own expense. Delivery of Herz products as shown in the price table is generally carried out using shrink-wrapping and on disposable pallets, depending on the size. The goods are insured against transport damage, transport loss or breakage only on the written request of the customer at their own expense.

6. Delivery period

6.1 Delivery dates are always non-binding. Any delay in delivery entitles the purchaser to the assertion of claims for damages.

6.2 Only after a reasonable period of grace set by them, is the purchaser entitled to withdraw from the contract due to delays in delivery.

6.3 The delivery time is deemed to have interrupted for the duration of the following circumstances. affecting us or our suppliers without being influenced by us: difficulties with raw material procurement, operational disruptions, strikes or lockouts and all cases of force majeure.

6.4 If the reasons given at 6.3 last longer than 8 weeks, then we are entitled to withdraw from the contract without stating other reasons.

6.5 If finished goods with a delivery deadline are not received by the purchaser at the agreed place or at the contractually agreed time, the seller assumes the storage of the goods at the expense and risk of the purchaser. The obligation of the purchaser to pay the purchase price remains in place. Besides this, the seller retains the right to issue an invoice.

6.6 The seller is entitled to make partial and advance deliveries.

7. Withdrawal from the contract

In the event of withdrawal from the contract, the purchaser undertakes to pay a cancellation fee of 20% of the order value, without prejudice to further claims for damages that might arise.

8. Payments

Unless otherwise agreed, all payments by bank transfer to our bank account are to be paid in cash, free of charge and without deductions within 30 days of delivery. For payments that are made within 14 days of delivery, we grant a 2% cash discount. Cheques and exchange are accepted only upon special agreement and on account of payment not in lieu of fulfilment. Collection and discount charges are payable by the purchaser. The purchaser is obliged to make full payment of the purchase price. Offsetting with counterclaims or the withholding of payments for any reason on the part of the purchaser is not permitted without express agreement. Payments to discharge debt must either be made to one of the accounts indicated on our invoices or to a person with authorisation to collect. The sales tax is to be paid in full on the total price invoiced, unless other payment terms have been agreed for the adjustment of the purchase price. For orders under a net goods value of euro 100, a small charge of 10% of the net goods value will be added.

9. Reminder and collection expenses

If the payment target date is exceeded or if the deadline is missed, the contract partner undertakes to pay interest on arrears in the sum of 8% above the interest rate announced by the ECB. In the event of late payment, the purchaser is also obliged to compensate for reminders, intervention costs and the costs of a debt collection agency and legal intervention, in addition to the interest on arrears. Warranty claims asserted by the purchaser do not entitle them to withhold agreed payments. In the event of litigation, we are entitled to include both pre litigation costs (costs of reminders, etc.) and interest on the claim. We are entitled to offset recovery costs incurred against the payment to be made by the contract partner, and payments may also be applied by the contract partner in the reverse case for older claims. Any other notes, for example on payment documents, are ineffective.

10. Deadline losses

If the purchaser is more than 2 weeks in arrears with a contractual payment or any part thereof, we are entitled to make the total remaining purchase price (remaining amount) due immediately. The entire outstanding amount is payable immediately, if application is made unsuccessfully against the assets of the purchaser, or if the credit and creditworthiness of the purchaser is otherwise compromised in any way. In the event of a delay in payment, we are entitled to withdraw from the contract. In the event of cancellation of the contract, the contract partner has to pay a reasonable fee to us for the use of the contract goods up to the actual default. When instalments are being paid, delayed payment of an instalment automatically leads to it being overdue.

11. Shipping and acceptance conditions

Upon receipt of the goods, the purchaser must check and accept them immediately at the agreed place of acceptance, or have them checked and accepted by authorised persons. If the purchaser expressly or implicitly waives the checking, the items purchased are regarded as properly delivered and accepted. Upon transfer of the goods ordered by the purchaser to the shipper, (by

post, Federal Railways or forwarder) we have fulfilled our contractual obligations and the risk falls to the purchaser. Our sales costs include costs for the delivery, assembly and installation.

12. Returns:

Components are only accepted as returns if in perfect condition, within 4 weeks from the date of delivery, with a 10% processing charge. Special components made for a system cannot be returned. Ordered special parts or special designs cannot be returned either.

13. Retention of title

13.1. We reserve ownership of all goods delivered by us up to full payment of all claims and future claims resulting from the business relationship. The purchaser is obliged to maintain the value of the reserved property and immediately undertakes to agree to this in the event that a third party makes a claim on our ownership. The purchaser is obliged to inform their customers that all goods supplied by us are under retention of title, and that they may not transfer ownership to their customers prior to full payment of our claims.

13.2 The goods will be supplied by the purchaser directly to third parties, and the purchaser is therefore entitled to services in return. For this reason, the purchaser assigns all claims, including additional claims against third parties, from such sales to us and is obliged to quote this assignment in advance of the asking price for the reservation of ownership in their current account books. The claim, up to the amount of the outstanding invoice, for ongoing business transactions for the amount of the balance claim, plus the interest on arrears, is ceded. In the event of resale, the purchaser is liable for goods and services supplied by us, up to full payment of all our claims, also for fire, theft or other damage.

13.3. The authorisation of the purchaser to sell goods in proper business transactions, ends at the latest with its suspension of payments to us or if the opening of insolvency proceedings for the assets of the purchaser is requested. In this event, the purchaser is obliged to immediately issue the goods subject to the reservation of ownership to us upon our first request. There may be no withdrawal from the purchasing contract upon demand for the release of the goods.

13.4. Pledging or security transfer of the goods subject to the reservation of ownership or the ceded claim is not permissible.

13.5. The purchaser is obliged to send us a list of the owned goods subject to the reservation of ownership as well as a list of claims with third party debtors, as soon as they have issued the payments to us and without delay after disclosure of the suspension of payments.

13.6. In the event of delay and breach of the deadline, we are entitled to take away the goods delivered at any time.

13.7. The purchaser must comply with the required formalities to ensure retention of title. For pledging or other claims against the object of the contract, the purchaser is obliged to point out our ownership rights and to appraise us of this immediately via written letter.

13.8. Any claims by the purchaser against an insurer if our goods are not paid for in full are issued within the parameters of § 15 VersVG (Austrian Insurance Act) and already assigned to us.

14. Product liability

Any recourse claims made against us by contractual partners or third parties from the title of product liability within the meaning of the law on product liability, are excluded, unless the claimant can prove that the failure was caused intentionally or at least due to gross negligence. Claims for damages for non-performance are limited to a maximum of 20% of the value of that part of the delivery or service amount, insofar as the purchaser proves corresponding damages, affected by impossibility or delay. It assumes no liability if facilities or installations of the purchaser or its customers are damaged due to incorporation of faulty goods.

15. Warranty and guarantee

15.1. Fulfilment of the warranty is executed only under the condition that the contract partner has fulfilled its contractual obligations in full and that all equipment supplied by us has been operated, installed and run for its specific use in each case according to our operating instructions, maintenance instructions, installation instructions, service manuals, etc. and that no interventions have been made by third parties with regard to our equipment.

15.2. We generally guarantee freedom from defects of mobile objects purchased for a period of 2 years, to a maximum of 6,000 hours of operation. For non-moving purchased items, the guarantee is generally for a period of 3 years to a maximum for 9,000 hours of operation. For those parts of the goods, which were sourced from a supplier, we are liable only within the scope of our warranty claims even with regard to the subcontractors. The warranty is subject to our discretion for repair of the purchased item or replacement of the defective parts, exchange or price reduction. The exchanged parts or goods are to be returned free of charge to us upon our request. Staff fees and costs for the installation and removal are to be borne by the purchaser. This applies in the same way for all warranty services. It remains at our discretion to exchange a defective product for a fault-free one of the same type. The purchaser expressly waives the assertion of direct or indirect damage (consequential damage or consequential damage) and loss of profits caused by the object purchased or defects to the object purchased, also in the event of gross negligence, for themselves and their successors in title. The special recourse of a company which has ensured guarantees to a user (section 933 b ABGB – Austrian General Civil Code) is restricted by mutual agreement to the period of statutory warranty periods (§ 933 ABGB). If in breach of its obligation to submit a complaint within the sense of § 377 V, the purchaser loses their recourse. Damage that results from improper or negligent handling, as stated above, is excluded from the guarantee and warranty. Guarantee and warranty claims are only recognised and taken into account, if they are notified immediately in writing after the occurrence of the defect. Verbal or telephone communication is not sufficient to trigger a guarantee claim.

15.3. We offer free replacement for the materials, which have demonstrably not fulfilled one of the requirements of the standard, DIN 4757, part 3, for collectors and storage, ex-factory, 5 years from the date of issue of the invoice by HERZ Energietechnik GmbH. However, we are not liable for damage caused by mechanical stress and/or changes caused by weather-related influences. Minor colour deviations and/or damage to the surface, which have no effect on the functioning of the collector, are also not covered by the warranty. For all other goods we grant 2 years' guarantee, for boilers, 5 years. Excluded from the warranty or the guarantee are cases of damages due to force majeure and malfunction which can be attributed to improper installation; if the installations or the operation have not been carried out according to our operating instructions and assembly instructions, and maintenance has not been conducted according to our maintenance provisions, or the appropriate fuel has not been used; Installation has not been

effected by a licensed specialist (heating or plumbing); for new buildings, the units have been subject to unauthorised access, if preparatory work has not been performed professionally, if the device has not been put into operation by us or our authorised agents, or we or our agents have not been given the opportunity to examine complaints on-site immediately after the occurrence of any defects, and there is no confirmation of the proper commissioning and annual inspection and maintenance by a licensed company specialising in this. We do not accept liability for any costs resulting from defects. The guarantee services promised by us apply only to companies. The consumer must be made expressly aware of any assignment of the warranty. Warranty and guarantee deliveries do not imply an extension of the warranty period. A warranty claim does not displace the due date of our claims. We only provide a guarantee if all our payment claims for the product delivered have been settled. For production of goods on request, according to drawings or technical specifications, supplied models or based on customer descriptions, any guarantee for the functioning of the parts is excluded. We only give a guarantee of faultless production and material quality.

15.4. We are not obliged to provide subsequent deliveries or repairs, where the purchaser has not fulfilled their contractual obligations. The same warranty duration as for the original delivery item applies for the spare parts and repairs provided free of charge. However, this is time limited up to the end of the warranty period of the original delivery item. Replacement parts shall become our property and are to be sent to us free of charge. We do not assume any exceptional costs for reworking based on the method and location of the use of our devices or poor accessibility to our products. The end user is obliged to provide free and unimpeded access to the device.

15.5. We will only meet the costs of a fault repair carried out by the purchaser if we have given our written agreement in advance

15.6. A further precondition of warranty claims is regular maintenance by us or our warranty agents during the maintenance service period. A maintenance contract is therefore recommended for the duration of the warranty for automatic plant feeds and heat pumps, as only regular maintenance, such as for a motor vehicle, ensures fault-free operation. However, as manufacturers, we also provide a manufacturer guarantee for all non-mobile items we have supplied, by concluding a maintenance contract (type - premium) over at least 5 years, but only with the precondition that the devices have completed no more than 15,000 operating hours. Any form of modification to the devices supplied by us, which have not been agreed by us in writing, will lead to exclusion from the warranty. Guarantees based on § 922 para. 1 2. clause. 2. Sub-clause ABGB (description, test, sample), § 922 para. 2 ABGB and § 933 para. 1 ABGB are excluded. We would point out that installation, maintenance and and/or places of repair must be kept accessible during normal business hours, otherwise there is default of acceptance by the contract partner. We neither accept liability nor guarantee the execution of work on used equipment or equipment to be repaired. If compensation claims are not recognised by us in writing, these must be validated within 6 months from discovery of the damage and the perpetrator must be established in law, otherwise these are invalid.

15.7. Under the warranty, goods or parts proven to have become unusable as a result of material or manufacturing faults, will be replaced free of charge within 3 years of commissioning of the equipment and on the condition that the plant has not operated in excess of 15,000 hours. Excluded from this are moving, electronic and electric parts, burner dishes, combustion chamber parts, etc.; 2 years or 6,000 operating hours apply to these.

15.8. The purchaser is also obliged to transfer all conditions of this business relationship to their end client. If the purchaser contravenes an obligation set out in these general terms and conditions, they must indemnify us without complaint against all claims from third parties, which would not have occurred if the conditions had been adhered to.

15.9. Our warranty and guarantee obligations do not include damages or faults arising from improper usage of the equipment, the wear and tear of so-called wearing parts, crack formation, etc., which lead to small disruptions in functioning, poor repairs or those repairs carried out without our written agreement, or modifications made by persons other than our agents, and to wearing parts, working materials (e.g. fireclay, combustion chamber stones, combustion cover linings, grid, grid elements or moving parts, ignition parts, storage, seals and fuels such as: oils, greases, filters, cleaning agents, cooling elements, thermal transfer fluid, relays, fuses and carbon brusher). Our warranty and guarantee obligation does not include damage as a result of air impurities due to heavy dust deposits, aggressive steam, placement in unsuitable areas, particularly moist areas such as washrooms and hobby rooms. Our warranty becomes invalid if a machine continues to be operated despite a fault being present, without the fault being rectified.

15.10. For Herz heat pumps we give a 3-year guarantee on the closed cooling circuit. The guarantee can also be optionally extended to 5 years or a maximum of 15,000 operating hours, in each case via an appropriate agreement.

16. System software

Control and command programs, which control and command the operating of equipment supplied, remain our property. Only upon full payment of the delivery of plant does the purchaser receive time unlimited right of use of their system-specific control program, as well as of the software deployed. We expressly reserve the right, where we make modifications or renewals to this new software, to implement this new software as required, for which we will not make a charge. The purchaser has not bought the right to ownership of the source code, which we do not disclose.

17. Technical values

17.1 The technical data on dimensions, weights, performance, operating costs and functional drawings, included in our brochures, catalogues, illustrations, technical documents, price lists, etc., are approximate details and therefore non-binding.

17.2 We reserve the right to allow deviations in design and in relation to samples provided, as well as modifications to the software.

18. 15-year spare parts guarantee

For all devices supplied, we guaranteed the supply of spare parts for 15 years from the delivery date, whereby we reserve the right, however, to supply modified parts that are nevertheless suitable for the device.

19. Installation / completion

HERZ systems are assembled on site. Installation is carried out at the standard hourly rate or at the agreed fixed price. Fixed costs for installation / completion, commissioning and training for HERZ systems are given in the price list (not including transportation to the heating room). If the installation or transfer of the system has been arranged, then the route or access to the place of

installation must be on a hard-surface road or path. For transfer to a cellar, solid steps must be available.

20. Start-up of systems

HERZ equipment is delivered with electrical cabling already in place. The water parts (hydraulics), the flue gas elements (chimney) and the electrical connections for the plant are put in place on site and are to be carried out by a licensed specialist / company. The commissioning of HERZ equipment can only be undertaken during standard working hours. Preconditions for commissioning after prior notification of the start-up requirements:

- The heating equipment must be filled with consideration of the standards in force.
- Finishing, functioning, inspection and all relevant electrical installations must be carried out by a licensed specialist.
- Sufficient pellets (according to EN 14961-2, ÖNORM M 7135, DINplus, ENplus or Swiss Pellets), wood chips (according to EN 14961-4 or ÖNORM M 7133) or logs of the relevant quality must be available or, for automatic plant the appropriate storage space must be filled.
- The plant operator must be on site for the purposes of training and instruction.
- The plant must be properly connected to the chimney (dense flue gas extraction with regular drawing rates) and a chimney must be in place, built according to the regulations (DIN 4705 or EN 13384).

If individual points have not been fulfilled, Herz customer service must be informed in good time (minimum 3 working days in advance) of the moving of the commissioning date. Additional services such as overtime, start-up of fuel supply, electrical works, etc., as well as all other journeys required if the start-up cannot be carried out in one visit, will be billed to the client at actual cost. We cannot give a guarantee for the connection to temporary electrical or water supplies.

21. Fuels

Guarantee claims and warranty claims cannot be met if the permissible fuels detailed in our operating instructions have not been used. Approval for special fuels must be sought from the manufacturer accordingly before procurement.

22. Place of fulfilment

22.1. The place of fulfilment for both parties is the head office of our company. It is agreed by the parties to the contract, according to § 104 JN that, for all legal conflicts arising from this contract, the competent court in Eisenstadt is the place of jurisdiction, for which we reserve the right of selection.

22.2. Austrian and German law apply in all contract matters. All conditions also apply for the benefit of our employees, suppliers and agents.