

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FOR SPARE PARTS

(November 2018)

1. General, scope of application

- 1.1 These General Terms and Conditions of Delivery of Hennecke GmbH (hereinafter referred to as "Supplier") apply to all business relations with companies ("Unternehmer") (section 14 of the German Civil Code (BGB)), public-sector legal entities, or special bodies or funds under public law (hereinafter referred to as "Customer"), which involve the delivery of spare parts. If other services besides the delivery of spare parts have been agreed upon between the Supplier and the Customer, separate Terms and Conditions apply, which can be found at: www.hennecke.com/gtc. The General Terms and Conditions of Sale and Delivery of Spare Parts apply in their respective version as a framework agreement to future contracts for the delivery of spare parts to the Customer, without the Supplier having to refer to them again in each particular case. Spare Parts are products or parts of products/systems, which serve to restore functionality and which are intended to replace damaged, worn out or missing machinery parts. Separate General Terms and Conditions apply to assembly services provided by the Supplier within the delivery of spare parts.
- 1.2 Any contradictory or supplementary general terms and conditions of the Customer shall only become an integral part of the contract if and to the extent that the Supplier has expressly consented to the application thereof.
- 1.3 Any deviation, supplementary agreement and/or amendment to the content of these Delivery Conditions must be made in textual form and are to be negotiated individually. This also applies to the textual form requirement itself.

2. Offer and conclusion of contract

- 2.1 All offers made by the Supplier are subject to confirmation and non-binding. All orders placed by the Customer shall be deemed to be a binding offer of a contract. The Supplier may accept said offer of contract within 4 weeks from Supplier's receipt thereof. Acceptance may be declared either in writing (e.g. by confirmation of the order) or by delivery of the goods to the Customer.
- 2.2 The Supplier reserves the right to make changes concerning the delivery of goods or services (e.g. weights, dimensions, functional specifications, load-bearing capacities, tolerances, technical data or product descriptions) as well as any representations thereof (e.g., drawings and illustrations), provided that these do not significantly alter or improve the quality of the deliverables and these changes or deviations are reasonably acceptable to the Customer.
- Information provided by the Supplier on the deliverable goods or services does not constitute a guarantee of characteristics or properties but is merely a description.
- 2.3 The Supplier reserves title and copyright to all documents. These shall not be made available to any third parties nor used for advertising purposes and must be returned upon request or proof of deletion be provided. Documents may only be used in accordance with the contract; in particular they may not be relied upon to replicate any identical or similar goods. Design drawings will not be supplied.

3. Prices and payment

- 3.1 Unless otherwise agreed, prices apply ex works subject to addition of statutory value added tax and if applicable plus assembly, commissioning and packaging costs; any export deliveries are subject to the addition of customs duties, charges and other official duties. The Supplier will not take back the transportation packaging or any other packaging under the Packaging Directive (Verpackungsverordnung); said packaging shall become the property of the Customer.
- 3.2 If the agreed prices are based on the Supplier's list prices and delivery is not to be effected within four months after contract conclusion, the Supplier's list prices applicable at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

- 3.3 The weight measurements, which are significant for the calculation, shall take place at the shipping point at the Supplier's factory, unless the Customer demands an official railway weighing at his own cost.
- 3.4 The billing of delivered parts will take place after the transfer of risk and shall be due immediately without any deductions. The Customer shall automatically be in default 14 calendar days following transfer of risk and the issue of the invoice. Payment shall only be deemed to have been effected on the date of receipt thereof by the Supplier. Checks shall be deemed to be payment only once they have been successfully honored. In the event that the Customer is in arrears of payment and the Supplier is not responsible for said arrears, the Supplier shall, without prejudice to any other claims for compensation, be entitled to defer its own contractual obligations until the overdue payments have been effected.
- 3.5 The Customer shall not be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have unless such counterclaims are undisputed or have been confirmed by a competent court.
- 3.6 If, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to substantially diminish the Customer's creditworthiness and which may jeopardise the payment by Customer of debts owed to Supplier under any contract (including other individual orders subject to the same framework agreement), the Supplier shall be entitled to effect outstanding deliveries or to render outstanding services only against receipt of advance payment or against provision of appropriate security by the Customer.

4. Delivery and delay

- 4.1 Delivery shall be effected ex warehouse (EXW, Incoterms 2000), which is also the place of performance. At Customer's request and cost, the goods shall also be sent to a different point of destination (sale by delivery to a place other than the place of performance "Versendungskauf"). Unless otherwise agreed, the Supplier is entitled to determine the type of shipment (in particular the transport company, dispatch route, packaging). The costs of shipment shall be borne by the Customer.
- 4.2 The delivery periods stated by the Supplier are not binding unless binding deadlines are expressly stated in the written confirmation of the order. Insofar as dispatch has been agreed, the delivery periods and delivery dates refer to the time when the purchased goods leave the Supplier's warehouse or the time with effect from when the Supplier notified the Customer that they were ready for dispatch.
- 4.3 The Supplier's obligations are subject to the condition of correct and timely self-delivery.
- 4.4 Compliance with delivery periods by the Supplier shall be subject to the condition that all commercial and technical questions between the contract parties have been resolved and the Customer has fulfilled all obligations incumbent on it such as, e.g. obtaining the necessary official certificates or permits or the furnishing of a deposit. In the event of any delays in respect of the foregoing, the delivery time shall be appropriately extended. This shall not apply if the Supplier is responsible for the delay.
- 4.5 If the Customer is in default of acceptance or culpably breaches other duties to cooperate, the Supplier shall be entitled to demand compensation for the resulting damages, including any additional expenses. The right remains to assert further claims. Insofar as the above conditions prevail, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which he is in default of acceptance or payment.
- 4.6 The Supplier shall not be liable for impossibility of the delivery or for delays in delivery to the extent that these were caused by force majeure (e.g. natural catastrophes, war, civil unrest) or other events that were not foreseeable at the time the contract was concluded (e.g. stoppages of all kinds, transport delays, strikes, lawful lock-outs, a shortage of workers, power or raw materials, difficulties in procuring necessary administrative

licenses, administrative measures or any failure to supply, incorrect supply or untimely supply by Suppliers) for which the Supplier is not responsible. Insofar as such events make delivery of the goods or services considerably more difficult or impossible for the Supplier and the impediment is not merely of a temporary duration, the Supplier shall be entitled to rescind the contract. In the event of impediments that are of temporary duration the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. Insofar as the Customer can no longer be expected reasonably to accept delivery or performance because of the delay, the Customer may rescind the contract by means of a prompt written declaration to the Supplier.

- 4.7 The Supplier shall be entitled to effect part deliveries of goods only if the Customer is able to effectively use the goods so delivered for their contractually stipulated purpose, delivery of the remainder of the goods ordered has been ensured, and the Customer does not thereby incur considerable additional work and expense.
- 4.8 If the Supplier is late in effecting a delivery or providing a service, or if, for any reason whatsoever, the making of a delivery or the provision of a service becomes impossible for the Supplier, the Supplier's liability for damages shall be limited as set out in Clause 7 of these General Terms and Conditions of Delivery.
- 4.9 If, at the request of the Customer, deliveries are to be effected later than the delivery dates originally agreed, payment shall nevertheless be effected as though the delivery had been made on the delivery dates originally agreed. This shall also apply if the Customer fails to accept delivery on the contractually agreed delivery dates. The cost of any necessary storage of the goods as well as other costs incurred by reason of the delay shall be charged to the Customer.

5. Transfer of risk and acceptance

The risk shall pass to the Customer at the latest when the goods to be delivered have left the Supplier's warehouse. The same applies if part deliveries are effected or the Supplier has undertaken to also provide additional services (e.g. dispatch or installation of goods). If dispatch or delivery is delayed as a consequence of the acts or omissions of the Customer, the risk shall pass to the Customer upon the date on which the Supplier is ready for dispatch or delivery and has notified the Customer accordingly.

6. Retention of title

- 6.1 The Supplier shall retain title to goods delivered by the Supplier until all of the Supplier's claims arising out of the business relationship with the Customer have been satisfied in full, in particular until the Customer has settled the account balance.
- 6.2 The Customer shall handle, store, maintain and repair any goods delivered to it subject to a retention of title by the Supplier with due care, and shall insure them at its own cost against fire, water damage, breaking and entering and theft and damage. The Customer shall promptly notify the Supplier of any damage to such goods. Upon request the Customer shall send the insurance policy to the Supplier for inspection. The Customer assigns all claims against the insurance company arising out of the insurance contract to the Supplier in advance. The Supplier accepts said assignment. If the Customer has not adequately insured the goods/services to be delivered, the Supplier shall have the right but not the duty to insure the goods/services to be delivered at the Customer's cost.
- 6.3 The Customer shall promptly notify the Supplier in writing if any goods delivered to him subject to a retention of title by the Supplier are attached or otherwise encroached upon by third parties.
- 6.4 The Customer shall be entitled to sell goods delivered to it subject to a retention of title by the Supplier in the ordinary course of business so long as the Customer is not in default of payment. The goods may not be pledged nor shall title thereto be transferred as security. The Customer hereby assigns to the Supplier by way of security all claims that may arise consequent to a sale by it of such goods or on any other legal grounds (in particular, transfer of ownership, insurance claims, tort). The Supplier accepts said assignment. The Supplier revocably authorizes the Customer to enforce the assigned claims in its own name, for the Supplier's account. If the Customer acts in breach of the terms of the contract, including defaulting on

payment, the Supplier may require him to disclose such assignment to a third party and to hand over to the Supplier the information and documents necessary to enforce the claim.

- 6.5 In the event of a breach of contract by the Customer, especially in the event of defaulting in making payment, the Supplier may demand the return, at the Customer's cost, of any goods delivered to the Customer subject to a retention of title by the Supplier, subject to the Supplier having first set a reasonable deadline. Such demand for the return of the goods by the Supplier shall constitute a rescission of the contract. After taking back the goods, the Supplier shall be entitled to their realization. The proceeds from any such realization, less the reasonable realization costs, must be offset against the amount owed by the Customer.
- 6.6 If any goods delivered to the Customer subject to Supplier's retention of title accede to other objects, the retention of title shall be valid and continue in respect of the newly created object. The Supplier shall thereby acquire co-ownership in such object at a rate commensurate to the value of the goods delivered to the Customer subject to a retention of title. If one of the joined objects ("verbundene Sache") is considered to be the principal object ("Hauptsache"), the Customer shall transfer to the Supplier co-ownership in such joint object at a rate commensurate to the value of the goods delivered to the Customer subject to a retention of title. The Customer shall keep any object in respect of which the Supplier has acquired joint ownership in safe custody free of charge. If any goods delivered to the Customer subject to a retention of title by Supplier are resold as an integral part of a new object, the assignment subject to Clause 6.4 shall apply only in the amount of the invoice value of the goods delivered to the Customer subject to a retention of title by the Supplier.
- 6.7 If the value of the security to which the Supplier is entitled under the above provisions exceeds the Supplier's claims by more than 10 %, the Supplier shall be obliged to release the security with respect to the value that exceeds said amount. The choice of security to be released shall be up to the Supplier.
- 6.8 If the law of the country in which any delivered goods are located does not permit or recognize a retention of title or does so only in limited form, the Supplier may reserve other rights in the delivered goods. The Customer shall be bound to cooperate with the Supplier in relation to all measures (e.g. registration) necessary to effect the retention of title or to create such other rights, as may appropriately protect the interests of the Supplier in lieu of a retention of title.
- ## 7. Damages
- 7.1 The Supplier shall be liable in accordance with the statutory provisions for any breach by it of material contractual obligations, i.e. contractual obligations, the performance of which characterize the contract and which are necessary for its proper implementation. The Supplier shall not be liable for any other breaches of contract, unless damage has been caused through intentional or grossly negligent acts or omissions of its statutory representatives ("gesetzlicher Vertreter") or any senior employee or agent engaged by the Supplier to assist it in complying with its obligations in terms hereof ("leitender Erfüllungsgehilfe"). The Supplier shall only be liable for consequential damages, if the consequential damage can be attributed to a breach of duty caused by wilful intent or gross negligence.
- 7.2 In the absence of intentional conduct attributable to Supplier, the latter shall be liable only for the reasonably foreseeable damage that typically occurs.
- 7.3 The foregoing shall neither affect the Supplier's liability under the German Product Liability Act (Produkthaftungsgesetz), nor its liability for culpable ("schuldhaft") injury to any person's life, body or health.
- 7.4 Unless otherwise provided above, claims against the Supplier for damages arising out of a breach of duties ("Pflichtverletzungen") shall be excluded.
- 7.5 The claims for damages under Clauses 7.1 to 7.3 above shall be time-barred within the statutory periods.

8. Warranty

- 8.1 Any warranty claims (“Mängelansprüche”) against the Supplier shall be conditional on fulfillment of the duties incumbent upon the Customer under section 377 of the German Commercial Code (HGB) to inspect any goods delivered and to report any complaints.
- 8.2 If brand-new spare parts are delivered by the Supplier and those brand-new spare parts prove to be defective, the Supplier shall be bound to provide remedy by, at the Supplier’s option, either rectifying the defect or by delivering a replacement (“Ersatzlieferung”). In the case of a replacement delivery the Customer must return the defective goods to the Supplier in accordance with the statutory provisions. The costs of such supplementary performance (“Nacherfüllung”) by Supplier, in particular transport costs, labour costs and cost of materials, shall be borne by the Supplier; however, this shall not apply if costs are increased as a result of goods being located at a site which is not their intended place of use.
- 8.3 In case of delivery of second-hand spare parts, which are sold as “repaired” (“repariert”) or “second-hand/used” (“gebraucht”) and not as “refurbished” (“generalüberholt”) or “in mint condition” (“neuwertig”) by the Supplier, the Supplier shall only be liable in accordance with Clause 7. If a used but refurbished spare part or a used spare part in mint condition is sold and proves to be defective, the Supplier shall only be obliged to attempt to rectify the defect. If this attempt fails, the Customer shall only be entitled to a reduction of the purchase price. Damage claims under section 7 remain unaffected. Any further warranty claims are excluded.
- 8.4 The Supplier shall be entitled to make supplementary performance dependent on the Customer paying the due purchase price. The Customer shall, however, be entitled to withhold such part of the purchase price as is reasonable in proportion to the defect.
- 8.5 If the supplementary performance acc. to Clause 8.2 fails twice, the Customer shall be entitled to a reduction of the purchase price or to rescind the contract. There shall be no entitlement to rescind the contract if the defect is negligible. In addition the Customer can demand damages in accordance with Clause 7. Any further warranty claims are excluded.
- 8.6 Save in the case of bad faith (“Arglist”) and subject to the provisions of Clause 7.5, all warranty claims shall prescribe 12 months after delivery.
- 8.7 Ordinary wear and tear is excluded from the warranty. Ordinary wear particularly affects wear parts such as, without limitation, filter elements, shaft seals (e.g. on pumps, stirrers etc.), seals in general, injectors, throttles, high pressure lines etc.
- 8.8 Excluded from any warranty are failures or damage caused by the Customer himself, or by a third party not commissioned by Supplier, through any use contravening the contractually agreed purpose, or any assembly, installation and start-up not in compliance with Supplier’s assembly, installation or start-up instructions, or any operating error or omitted or improperly administered maintenance, e.g., by relying on inappropriate maintenance equipment. Or if the Customer himself, or a third party not commissioned by Supplier undertakes a non-insignificant modification to the delivered goods.
- 8.9 Machine components will be designed and selected for the use of customary, non-aggressive PU raw materials. Corrosive or abrasive raw materials with a strong acid or alkaline reaction due to the additives used, or containing crystalline or mineral solids, may lead to higher wear and reduce the service life. The Customer shall be solely responsible for the consequences of any use of such raw material.

9. Information and technical advice

- 9.1 Information and recommendations from the Supplier are not binding and are made excluding all liability unless the Supplier has undertaken expressly and in writing to give information and recommendations. The Customer shall be responsible for investigating whether a product is suitable for the Customer’s particular applications. Any details and information provided by the Supplier in relation to its goods do not constitute any promise as to their suitability for the Customer’s purposes.

10. Use of software

- 10.1 To the extent that software is included in the scope of delivery, the Customer is granted a non-exclusive right to use the products supplied, including the documentation pertaining thereto. However, software is made available solely for use with those deliverables for which it is intended. Use of the software on more than one system is not permitted.
- 10.2 The Customer may copy, edit or translate software, or convert it from object code into source code, only to the extent permitted by statute (sections 69 a et seq. German Copyright Act (Urheberrechtsgesetz)). The Customer undertakes not to remove or alter any manufacturer’s details - in particular copyright notices - without Hennecke’s express prior consent.
- 10.3 All other rights in the software and in the documentation, including any copies thereof, shall remain with the Supplier or the supplier of the software, respectively. The granting of sub-licenses is not permitted.
- 10.4 To the extent to which software is included in the scope of delivery for machine and plant documentation, the foregoing is limited solely to the software needed for restoring the delivered machine or plant to its original state (back-up software) in the case of a failure, loss, or similar event.
- 10.5 To the extent the scope of delivery includes software, for which the Supplier has only derived rights, meaning a software for which a third party is the rights holder, the rights holder’s Terms of Use shall prevail. Provided that the rights holder’s Terms of Use are not included in the machine and plant documentation, the Supplier will submit the rights holder’s Terms of Use on demand. Restricted acts according to sections 69a et seq. German Copyright Act (Urheberrechtsgesetz) fundamentally require the rights holder’s permission. If the Customer wishes to perform such restricted acts, the Supplier will request the right holder’s permission at the Customer’s demand.
- 10.6 Modifications to the machine code included in the control software are subject to the express approval of the Supplier’s Electrical Design Department.
- 10.7 Insofar as the Supplier loads software by way of remote maintenance without being personally present on site to setup said software, the Customer must take all reasonable measures in the course of setup and in the commissioning phase in order to minimize any damage due to any malfunctions in the software as far as possible. This includes functional testing of the equipment affected by such remote maintenance, an intensified initial observation of functional and machine parameters, and the capability to shut down the system promptly if malfunctions occur.
- 11. Choice of law, place of jurisdiction, place of performance**
- 11.1 The place of performance for all contractual obligations of the Supplier and the Customer is the registered seat of the Supplier, unless otherwise specified or another place of performance results from the nature of the obligation.
- 11.2 German law shall apply, subject to exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.3 The place of jurisdiction is Cologne. In addition, we may assert any of our claims at the Customer’s place of general jurisdiction. The Supplier shall also have the choice to have any and all disputes arising out of the business relationship with the Customer finally decided in accordance with the Rules of Arbitration of the Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules. At the Customer’s request, the Supplier is obliged to execute the aforementioned right of choice regarding a certain dispute by declaration to the Customer within one week from the receipt of the Customer’s request, if the Customer wishes to initiate legal proceedings against the Supplier.
- 11.4 Agreements concluded in accordance with these Terms and Conditions of Delivery shall remain binding on the Customer, even when individual provisions are void, all of the remainder of the provisions remain binding.

Hennecke GmbH