

**Heliotherm Wärmepumpentechnik Ges.m.b.H.** (hereinafter referred to as "Company" for short),

## **General Terms and Conditions of Sale**

version of: 01 Jan 2013

### **I. General/Area of applicability**

1. The General Terms and Conditions of Sales (hereinafter referred to as „Conditions“ for short) in their current and any revised version shall apply to all offers, deliveries and other services, in particular also to customer service and repair works (hereinafter jointly referred to as „Services“) of the company vis-à-vis third parties (referred to as „Customers“ for short). The company only concludes contracts for services with their customers on the basis of these conditions, even if this is not specifically referred to in individual cases and provided that nothing to the contrary has been agreed in writing. By concluding a contract based on these conditions, the customer explicitly recognizes the applicability of these conditions for any and all future contracts as well.
2. Any agreements or arrangements deviating from these conditions or made in addition to them can only be made in writing and for each case individually. This shall also apply to any deviation from the written form. Any oral declarations, in particular if made by representatives and other employees of the company, do not become legally valid until they are confirmed in writing by the company or an authorized representative. The customer recognizes that any persons attributable to the company are not entitled to make declarations deviating from these conditions or any other declarations made by the company without written authorization to do so.
3. The applicability of any general terms and conditions of business of the customer of any kind whatsoever is excluded. This shall also apply if they do not explicitly contradict these conditions or if they are not contradicted explicitly, except if they have been explicitly recognized by the company in writing. Any act of performance or silence on the part of the company does not constitute a recognition of any general terms and conditions of business of the customer. Such general terms and conditions of business of the customer shall also not apply if the company did not contradict them upon confirmation of the order or the customer made the acceptance of these conditions an explicit condition of acceptance.
4. For customers as defined by the Austrian Consumer Protection Act, these conditions shall only apply to the extent to which they are not contrary to any applicable statutory provisions.

### **II. Place of performance, place of jurisdiction and choice of law**

1. The place of performance for any and all obligations of the contracting parties, in particular deliveries and payments (including bills of exchange and checks), is Langkampfen in Tirol.
2. The contractual relationship (including the issue of its valid conclusion and the pre- and after-effects) is governed exclusively by Austrian law, excluding the conflict of law where rules apply. The conditions of the CISG are expressly excluded.
3. All disputes arising under this contract agreement (including the issue of its valid conclusion and its pre- and after-effects), the contracting parties of manufacturer and competence partner, agree that the manufacturer's seat of jurisdiction is Austria.
4. The company reserves the right of correction and therefore in particular the right to additional charging with respect to mistakes and errors in writing and calculation. The customer shall also be liable if services performed by the company are charged to a third party upon request of the customer.

### **III. Conclusion of contract, pricing and terms and conditions of payment**

1. Any and all offers of the company are non-binding and always limited to a period of 30 days. Therefore, they are also subject to change or revocation after a statement made by the customer in this respect.
2. All information stated in brochures, circulars, catalogues, ads, price lists etc. are also non-binding. Offers made by customers require the company's written acceptance in order to be valid. Any changes or deviations with respect to technique, colour or form from all and any specifications shall be accepted by the customer without any entitlement to a change in prices, provided that they are not contrary to the envisaged purpose.
3. Contracts between the company and their customers shall apply independently from the granting of any official approvals. If nothing to the contrary has been stipulated in writing, obtaining such approvals is up to the customer. Should the company obtain such approvals on behalf of the customer, the company may charge an appropriate additional amount in this respect. Should any amendments of the original order be required in order to obtain such approval, the relevant changes are deemed agreed.
4. If nothing to the contrary is established in writing, any and all remuneration stated by the company are exclusive of value added tax and ex warehouse of the company. They do not include any costs for transport, assembly and set-up.
5. Even if assembly prices are fixed prices, they do not include any costs which incur due to delays due to circumstances which are the fault of the customer or any persons attributable to the customer. All costs incurred in this respect shall be borne by the customer.
6. Should the company be obliged to dispose of any dismantled or removed parts due to any legal obligations or administrative orders, the customer shall bear these additional costs, even if this has not been explicitly agreed.
7. In the event of a change in wage costs due to collective agreement regulations in the industry or intra-company agreements or changes of any other costs relevant for calculation or required for the rendering of services (material, energy, third-party work, financing etc.), the company shall also have the right to adjust the prices in an appropriate manner after the conclusion of the contract. In the event of changes or fluctuations in exchange rates, the company shall be entitled to change the prices in such a way that the original value ratio between service and consideration is preserved.

8. If an order is accepted without any prior offer on the part of the company or if services are rendered which were not explicitly contained in the order, the company may charge the amount according to their price list as applicable or which is common in the industry.
9. The company issues an order confirmation for orders concluded on the basis of an offer made by the customer. Any errors or contradictions with respect to the offer of the customer shall be complained about immediately upon receipt of the order confirmation, however, no later than 5 (five) working days upon receipt. Otherwise, the content of the order confirmation is deemed accepted by the customer. In the event of short-term forward orders, the complaint shall be made immediately.
10. Any kind of price discounts granted in individual cases including cash discounts do not constitute an entitlement to such discounts in the future.
11. The prices stated are exclusive of VAT and are stated in euros. In the event of settlement, statutory VAT is added to the prices. Any deviating conditions of payment are subject to separate written agreement. Bills of exchange and cheques are only accepted by way of payment. Any expenses, taxes and other duties due in this respect shall be borne by the customer.
12. Payments shall be affected by bank transfer to the company's bank account stated on the invoice. The company can set off payments against outstanding receivables irrespective of their purpose and at the company's own discretion.
13. The customer is not entitled to offset their receivables against receivables of the company.
14. Provided that nothing to the contrary is stated in binding statutory provisions, the customer shall not have any right of retention or lien with respect to the services rendered by the company.
15. In the event of non-payment of a payable claim by the customers, all other claims become due immediately without any explicit calling-in being required in this respect. The same shall apply in the event of a considerable deterioration of the financial circumstances of the customer or if any measures of enforcement vis-à-vis the customer's assets are taken.
16. The default of payment shall occur without any separate declaration being required in this respect. Without prejudice to any other rights and without requirement of fault, the default interest amounts to 12 % p.a. Any further damage shall be compensated.
17. In the event of a delay, the customer shall be obliged to compensate the company for any and all reminder and enforcement costs including the costs of an attorney-at-law or collection agency and legal fees if such costs or fees are required within the framework of appropriate legal action.

#### **IV. Business documents and technical documents, sales aids, copyrights**

1. All business documents and technical documents of the company including any and all drafts and visualizations as well as any and all sales aids shall remain the property of the company, which explicitly reserves any and all copyrights involved with these documents. Any dissemination and exploitation of these documents for purposes of tendering is subject to the company's written consent. Sales aids may only be used for the marketing of products of the company. The company shall have the right to reclaim such documents or sales aids any time at the customer's expense without giving any reasons in this respect.
2. Should any copyrights have arisen from the work, the company shall be entitled to them. The customer shall be granted a right of use for advertising purposes. The granting of the right of use shall be subject to the condition precedent of complete payment of the remuneration for the services by the customer. The sole use by the customer is not subject to any particular remuneration for the right of use. Any transfer of the right of use to third parties shall be subject to the company's written consent.

#### **V. Retention of title**

1. Until complete payment without reservations is effected for all claims of the company including all claims for interest and costs and until any and all present and future financial obligations of the client vis-à-vis the company are met, the delivered goods shall remain the sole property of the company. The customer shall take any and all actions required in order to establish and maintain such property of the company and, upon request of the company, immediately provide the company with a listing of all goods under retention that are still in possession of the customer.
2. Any sale of goods under retention in the ordinary course of business and by informing the relevant customer is basically allowed. The customer undertakes to immediately inform the company about any resale of goods not yet paid. In the event of a resale of goods under retention, the customer irrevocably assigns all claims due to the resale to the company upon conclusion of the contract for payment and shall immediately perform any and all measures required for effecting the assignment (e. g. informing their contractual partner). All costs incurred in this respect shall be borne by the customer.
3. In the event of pledging or other utilisation of the goods under retention, the customer shall inform the company and safeguard the company's property at their own expense. In the event of non-payment of due claims, cession of payment, the execution of goods under retention or opening of insolvency proceedings against the assets of the customer, the customer shall immediately return any and all goods under retention to the company; the return of these goods is not deemed as withdrawal from the contract if no written declaration to the contrary has been made. Should the goods under retention of the company be discarded, they can be stored at the customer's cost and risk.

## **VI. Delivery, services, transfer of risk, acceptance and delay**

1. In every case, the risk of (partial) services passes to the customer when the goods leave the warehouse of the company or the third-party engaged for the performance by the company. If collection of the goods on the company's premises has been agreed, the risk passes to the customer with the timely provision in the company's warehouse.
2. Any date or period of delivery is only binding if this has been stipulated in writing upon conclusion of the contract. The date or period of delivery is deemed complied with when the customer is informed about the readiness for dispatch of the object of delivery by the company or - should such notification not occur - when the object of delivery has been dispatched by the company.
3. If no particular order has been made by the customer, the dispatch will be effected in the mode of dispatch which seems most favourable to the company without guarantee. Dispatches to the company are effected at the customer's cost and risk. Damages visible from the outside or insufficient quantities of the delivered goods shall be identified in writing by the customer upon acceptance subject to subsequent loss of rights. Such damages or insufficient quantities are not grounds for refusing acceptance. Transport damages shall be immediately, however, no later than within 2 (two) working days, notified to the company, the carrier and the relevant freight forwarder.
4. If a stipulated product is not available, the company shall be entitled to meet their requirements by delivering a comparable product which, however, may not be identical with respect to the construction and surface design. The customer shall accept such goods.
5. The company shall be entitled to render partial services and issue partial invoices in this respect.
6. In the event of a delay of a service due to circumstances through no fault of the company, the period of performance shall be reasonably extended without any particular declaration in this respect and the company shall not be held responsible for legal consequences of any kind whatsoever. This shall also apply if the company is already in default with respect to the performance of other obligations. In the event of unreasonable impediment of the rendering of services, the company shall be entitled to withdraw from the contract under exclusion of claims for damages.
7. In the event of a delay through the company's fault, the customer can require fulfillment or withdraw from the contract after expiry of a time limit of at least three months set in writing with reference to the legal consequences.
8. In any case, the company can - without causing any consequences of default for themselves - make their services subject to the performance of all other contractual obligations as well as to the timely payment of any other claims due, in particular purchase price claims from services already rendered. Should any creditworthiness check conducted after conclusion of the contract have a negative outcome, the company can make the performance of services subject to the complete payment in advance or the provision of an appropriate bank guarantee in the original upon first request without being in default.
9. As far as legally permitted, claims for damages due to a default on the part of the company are excluded, at least in cases of slight negligence.
10. Should the rendering of services not be possible, any and all contractual obligations cease. Should the impracticability - also including any default of delivery or service - due to any non-performance or delayed performance of any supplier of the company, the customer is not entitled to any damages.
11. In the event of default of acceptance on the part of the customer, the company is, at their own discretion, entitled to either withdraw from the contract, make a hedging sale, require performance or to store or keep the goods for a reasonable period of time. In the event of keeping or storing, the company shall have the right to separately charge the additional expenses incurring in this respect. Should the customer withdraw from the contract on whatever legal grounds, the company shall - without prejudice to the claim of performance of contract - be entitled to charge a cancellation fee of 25 % due within 14 (fourteen) days after rendering of invoice or to claim damages.

## **VII. Right of withdrawal with respect to the applicability of the Austrian Consumer Protection Act**

In the event of a right of withdrawal according to Section 3 of the Austrian Consumer Protection Act, the company is reserved the right to only deliver the goods or render the services when the period of withdrawal has expired.

## **VIII. Warranty**

1. The period of warranty amounts to 24 (twenty-four) months as of transfer of risk if there is no legally binding longer period of warranty. In the event of a warranty claim, there shall be no further claims for damages or other compensation of any kind whatsoever.
2. The period of warranty shall begin upon transfer of risk. If common acceptance of goods has been agreed on, the period of warranty shall commence upon the acceptance of goods.
3. Any defects or missing parts shall be complained about within 5 (five) working days with proof of receipt and subject to the immediate cession of use. Otherwise, the goods are deemed accepted without reservations or defects. This period shall apply to open defects as of commencement of the period of warranty and as of the identification of defects in the event of hidden defects.

4. If notified about a defect in a legally valid manner, the company can meet their warranty obligations at their own discretion in one of the following ways:
  - 4.1. Supplement of the missing goods;
  - 4.2. Request the return of the defective goods or parts and rectification on the company premises or any other place designated by the company;
  - 4.3. Replacement of the defective goods;
  - 4.4. Replacement of the defective parts of the goods;
5. As far as legally permitted, there shall be no further warranty obligations of the company. This shall in particular relate to bearing any transport, assembly and additional assembly expenditure.
6. The supplementation, rectification or replacement shall be announced by the company with at least 8 (eight) days notice. Should the customer - without having claimed the appointment before - not be present on grounds attributable to the customer or if the customer had complicated these measures or made them impossible by their own action, this shall be deemed as waiver of warranty claims.
7. The warranty of the company is excluded if the customer did not comply with the instructions or any and all operating conditions of the company with respect to the set-up, assembly or use, if the defect has been caused by the customer or third parties or if these persons performed manipulations or repair works at the goods or the work.
8. The warranty shall further only apply to defects occurring under compliance with the relevant operating conditions at normal use. Wearing parts only have a lifespan according to the state of the art so that any period of warranty is limited in this respect.
9. In the absence of any separate agreement and as far as legally permitted, the company does not assume any warranty for modifications or alterations and for external goods or the delivery of used goods.
10. Changes or deviations of colours of the final product do not constitute any warranty claim. With respect to rectifications or repair works, the authenticity of colours is not part of the agreed quality and can therefore not be reasonably expected.
11. In the event of disputes as to the existence or scope of warranty claims, the company shall be entitled to have the goods or the works examined by an expert or a legally-sworn specialist binding for both parties to the contract. If it turns out that the alleged warranty claim of the customer is not existent, the customer shall bear the costs of the expert.
12. Damages due to external influences like overload, contamination, corrosion, force majeure and acts of god are excluded from warranty.

## **IX. Claims for damages and product liability**

1. In the event of claims for damages, the company shall only be liable for intent and gross negligence. There shall be no liability for slight negligence. Further, the compensation for consequential or financial damages, loss of interest and damages due to third-party claims vis-à-vis the customer is also excluded.
2. In the event of gross negligence, the liability shall be limited to a maximum amount of EUR 100,000.00 per event of damage.
3. In the event of non-compliance with any and all conditions of assembly, commissioning, and use on the part of the customer, there shall be no claims for damages.
4. The customer shall further be obliged to convey this agreement and any obligations in this respect to their customers and to inform their customers about the competent use.
5. Within the area of applicability of the Austrian Product Liability Act, the company and their primary and secondary suppliers shall not be liable for property damages incurred by an entrepreneur in the meaning of this Act. The customer undertakes to also convey this disclaimer to their customers.

## **X. Other obligations of the customer**

The customer shall inform their employees and customers on a regular basis about all information provided and instructions made by the company as well as about statutory provisions and government orders. The customer shall keep all documents, certificates and evidence in this respect for at least 10 (ten) years as of placing on the market or transfer of the goods and to return them upon request.

## **XI. Data processing**

1. Within the framework of computing, any and all data of the customer relevant for the business relation is stored in consideration of the Data Protection Act. The company shall be entitled to store, process and forward these data to third parties.
2. The customer shall be entitled to inform the company about changes of its legal form, ownership structure, company representation and address as long as the contractual legal transaction is not completely concluded by both parties. If the customer does not inform the company about any new address, any notification is also deemed received if it has been sent to the last notified address.

## **XII. Other provisions**

1. Should any individual provision of these conditions or individual agreements concluded between the parties be or become invalid or should there be a legal gap, this shall not affect the validity of the remaining provisions. In

this case, the invalid provision or legal gap shall be replaced by a valid provision coming as close as possible to the economic purpose of the invalid provision.

2. The company shall always have the right to completely or partially assign their rights and obligations to third parties. Any assignment on the part of the customer is subject to the company's consent.
3. The legal remedy for cancellation of the contract on grounds of *laesio enormis* is excluded.

### **XIII. Bank details**

#### **Sparkasse Kufstein/Kirchbichl**

BIN: 20506  
Account number: 0100-024397  
IBAN: AT43 2050 6001 0002 4397  
SWIFT: GIBA AT WW  
BIC-CODE: SPKUAT22XXX

#### **Volksbank Raiffeisenbank Mangfalltal-Rosenheim eG**

BIN: 711 600 00  
Account number: 319171  
IBAN: DE60711600000000319171  
SWIFT: GENODEF1VRR  
BIC-CODE: GENODEF1VRR