



## GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY HERZ ENERGIETECHNIK GMBH

### 1. General information

The following General Terms and Conditions apply to all quotes, contracts, deliveries, assemblies, maintenance and all services, etc. provided by Herz Energietechnik GmbH (hereinafter referred to as HERZ for short) to its customers. Different agreements or side agreements of terms and conditions of the buyer shall only become valid if they are confirmed in writing by HERZ.

### 2. The quote

Quotes from HERZ are subject to alteration and non-binding, unless they are expressly labelled as binding in the quote text. Changes to the goods or to the design as a result of technical developments are reserved. The weights, dimensions and technical specifications stated for HERZ products are non-binding. All technical documents - also in electronic form - including all images and brochures, shall remain the property of HERZ and shall remain its copyright. Any use, notably forwarding, reproduction and publication, shall require the express consent of HERZ.

### 3. Prices

Unless agreed in writing, prices are net ex works (EXW Incoterms 2020) without packaging and without discount. They are only guide prices. If there are increases in material costs between conclusion of the contract and performance as a result of recommendations from a joint commission or due to changes in global market prices for raw materials or cost prices or additional work and additional costs caused by circumstances not in the contractor's sphere of influence, HERZ reserves the right to adjust the prices. This does not apply if there are fewer than 3 months between conclusion of the contract and performance. If delivery free site is agreed, this means access is via an easily accessible road but without unloading the delivered goods. Additional services and deliveries shall be billed separately. For goods delivered ex works Incoterms 2020, these are deemed to be accepted. Services, including training and instruction for employees of the contractual partner, shall be charged according to the applicable services price list.

### 4. Entering into a contract

4.1 A contract is deemed concluded when HERZ, after receiving an order, sends a written order confirmation or if the goods are delivered to the purchase directly after receipt of order. In the latter case, the invoice is simultaneously the order confirmation.

4.2 Side agreements and changes or supplements requested by the purchase after conclusion of a contract require written confirmation from HERZ in order to be valid. All changes after entering into a contract, which are made upon request from the purchaser or costs incurred by HERZ as a result of cancellation, shall be borne by the purchaser. HERZ is free to reject orders without stating grounds. If prepayments have been made in the meantime, these shall be refunded.

### 5. Performance periods and deadlines

5.1 Performance periods, which are not expressly designated as binding, are non-binding.

5.2 Compliance with an agreed performance period requires all commercial and technical questions to be clarified between the contractual parties and for the ordering party to have fulfilled all its obligations. If this is not the case, the performance period shall be extended appropriately. A performance period is complied with if the shipment is ready for shipping within the period and this has been advised to the purchaser. If acceptance has to be performed, the acceptance date shall apply, alternatively the notification from HERZ of readiness for acceptance.

5.3 Before the end of the performance period, HERZ reserves the right to make partial deliveries and submit partial invoices to a reasonable extent.

5.4 Compliance with the performance deadline is subject to correct and timely self-delivery. HERZ shall report any obviously developing delays.

5.5 If non-compliance is due to force majeure, labour disputes, delays in receiving state approvals or other events outside HERZ's sphere of influence, the delivery period shall be extended accordingly. This shall also apply if HERZ is in arrears with provision of the work and services. Any obviously developing delays in the provision of work and services shall be reported.

5.6 If there are delays to the assembly or commissioning or delays to subsequent trades or work by other companies that are longer as a result of delivery delays, partial deliveries, longer than envisaged assembly times, or similar, claims for compensation against HERZ are excluded unless the delays are due to malice or gross negligence.

## 6. Delivery period

6.1 Delivery dates are always non-binding unless a fixed date has been expressly agreed in writing. A delayed delivery shall not entitle the purchaser to assert claims for compensation or to withdraw from the contract. Nevertheless, HERZ shall take all measures in order to fulfil the desired dates of its customers.

6.2 In the event of delayed delivery, the purchase only reserves the right of withdrawal after a reasonable subsequent deadline set by it has passed.

6.3 The delivery time is deemed to be interrupted for the duration of circumstances, which cannot be influenced by HERZ or by suppliers to HERZ: e.g. Difficulties in procuring raw materials, business interruption, strikes or lockouts, and all cases of force majeure.

6.4 If the grounds for delays as listed in No. 6.3 last longer than 12 weeks, both HERZ and the purchaser reserve the right to withdraw from the contract without stating further reasons.

6.5 If goods manufactured on time are not transferred to the purchaser at the agreed location or on the contractually agreed date, HERZ can store the goods at the purchaser's costs and risk. The purchaser's obligation to pay the purchase price shall remain unaffected. In addition, HERZ reserves the right to present the invoice.

6.6 HERZ reserves the right to make partial and advance deliveries.

6.7 In the case of a delay to the work and services or of an interruption, which are caused by the purchaser, the purchaser shall bear all additional costs incurred as a result of the delay or interruption, and HERZ can submit partial invoices for its work and costs. Delivery of the HERZ products - as represented in the price table - shall generally be within the usual market and industry packaging. The goods are insured against transport damage, transport losses or breakage only upon written request from the purchaser and at its cost. If there are delays to the assembly or commissioning or delays to subsequent trades or work by other companies that are longer as a result of delivery delays, partial deliveries, longer than envisaged assembly times, or similar, claims for compensation against HERZ are excluded unless the delays are due to malice or gross negligence. Unless the delay is due to malice or gross only by HERZ but not by its suppliers.

## 7. Delivery, transport and transfer of risk

7.1 Risk, including risk of seizure, for whatever reason, shall transfer to the purchaser with handover of the goods to the haulier or freight carrier, but not later than upon leaving the HERZ plant. If the shipment is delayed due to conduct by the purchaser or as a result of circumstances that HERZ is not responsible for, risk shall transfer to the purchaser upon notification of readiness for shipping.

For delivery with installation and assembly, risk shall transfer on the date the plant is handed over or, if agreed, after completion of the test operation.

7.2 Delivery of the HERZ products - as represented in the price table - shall generally be within the usual market and industry packaging.

7.3 The goods are insured against transport damage, transport losses or breakage only upon written request from the customer and at its cost.

7.4 If delivery free site is agreed, access to the unloading site must be possible for a 40-tonne truck, but without unloading the delivered goods. Exceptions shall be agreed in writing.

7.5 The delivery time is deemed to be interrupted for the duration of circumstances, which cannot be influenced by HERZ or by suppliers to HERZ: e.g. Difficulties in procuring raw materials, business interruption, strikes or lockouts, and all cases of force majeure.

7.6 If the grounds for delays as listed in No. 7.5 last longer than 12 weeks, both HERZ and the contractual partner reserve the right to withdraw from the contract without stating further reasons.

7.7. The vendor reserves the right to make partial and advance deliveries.

7.8 In the case of a delay to the work and services or of an interruption, which are caused by the purchaser, the purchaser shall bear all additional costs incurred as a result of the delay or interruption, and HERZ can submit partial invoices for its work and costs. Delivery of the HERZ products as represented in the price table shall be as agreed under No. 6. If there are delays during assembly or commissioning or if there are delays to subsequent trades or work from other companies, the agreements as agreed in No. 5.6 shall apply.

## 8. Withdrawal from the contract

Upon withdrawal from the contract (sales order), for which the purchaser exclusively is responsible and which is a case according to Nos. 5.3 and 5.4, it is agreed that in this case the purchaser shall pay a cancellation fee of 20 % of the order value as compensation.

## 9. Return conditions

The return of goods delivered without defects is only possible under the following conditions:

9.1 Returns can only be made in exceptional cases and by agreement. Goods returned without agreement cannot be accepted and will be returned to the sender's address at the customer's expense and risk.

9.2 The goods are not custom-made or specially purchased parts.

9.3 The return is at the customer's expense and risk.

9.4 The goods are in perfect, saleable condition. Any damage to the goods by the customer or the freight forwarder excludes return.

9.5 The delivery note or a copy of the original invoice must be enclosed with the return shipment.

If the returned goods are found to be flawless after a thorough quality check by HERZ, a credit note will be issued minus a processing fee of 20% of the total value of the goods.

If the goods are not in perfect condition or are outdated, Herz reserves the right to refuse the return shipment or to only partially reimburse the amount by credit note.

9.6 The return of individual parts from sets (Cleaning set, etc.) is not possible.

9.7 Products with an original delivery date older than 6 months cannot be returned.

9.8 Goods returned to HERZ that are not in perfect condition or are no longer in the delivery program can be disposed of by HERZ.

## 10. Payments

Unless agreed otherwise, all payments shall payable and therefore due within 30 days of delivery by bank transfer into the HERZ bank account or in cash, free of expenses and without deduction. Fees for collection or discount shall be charged to the purchaser. The purchaser is required to pay the respective purchase price in full. The offsetting with counter-claims or retention of payments by the purchaser for whatever reason are not permitted without express agreement, unless the purchaser's claim has been acknowledged in writing by HERZ or has been legally upheld. Other payment agreements must be in writing.

## 11. Dunning and debt collection costs

The purchaser shall pay default interest at the rate of 8 percentage points above the respective base rate if a payment date is missed or date is lost. In the case of default and after unsuccessful dunning twice by HERZ, the purchaser is required to reimburse the costs dunning costs, intervention costs and the costs for debt collection and involvement of the lawyers in addition to the default interest. Warranty claims asserted by the purchaser shall not entitle it to withhold agreed payments. HERZ reserves the right to offset payments made by the purchaser against debt collection costs incurred, payments may also be offset against older debts even in the event of different allocation by the purchaser. Contradictory instructions, for example on the payment documents, are invalid.

## 12. Loss of date

In the event of default, HERZ reserves the right to withdraw from the contract. In the event of withdrawal from the contract. The purchaser shall pay a reasonable fee for use of the contractual goods until the actual retraction.

## 13. Shipping and handover conditions

Immediately after receiving the goods at the agreed destination, the purchaser shall inspect and accept them or have then invested and accepted by authorised persons. If the purchaser expressly or tacitly waives the inspection, the purchased object is deemed to have been delivered correctly and accepted. Shipping shall be at the purchaser's account and cost, the purchaser's conditions regarding the method and route of shipping are not binding for HERZ and HERZ reserves the right of selection. HERZ reserves the right but is not required to insure deliveries against normal transport risks in the name of an on account of the purchaser. Risk, including risk of seizure, for whatever reason, shall transfer to the purchaser with handover of the goods to the haulier or freight carrier, but not later than upon leaving the HERZ plant.

Upon handover of the goods ordered by the purchaser to the carrier (post office, railway or haulier), HERZ has fulfilled its contractual obligations and risk shall transfer to the purchaser.

The sales costs of HERZ do not include costs for delivery, assembly and installation.

If delivery is made by HERZ, risk shall transfer on the date of handover of the plant.

## 14. Retention of title

14.1 HERZ shall retain ownership of all goods delivered by it until full payment. The purchaser shall preserve the value of the conditional goods and shall immediately inform HERZ in the event that claims are asserted by third parties regarding HERZ property. The purchaser shall inform its customers that all goods supplied by HERZ are subject to retention of title and that it therefore cannot transfer ownership to its customers before full payment of the debts to HERZ.

14.2 If the goods are supplied directly by the purchaser to third parties, the purchaser shall be entitled to compensation. For this reason, the purchaser herewith assigns all claims and incidental claims against third parties from such sales to HERZ and shall declare this advance assignment for the purchase price demands for the conditional goods in its accounts. The claim up to the amount of the outstanding invoice amount is assigned, for current business relationships at the amount of the balance plus default interest. In the case of resale, the purchaser is liable until full payment of all demands by HERZ for all goods and services provided to it, also in the event of fire, theft or other damage.

14.3 Pledging or assigning of conditional goods or of the assigned claim is not permitted.

14.4 The purchaser shall fulfil the necessary formal provisions regarding safeguarding the retention of title before handover

to a third party by correspondingly labelling the property of HERZ. In the event of seizure or other claim of the contractual object, the purchaser shall point out HERZ's property rights and shall immediately inform HERZ by registered letter.

14.5 Any claims by the purchaser against an insurer in respect of HERZ goods not yet fully paid for are hereby assigned to HERZ within the limits of s. 15 VersVG.

14.6 In the event of processing, combining and mixing of plant parts, devices, fittings, etc. subject to retention of title, HERZ shall be entitled to joint ownership of the new items, namely in the same ratio as the invoice value of the conditional goods to the invoice value of the other goods, whereby the costs for processing shall be added to this invoice value.

### **15. Product liability and claims for compensation**

15.1 In the event of injury to life, limb or health, which is due to a negligent breach of duty by HERZ or a culpable or negligent breach of duty by one of its statutory representatives or vicarious agents, HERZ shall be liable in accordance with the statutory conditions.

The following applies to other damages:

- a) For damages caused by a grossly negligent breach of duty by HERZ or culpable or grossly negligent breach of duty by one of its statutory representatives or vicarious agents, HERZ shall be liable in accordance with the statutory conditions.
- b) HERZ's liability for damages due to a breach of material contractual duties resulting from slight negligence by HERZ is restricted to the foreseeable, contractually typical damage up to a maximum of 100% of the net purchase price.
- c) Claims for compensation for other damage due to a breach of secondary duties or immaterial duties in the case of slight negligence are excluded.
- d) Claims for compensation from default, which are due to slight negligence, are excluded; the purchaser's statutory rights after expiration of a reasonable additional period shall remain unaffected.
- e) The liability exclusions or restrictions shall not apply if HERZ maliciously concealed a defect or has assumed a warranty for the condition of the object.
- f) The purchaser's claim for replacement if any costs incurred in vain rather than compensation instead of performance shall remain unaffected.

15.2 HERZ is not liable for indirect damages resulting from a defective delivery, e.g. loss of production, increased production costs, lost profits and increased material consumption, except in the cases of malice or gross negligence.

15.3 Any regress claims, which the purchaser or third parties direct against HERZ from the product liability as defined in the Product Liability Act (Produkthaftungsgesetz - PHG), are also excluded. Unless the party entitled to recourse proves that the

fault was caused culpably by HERZ or at least grossly negligently.

15.4 Insofar as the purchaser proves corresponding damage, claims for compensation due to non-performance are restricted to the amount of 20% of the value of the part of the delivery or service affected by impossibility or default. No liability is assumed if equipment or installations of the purchaser or its customers are defective as a result of integration of the defect-free goods.

### **16. Warranty claims and complaints due to defects**

16.1 The statutory conditions and deadline for moveables shall apply to these. The warranty only applies to defects that occurred despite compliance with the operating instructions, maintenance provisions, installation instructions and service instructions from HERZ etc. It is excluded for defects, which arise due to normal wear and tear, worn parts, incorrect installation by the customer or its agents, incorrect maintenance or maintenance not carried out and documented regularly, or incorrect repairs or changes performed by third parties or repairs or changes performed by third parties without written consent from HERZ and replacement of parts, which HERZ did not manufacture.

16.2 For itself and its legal successors-in-title, the purchaser expressly waives the assertion of direct or indirect damage as a result of the purchased object or defect to the purchased object, but not in the case of gross negligence caused by the purchaser (consequential damage or consequential damage caused by defects) and lost profit. If a duty to report as defined in s. 377 UGB is breached, the purchaser shall lose its right to redress. Damage, which is due to incorrect or negligent treatment as described above, is excluded from the warranty and guarantee. Warranty and guarantee claims are only acknowledged and taken into account if they are reported in writing immediately after occurrence of the defect, with a precise description of the defect. Verbal agreements are not sufficient to trigger a warranty claim. The work and services provided by HERZ shall be accepted directly after completion. Immaterial defects, which do not affect the functioning and operation of the heating system, should be recorded in the acceptance protocol and do not entitle the purchaser to refuse acceptance.

If acceptance is delayed due to no fault of HERZ, acceptance shall be deemed to have occurred 12 working days after notification of the respective work and services.

The warranty or guarantee starts from commissioning of the plant by the certified local customer service, but not later than 90 days after delivery if this is not facilitated by the purchaser.

16.3 Services provided as part of the work and services from HERZ shall not include an inspection of the entire system. A check of the seal of supply lines connected on site, and the inspection of the correct installation of electricity cables, including connections to peripheral devices, are not included in the work and services from HERZ. HERZ does not assume

any liability for documents provided to HERZ. HERZ is not required to check whether information and documents provided to HERZ by the purchaser are correct and suitable for the intended use. This shall apply in particular to plant descriptions and plant diagrams.

16.4 HERZ is not required to replace or repair as long as the purchaser has not fulfilled its contractual obligations. The same warranty period shall apply to free spare parts and repairs as to the original delivered object. However, it is time-limited to the end of the warranty period of the original delivered object. Replaced parts shall become the property of HERZ and should be sent to HERZ free of charge. Extraordinary costs for repair caused by the type and location of the HERZ device or due to poor accessibility shall not be assumed either. The end customer shall ensure free and unhindered access to the device.

16.5 HERZ shall only be liable for costs of a repair performed by the purchaser itself if HERZ has granted its written consent in advance.

16.6 An additional requirement for fulfilment of the warranty claims is regular maintenance or conclusion of a maintenance agreement through HERZ or its warrantors during the warranty period.

The warranty period starts upon delivery, is 6,000 operating hours or a maximum of 2 years for moveables and 9,000 operating hours or a maximum of 3 years for immoveables or parts. HERZ is only liable for parts of goods, which are purchased from a subcontractor, within the framework of its own warranty claims against the subcontractor.

16.7 HERZ shall replace goods or parts of goods demonstrably unusable as a result of material or manufacturing faults free of charge within 3 years from commissioning of the plant and provided that the plant has not recorded more than 9,000 operating hours. This does not include moving and electronic and electrical parts, 2 years or 6,000 operating hours shall apply in this case.

Wear and tear to so-called wear parts and operating materials are not covered and therefore excluded, including, for example: relays, fuses, carbon brushes, bearings and seals, as well as crack formation not resulting in malfunction, oils, greases, filters, cleaning agents, coolants, heat transfer fluids, etc.

However, the warranty and guarantee obligation of HERZ does not cover damages caused due to air pollution as a result of dust accumulation, aggressive vapours, installation in unsuitable rooms, notably damp rooms such as laundry rooms and hobby rooms. The HERZ warranty shall also expire if a plant is continued to be operated despite a defect without the defect being repaired. See also No. 23.

16.8 If the HERZ boiler or parts of the plant fails and the heating supply fails as a result, any additional costs incurred

for substitute heating (backup boiler, mobile solution or similar) and its fuel costs cannot be charged to HERZ. This is exclusively the responsibility of the plant operator.

16.9 HERZ is not liable for damages outside the Product Liability Act unless malice or gross negligence is documented, and then only within the framework of the statutory provisions. Liability for slight negligence, replacement of consequential damage, pure pecuniary losses, lost profit, unrealised savings, lost interest and damages from claims by third parties against the respective contractual partner, therefore also down times and their costs for boiler plants that we delivered, and the resulting loss of heating, any additional costs for substitute heating or similar, for use of other fuels, is excluded and the purchaser expressly acknowledges this by ordering in accordance with the HERZ delivery conditions.

16.10 HERZ shall only make delivery in the country of the delivery location free of commercial property rights and third-party copyrights. In the event that a third party lodges justified claims against the ordering party because of an infringement of property rights through a delivery by HERZ that is used in accordance with the contract, HERZ shall be liable to the ordering party for 3 years.

At its own choice and own costs, HERZ shall either obtain a corresponding right of use or change the delivery such that property rights are not infringed. If this is not possible for HERZ within a reasonable period, the order shall reserve the statutory rights of withdrawal or reduction. The duties of HERZ to provide compensation are based on No. 15.

16.11 In the case that HERZ suffers any damage, for which it is liable, the liability shall be restricted to 5% of the purchase price of the relevant delivered part for which it is liable. If a penalty is agreed against HERZ, in whatever case, this shall be subject to the judicial right if moderation and the assertion of damages exceeding the penalty shall be excluded.

## **17. Transfer**

The transfer of rights and / or duties by the purchaser or ordering party from the contract is not permitted without written consent from HERZ.

## **18. Plant software**

Control and regulation programs, which control and regulate the operation of the supplied plant, shall remain the property of HERZ. The purchaser shall only receive an unlimited right of use to its system-based control program, therefore for the implemented software, after full payment of the instrumental scope of delivery. In the event of modified or updated software, HERZ expressly reserves the right to implement this new software if required, whereby HERZ shall not charge any costs for this. The purchase has not acquired ownership of the source code, which HERZ does not disclose either. The purchaser merely acquires the usage rights. Upon conclusion of a maintenance agreement, the software shall be

automatically updated provided that this new software can be implemented in the hardware.

### 19. Reversing the purchase agreement

If a purchase agreement is reversed (e.g. As a result of withdrawal by one of the contractual parties), the purchaser shall return the delivered object or the supplied goods to HERZ in advance, irrespective of the further settlement according to the clauses below. HERZ reserves the right to have the delivered object or the supplied goods collected from the purchaser's premises. Furthermore, HERZ can demand that the purchaser pay reasonable compensation for the deterioration, destruction or current or future impossibility of return of the delivered object for another reason, which is in the purchaser's area of risk and responsibility.

Additionally, HERZ can demand remuneration for use of the delivered object if the value of the delivered object has decreased between the end of installation and its complete, direct re-commissioning. This reduction in value is calculated from the difference between the total price according to the order and the fair value, as calculated by sales revenue or, if a sale is not possible, through estimation by a sworn expert.

### 20. Spare parts warranty 15 years

HERZ shall deliver spare parts for all supplied devices for 15 years from the delivery date, whereby HERZ reserves the right to supply modified but appropriate spare parts for the device.

### 21. Assembly

HERZ plants are assembled locally and on site. Assembly is carried out at regular hourly rates or for an agreed flat rate. The general costs for assembly / completion, commissioning of HERZ plant and training are stated in the price list (without transport to the heating room). If completion (without transport to the installation room) of the plant is agreed, access to the installation location must be possible on paved paths.

### 22. Commissioning the plants

The HERZ plants are supplied in accordance with electrical documentation and technical documents. The liquid (hydraulics), flue gas (flue) and electrical connections are fitted on site and must be carried out by a licensed expert / company. The HERZ plants can only be commissioned during normal working hours. Prerequisites for commissioning after prior transmission of the commissioning request:

- The heating system must be filled with heating water in accordance with the applicable standards corresponding to ÖNORM H5195 or VDI 2035. Specific deviations or requirements are listed in the respective product documentation.
- Completed electrical installation, ready-to-use, tested and corresponding to all requirements, must be performed a licensed expert.

- The fuel standards and required qualities of the wood, wood chips and pellets as stated in the current operating instructions must be used for the plant.
- The plant operator must be on site for training and instruction.
- The plant must be properly connected to the flue (sealed flue gas exhaust with regular draft conditions) and a flue installed according to the requirements (DIN 4705 or EN 13384).

If individual points are not fulfilled, the HERZ customer service must be informed promptly (at least 3 working days in advance) of the postponement to the commissioning date. Additional services such as overtime, commissioning the fuel supply, electrical work, etc., and all extra journeys if commissioning cannot be completed in one go, shall be charged to the client according to the actual cost. HERZ is unable to assume guarantees for connections to electrical or hydraulic supplies.

### 23. Fuels

All warranty and guarantee claims are only fulfilled if the fuels listed and approved in the HERZ operating instructions are used. For special fuels, corresponding approvals must be obtained from the manufacturer before ordering.

### 24. Place of performance

24.1 If the ordering party is a merchant, place of performance for both parties is the registered place of domicile of HERZ. Austrian law is agreed for all disputes from this contract. The competent court in Eisenstadt or Graz, to be selected by HERZ, is agreed for all disputes from this contract. German shall exclusively apply as the contractual language. All conditions shall also apply to the employees, suppliers and vicarious agents of HERZ.

24.2 The UN Convention on the International Sale of goods, CISG, is expressly excluded.

**25. In principle, these general delivery terms and conditions shall only apply to legal transactions between companies.**

**26. If individual provisions of the contract are invalid, the rest of the contract shall remain binding. This shall not apply if adherence to the contract were to represent an unreasonable hardship for one party. If a part of these sales and delivery conditions are or become void, it is expressly agreed that this shall not affect the validity of the remaining conditions. An invalid condition shall be replaced as determined from the sense and purpose of the other conditions.**