

## **HEAT gas technologies GmbH - General Terms & Conditions of Sale and Delivery – 01. March 2021**

### **1. Scope and Validity**

All deliveries, services and offers by HEAT gas technologies GmbH (hereinafter referred to as the "Seller") shall be solely performed based on these "General Terms and Conditions of Sale and Delivery". Terms and conditions used by the contract partner (hereinafter referred to as the "Buyer") are only applicable if the Seller has expressly agreed to them in writing before placement of orders.

### **2. Offers and Orders by the Buyer**

All drawings, plans, or other disclosures, including any reference to material, weight, dimensions, price estimates, etc. in offers, marketing devices or other documents of the Seller are in each part non-binding, unless otherwise expressly declared as contractual content in writing. The agreement or acceptance of any order or the purchase order by a Buyer requires a written order confirmation on the Seller's part and shall not be binding otherwise.

### **3. Prices**

All prices are to be regarded ex-works, except as noted otherwise excl. VAT, and solely include standard packaging of the goods suitable for truck transport; the costs for special packaging, loading, transportation and transport insurance shall be borne by the Buyer. The Seller is entitled to adjust the price in case the time period between contract conclusion and delivery date agreed is longer than 6 months, and relevant cost elements (especially prices of raw materials and transportation) have changed to a reasonable degree or in case the Buyer has, after conclusion of the contract, demanded adjustments in delivery date, quantity, or quality of the ordered good.

### **4. Payment**

All payments shall be due in EUR within 30 days after presentation of Seller's invoice. The date of debt releasing payment shall be the day on which full due amount enters the account of the Seller. Discount deductions require a special mutual agreement. In the case of a delay in settlement of a due payment, the Buyer in accordance with § 456 UGB must pay the Seller default interest of 9.2 percentage points above the base rate of the Austrian Nationalbank. Associated reminder charges and collection fees are payable by the Buyer as well. Moreover, in the case of debt default or the opening of bankruptcy or insolvency proceedings on the Buyer's assets, the Seller shall, at his own discretion, be entitled to retain all deliveries and services until receipt of respective agreed reward, to withdraw from all unfulfilled parts of the contract or to supply any outstanding services only against payment in advance or appropriate partial or full payment security without prior grace period notification. All other rights of the Seller remain unaffected thereof.

### **5. Delivery, Performance, Distribution of Risk**

Unless otherwise agreed, all deliveries by the Seller shall be performed EXW Biedermansdorf, Austria, as per Incoterms 2020. The Seller shall be entitled to carry out partial and advance deliveries and to present respective invoices. Agreed dates and deadlines for deliveries and services may be exceeded by the Seller up to 10 working days, solely after the expiry of this period in case the delay in delivery is due to gross negligence attributable to the Seller the Buyer shall be entitled to withdraw from the contract in writing by registered letter after setting an appropriate period of grace of at least 14 days unless more specific regulations have been agreed.

### **6. Reservation of title**

The Seller retains all rights of ownership of the goods supplied until complete payment of the purchase price. Resale of retained goods shall only be possible with the Seller's written consent. However, the Buyer shall be obliged to assign all claims arising out of such resale of the goods to the Seller. Assertion of the reservation of ownership by the Seller does not imply any withdrawal from the contract, except if otherwise expressly stated. In case of goods being returned to the Seller, the Seller shall have the right to invoice the Buyer all transport and manipulation expenses incurred. In the event of claims by third parties on the goods subject to retention of title - particularly in the case of distress - the Buyer shall be obliged to state that such goods are property of the Seller, and to notify the Seller thereof without delay. The Buyer shall take the full risk for the retained goods, in particular for their destruction, loss or deterioration.

### **7. Withdrawal from the Contract**

The Seller shall be entitled at any time to withdraw in whole or in part from the contract - with or without grace period - for the following reasons: a change in the Buyer's ownership structure; the assignment of claims against

the Seller and the transfer of the collection of claims against the Seller to third parties; violations of statutory regulations or the provisions of these General Terms and Conditions of Sale and Delivery by the Buyer.

This shall also apply if: the Buyer has - to the disadvantage of the Seller - entered into immoral contracts or has entered into agreements that contravene the principles of competition; the Buyer has directly or indirectly promised or given benefits to employees of the Seller who are involved in the conclusion or performance of the contract or has threatened them with or inflicted disadvantages upon them; the execution, respectively the commencement or the continuation of supplies became - for reasons attributable to the Buyer - impossible or further delayed despite a reasonable grace period.

## **8. Warranty, Obligation to examine and give notice**

The condition of the goods at the transfer of risk shall be decisive. The Buyer has to examine the goods immediately after their receipt and to report obvious defects to the Seller in writing within 7 days after receipt of the goods with a detailed description of the defects and/or deficiencies claimed by the Buyer, otherwise the goods are deemed to be accepted. Hidden defects have to be reported by the Buyer within 7 days after discovery. The Buyer is obliged to provide proof of such claim; whereas the Buyer shall reimburse the Seller for all costs incurred with an unjustified or non-timely claim. Unless inconsistent with mandatory legal provisions, warranty claims are limited at Seller's option to correction of the deficiency defect or replacement of the goods within a reasonable period or reduction of the purchase price. The warranty period shall be 24 months commencing on the date of transfer of risk. Any works or deliveries by the Seller due to warranty claims do not extend the original warranty period. The Seller's obligations under warranty shall expire in any case after elapse of the warranty period; a special recourse of the Buyer resulting from warranty obligations by the Buyer to his customer shall be expressly excluded. If the goods are modified, reworked, changed or adapted by the Buyer or third parties without written consent of the Seller, the warranty obligation of the Seller will cease immediately.

## **9. Damages**

With the exception of personal injury the Seller's liability for damage is limited to cases of criminal intent and gross negligence of the Seller. The Buyer has the full onus of proof for all conditions of entitlement. As far as legally permissible, any kind of compensation for pure financial damage, indirect damage, and loss or consequential damage of any kind as well as loss of profit, howsoever caused is excluded. The liability of the Seller shall generally be limited to the typical, foreseeable damage and to the amount of the relevant purchase price of the respective (partial) delivery. Claims for damages expire after six months from knowledge of the damage and the damaging party, but in any case after two years from transfer of risk. If an order is made on basis of the Buyer's design specifications, drawings or models, the Seller's liability does not extend to the correctness of design, but only to the fact that the execution is carried out in accordance with the buyer's specifications. The Buyer must indemnify and hold harmless the Seller from any infringement of third party property rights.

## **10. Force Majeure**

Force majeure means external and unforeseeable events, including epidemics and/or pandemic, that cannot be averted with reasonable measures. If it is impossible for a party to fulfil its contractual obligations due to force majeure, it must inform the other party immediately in writing and its obligation to perform is suspended until the force majeure ceases, always provided that no impairment caused by the force majeure is possible.

## **11. Governing Law and Jurisdiction**

The contract is subject to Austrian law to the exclusion of the UN sales law. For Buyers based within the European Union or an EFTA State the designated court of jurisdiction shall be the appropriate competent court in Vienna. All disputes arising from or in connection with contracts with Buyers domiciled outside of the European Union or an EFTA State shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce. The place of arbitration shall be Vienna, language shall be English. In both cases, however, the Seller reserves the right to sue his claims at the Buyer's regular place of jurisdiction.

## **12. Miscellaneous**

The Buyer may only offset against undisputed or legally confirmed receivables or such receivables the Seller has acknowledged expressly. The Buyer is entitled to retain only a reasonable part of the payments due even in case of legally justified reclamations. The Seller is entitled to store, communicate, process and delete personal data relating to the Buyer in the context of business dealings.