

**Heggenstaller Vertriebs GmbH**  
**General terms of Delivery and Payment**  
**European Union/Switzerland/Norway/Iceland**  
**- as of 2009 -**

**I. Scope**

1. The following General Terms and Conditions shall apply exclusively for all deliveries (including repeat orders) and services (including consultancy). Contradictory (purchase) conditions shall require our written approval and shall also not be approved by acceptance or completion of an order.
2. Our General Terms and Conditions shall only apply in respect of businesses, legal entities under public law or special funds under public law according to § 310 para. 1 of the German Legal Code (BGB).
3. Deliveries as defined under these Terms and Conditions shall also include support services such as assembly in the case of sales or works delivery and other complementary services or consultancy.
4. In the case of conflicts between provisions in the main contract (regularly in the form of an order confirmation) and these Terms and Conditions, the provisions of the main contract shall take precedence.

**II. Quotation/Completion of Contract/Perfect Attestation Clause**

1. Our quotations are subject to change. Details in quotations and in associated documentation concerning dimensions, weights, performance, resilience and other product features shall not represent guarantees or warranted features. They shall only become constitutive properties of the object supplied and part of the contract when they are listed in the order confirmation or confirmed in other written agreements. The same shall apply to drawings, sketches, plans, illustrations, dimensions weights and other performance data which are made known to the customer or their vicarious agents before conclusion of contract.
2. The contract shall come into existence only on receipt by the customer of our written order confirmation, but in any case on completion of delivery.
3. Insofar as is reasonable for the customer, we shall reserve the right to make design changes if these appear technically necessary or expedient and the value and serviceability of the goods are not damaged as a result. Insignificant alterations that are reasonable for the customer are permitted at any time.
4. Further agreements and assurances shall not have been made. Changes and addenda to the contract and additions and contractual constitutive declarations must be made in writing. This shall also apply to lifting the requirement of written form.

**III. Price/Price Adjustment/Payment/Set-off and Retention**

1. Unless otherwise agreed, our prices shall apply in Euros plus VAT at the rate legally in force on the day on which the invoice is issued, with free wagon loading in the sidings or free freight train loading at the works, plus other costs and public fees, in particular packing and transportation costs, insurance premiums and any costs of assembly that may arise. Should a service be required that is not foreseen in the contract, we shall have the right to claim additional payment.
2. Cheques and bills of exchange shall only be accepted on account of performance, but not in lieu of performance. The cashing of a cheque shall only be regarded as complete when the account of the issuer has been debited, the credit has been made to the account of the payee and the debit entry can no longer be cancelled by the bank. Payments by note shall only be permitted with special agreement.
3. Unless otherwise agreed and other conditions regarding due date have been set, the price/fee shall be paid without discount within 14 days of the date of invoice. This shall also apply to part deliveries.
4. In the absence of other directions, incoming payments shall be used at our discretion to settle the oldest or the least secure debts.
5. We shall reserve the right to alter our prices in corresponding proportion if, after conclusion of the contract, costs rise or fall because of changes in the price of materials. We shall provide evidence of these and the basis for the relevant pricing to the customer on request. Should

the increase exceed 5 %, the customer shall have the right to dissolve the contract.

6. Failure to observe the conditions of payment that is the responsibility of the customer, not only insubstantial arrears but also a risk to our right to recompense as a result of incapacity on the part of the customer that only emerges after conclusion of the contract, for example as the result of an application to instigate insolvency proceedings in respect of the customer's assets, shall entitle us to stop outstanding deliveries and only complete them in return for advance payment or provision of securities. In the case of a risk to our right to recompense, if the customer does not meet our demands to make recompense or provide security, at his discretion, within an appropriate period, step by step in return for performance, we shall be able to withdraw from the contract on expiry of such a period, without affecting our other legal rights, on fulfilment of any other legal requirements. The risk to our right to recompense that is the responsibility of the customer shall further entitle us, insofar as we have already provided our service, to require immediate payment of all of the customer's other accounts with us.
7. Offsetting against counterclaims by the customer shall not be permissible, insofar as the counterclaims are not legally established, uncontested or accepted by us. To this extent, a right to retention shall also not be permissible.

**IV. Delivery/Delay in Delivery/Higher Authority/Transport**

1. The application for and obtaining of the necessary official or other permits shall not be part of our service obligations, unless otherwise agreed by contract. The delivery period shall not begin before final clarification of all technical details, not before receipt of other documents and official permits to be obtained by the customer and not before compliance with all agreed conditions of payment and other obligations. Should these obligations on the part of the customer not be completed on time, the period shall be extended accordingly, insofar as the delay is not our responsibility. The delivery period shall be observed if by its expiry notice of readiness for shipment has been received by the customer, unless shipment is delayed on grounds that are our responsibility.
2. War, unrest, lawful measures of industrial action, orders of higher authority, shortages of energy and raw materials, traffic disruption and unavoidable disruption of operation, together with all other instances of force majeure (also affecting our suppliers) shall release us for the duration of the disturbance and commensurate with its effects from the obligation to provide delivery. The customer may only withdraw from the contract within the legal provisions because of delay if such a delay is our responsibility or compliance with the contract is unreasonable for the customer. An alteration in the burden of proof to the disadvantage of the customer is not associated with the foregoing provision.
3. Should we cause a delay in delivery, we shall accept liability on submission of a fixed date agreement in accordance with the legal provisions. If the delay in delivery is our responsibility, this shall also apply if the customer has no further interest in fulfilment of the contract.
4. In the case of a delay in delivery we shall accept liability in accordance with the legal provisions, insofar as we are guilty of breaching significant contractual obligations or if we, our representatives or our vicarious agents are guilty of gross negligence or intent. Except in the case of intent, our liability for compensation shall be limited to predictable, typically occurring damages.
5. Insofar as we accept liability for delay in delivery, such liability shall be limited to a fixed-rate compensation payment for delay in the amount of 0.5 % per week, to a maximum of 5 % of the value of goods delivered.
6. Further legal claims and rights of the customer remain reserved.
7. Unless otherwise resulting from the order confirmation, delivery shall be agreed "ex works". If the place of fulfilment is our registered office and if the delivery item is shipped there at the request of the customer, the risk shall be transferred to the customer as soon as the delivery item has been handed over to the shipping company

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in our warehouse; this shall also apply if we bear the shipping costs. If we use our own means of transport in this case, the risk shall be transferred to the customer as soon as the item has been unloaded from the means of transport at the construction site or at the customer's location. Insofar as no debt to be discharged at the creditor's domicile exists, we shall take out shipping insurance to cover the delivery - at the customer's request - the costs of which the customer will bear.

**V. Liability for Defects**

1. The purchaser shall be obliged to accept delivery of the shipment in all cases.
2. The warranty rights of the customer shall be based on the assumption that the latter has properly fulfilled his obligations of inspection and complaint in accordance with § 377 of the German Commercial Code (HGB), whereby complaint about defects shall be made in writing.
3. In the case of a justified claim, we shall repair, replace or supply new parts or services at our discretion - at the discretion of the customer in the case of a claim to delivery damages in accordance with BGB §§ 478, 479. We shall not be obliged to repair insignificant defects. We shall bear the necessary expenses to rectify the defect, in particular transport, handling, labour and material costs, insofar as these are not increased by the purchase item being brought to a place other than the place of fulfilment. Should supplementary performance not be completed within an appropriate period, during which we are to be given two opportunities to rectify the defect, the customer shall be entitled to withdraw from the contract or to reduce the payment. The customer shall have the right to compensation claims for and claims for replacement of unavailing expenses under the provisions regulated below in sections V. 4 to 10.
4. We shall have the right to refuse supplementary performance, as long as the customer has not fulfilled the payment obligations due in respect of us to an extent that corresponds to the part of the service provided that is free from defects.  
Should the complaint of defect prove to be unjustified, we shall have the right to demand reimbursement from the customer for the costs incurred by us as a result.
5. We shall accept liability in compliance with the legal provisions for compensation for intentional or grossly negligent breaches of obligation and for intentional or grossly negligent breaches of obligation by our legal representatives or vicarious agents, and in the case of justifiable impossibility and significant breaches of obligation.
6. We shall accept liability in compliance with the legal provisions insofar as we culpably breach significant contractual obligations. These are such obligations as give the contract its form and on the observance of which the contracted partner may rely, as create the prerequisites for the fulfilment of the contract and are indispensable for the achievement of the purpose of the contract.
7. In the aforementioned cases V. 5. and 6., and furthermore, if the customer is entitled to a claim for compensation instead of the service, our liability shall be limited to compensation for foreseeable, typically occurring damages, insofar as we are not guilty of intent.
8. In the event of injury to life, physical injury and damage to health caused by us, our legal representatives or our vicarious agents, we shall accept liability in accordance with the legal provisions. The same shall apply insofar as we have provided guarantee for the properties of our goods or the availability of a service or a procurement risk and in the case of liability arising from risk factors (in particular pursuant to the Product Liability Act).
9. Unless otherwise stated above, our liability shall be excluded. Further claims or claims other than those regulated under clause V. of this contract on the part of the customer against us, our representatives or our vicarious agents on the grounds of a material defect shall be excluded.
10. Claims and rights on the grounds of material defect shall expire in 12 months, starting from delivery of the delivery item to the customer, unless longer periods are legally prescribed in accordance with § 438 para. 1 no. 2 BGB (Construction and Items for Construction), with §§ 478,

479 BGB (Delivery Claims) and § 634 a para. 1 no. 2 BGB (Construction Defects). The limitation period of 12 months shall not apply in cases of injury to life, physical injury or damage to health caused by us, our representative or our vicarious agents, fraudulent concealment of a defect, intentional or grossly negligent breach of obligation, breach of significant contractual obligations and insofar as we accept liability arising from risk factors.

11. For orders for goods or parts of goods the features of construction and composition of which are prescribed by the customer, the latter shall bear responsibility for ensuring that construction and composition do not infringe the property rights of third parties. The customer shall release us from liability in the case of a claim.
12. A reversal of the burden of proof is not connected with the preceding provisions under section V.

**VI. Joint and Several Liability**

1. Further liability for compensation than provided for in section V. above shall be excluded, irrespective of the legal nature of the claim asserted. This shall apply in particular to claims for compensation resulting from default on conclusion of contract, on the grounds of other breaches of obligation or on the grounds of tort claims for compensation for material damages pursuant to § 823 BGB.
2. The limitation under para. 1 shall also apply insofar as the customer demands replacement of futile expenses instead of claiming compensation in place of the performance of services.
3. For the limitation period for all claims that are not subject to the limitation period on the grounds of a material defect, a contact period of 18 months shall apply, unless a case pursuant to section V. 10. clause 2 exists. This shall start from the point at which the damage and the identity of the tortfeasor are known.
4. Insofar as the liability for compensation from us is excluded or limited, this shall also apply with regard to the personal liability for compensation of our staff, employees, co-workers, representatives and vicarious agents.
5. Section V. 12. shall apply accordingly.

**VII. Non-Assignment Clause**

The assignment of entitlements to performance, pecuniary claims, warranty claims or other secondary claims and of compensation claims against us by third parties is only permissible with our agreement.

**VIII. Retention of Title**

1. The goods supplied shall remain in our ownership until complete payment of the purchase price and completion of all other claims, including all outstanding balance claims from the current account and all incidental claims (exchange costs, financing costs, interest, etc.) and all future claims that arise in connection with the delivery. The addition of individual items to an open account or the balancing of the account and the acceptance of the same shall not affect the retention of title.
2. The purchaser shall be entitled to process and sell the goods in the regular course of business. The entitlement shall expire as soon as the customer gets into payment arrears, an application is made to instigate insolvency proceedings, payment is suspended or subsequent reduction of his creditworthiness takes place.
3. Should the goods subject to retention of title be processed into a new movable item by the purchaser, such processing shall take place on our behalf and at no cost and without obligations for us. We shall become proprietors and we are to be regarded as manufacturers as defined under § 950 BCB. In the case of processing with other goods that do not belong to us by the purchaser, we shall obtain co-ownership of the new item in the proportion of the invoice value of the goods subject to retention of title to the other processed goods at the time of processing. For the new item arising from the processing the same shall otherwise apply as for the goods subject to retention of title. They shall be regarded as items subject to retention of title as defined by these conditions.
4. Should goods subject to retention of title be combined, mixed or blended with goods not belonging to us pursuant to §§ 947, 948 BGB, we shall become co-owners in accordance with the legal provisions. Should the purchaser

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be granted sole ownership as a result of combination, mixing or blending, he shall then immediately transfer co-ownership to us in the proportion of the value of the goods subject to retention of title to the other goods at the time of combination, mixture or blending. In this case, the purchaser shall store free of charge the items in our ownership or co-ownership, which also shall be regarded as goods subject to retention of title in the sense of these provisions.

5. Should goods subject to retention of title be sold by the purchaser, the purchaser shall undertake to sell the goods subject to retention of title for his part only under retention of title and the purchaser shall at the same time immediately assign to us the claims from the further sale to secure all of our claims from the business relationship. We shall accept this assignation. Should the goods subject to retention of title be resold together with other goods and/or after processing, combination, mixing or blending, the assignation agreed shall only apply in the amount of the value of the goods subject to retention of title that are resold with the other goods.
6. Should goods subject to retention of title be built in to the purchaser's own property as a significant component, the purchaser shall immediately assign all claims arising from sale of the property or of property rights in the amount of the value of the goods subject to retention of title with all ancillary rights and with absolute priority. We shall accept this assignation. Para. 5, clause 3 shall apply accordingly.
7. Should goods subject to retention of title be built in to the property of a third party as a significant component, the purchaser shall immediately assign all claims against the third party for recompense in the amount of the value of the goods subject to retention of title with all ancillary rights, including any such granting an equitable mortgage, with absolute priority. We shall accept this assignment. Para. 5, clause 3 shall apply accordingly.
8. Without prejudice to our authority to collect the claims ourselves, it shall remain to the purchaser to collect the assigned claims in accordance with paras. 5, 6 and 7, with the reservation that authority may be revoked at any time. We shall make no use of our collection authority as long as the purchaser fulfils his payment obligations, also in respect of third parties. We shall be entitled to expect the purchaser to make known to us the assigned claims and the debtors associated with them, to give full particulars regarding collection, to hand over the relevant documentation and to notify the debtors of the assignation. Our right to inform the debtors of the assignation ourselves is not affected thereby.
9. The purchaser shall not be entitled to pledge or transfer by way of security the goods subject to retention of title without our consent. The purchaser shall notify us immediately of enforcement measures by third parties affecting the goods subject to retention of title or the assigned claims and shall provide us with documents necessary for appeal. He shall not make any informal agreements with his customers that exclude or affect our rights.
10. The purchaser shall store the goods subject to retention of title and the documents free of charge for us. He shall insure them at the nominal value against the usual risks e.g. fire, theft, transport and water damage. The purchaser shall immediately assign to us the claims resulting from a case of damage against insurers and third parties in the amount of the invoice value of the goods subject to retention of title. We shall accept this assignation.
11. The purchaser shall inform us immediately of suspension of his payments and/or an application to instigate insolvency proceedings in respect of his assets. In this case, the right to resell or use the goods subject to retention of title and the authority to collect the assigned claims expire.
12. Should the value of the securities established for us exceed our claims by a total of more than 10 %, we shall then be obliged at the purchaser's request or the request of a third party affected by the overcollateralisation to re-assignation or release, at our discretion. With the repayment of all our claims arising from the business relationship, ownership of the goods subject to retention of title

and the assigned claims shall be transferred to the purchaser.

**IX. Proprietary Rights/Drawings/Documents/Tools**

1. For all drawings, sketches and documents prepared by us we shall retain proprietary right and copyright. They shall be treated as confidential, enjoy the protection of intellectual property in accordance with the legal regulations and may not be made known to third parties, in particular to competitor companies, or used by the customer himself outside the contractual agreements.
2. Drawings, sketches and documents that are part of our quotation must be returned if no contract is concluded.
3. Tools, models and other devices shall remain our property, even if the customer has borne the costs for these in part or in total. We shall, however, be obliged not to use these objects for other customers without the agreement of the customer.

**X. Miscellaneous**

1. Local agents, travelling salesmen and other persons shall only be entitled to accept payment if they provide written authorities to collect issued by us.
2. Electronic data processing is used for the handling of business relations and for in-house processing of business transactions. Pursuant to the provisions of the Federal Data Protection Act, the customer's attention is drawn to the fact that we process the personal data required for this purpose and only use them in-house.

**XI. Place of Performance/Jurisdiction/Applicable Law**

1. **Unless otherwise stipulated in the order confirmation, our main registered office shall be the place of performance.**
2. **Insofar as the purchaser is a merchant as defined under the Commercial Code, a legal entity under public law or a special fund under public law, our registered office shall be the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. We shall also be entitled to sue in the court that has jurisdiction for the registered office of the purchaser.**
3. **German law shall apply exclusively, unless a differing written agreement has been expressly made in individual cases. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 shall be excluded.**

Company's registered office: Kühbach-Unterbernbach/Germany  
Court of Registration: Augsburg District Court Companies' Register  
No. 17387