

General Terms and Conditions for the Sale and Delivery of Replacement Parts (June 2009)

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 entrepreneurs ("*Unternehmer*") (Paragraph 14 German Civil Code (BGB), public-sector legal entities or special bodies or funds under public law (hereinafter referred to as "Customer") concerning the supply of replacement parts. Replacement parts are products or parts of products/systems which serve to restore functions and are intended to replace damaged, worn or missing parts. Separate General Terms and Conditions of Business apply to installation services by the Supplier in connection with the delivery of replacement parts.
- 1.2 Any contradictory or supplementary general conditions of business of the Customer shall become an integral part of the contract only if and to the extent that the Supplier has expressly consented to the application thereof.

2. Offer and Conclusion of the Contract

- 2.1 All offers by the Supplier are subject to confirmation and are not binding. All orders placed by the Customer shall be deemed to be a binding offer of a contract. The Supplier can declare acceptance 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 items (e.g. weights, dimensions, function values, load-bearing capacities, tolerances, technical data or product descriptions) as well as the representation thereof (e.g. drawings and illustrations) provided that they do not significantly alter or improve the quality of the delivery items and the changes or deviations are reasonably acceptable to the Customer.

3. Prices and Payment

- 3.1 Unless otherwise agreed the Supplier's prices applicable at the date of delivery shall apply. All prices apply ex works plus the statutory value added tax, assembly, commissioning and packaging, in the case of export deliveries plus customs duties and charges and other official duties. The Supplier will not take back the transportation packaging or any other packaging; 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 the contract was concluded, the Supplier's prices applicable at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).
- 3.3 The weight relevant for charging shall be determined at the forwarding department of the Supplier's works unless the Customer demands that the weight be ascertained - at the Customer's cost - by the railway authorities at the point of unloading.
- 3.4 Payment shall be due without any deductions upon delivery or upon acceptance of performance ("*Abnahme*"), whichever is applicable. Customer shall be in default ("*in Verzug*") 14 calendar days following delivery and the issue of the invoice without there being any need for a payment reminder. Payment shall only be deemed to have been effected on the date of receipt thereof by the Supplier, and cheques and bills of exchange shall be deemed to be payment only once they have been honoured. All discounts, bill charges, bill taxes and similar dues shall be borne by the Customer.
- 3.5 In the event of the Customer being in arrears of any payment, provided that the Supplier shall not be responsible for the Customer's suspension of the making of the payment, the Supplier shall, without prejudice to any claims for compensation that it may have, be entitled to defer its own contractual obligations until the arrear payments have been effected.
- 3.6 The Customer shall not be entitled set off claims or to withhold payments on the basis of any counterclaims that it may have against the Supplier, unless such counterclaims are undisputed or have been confirmed by a competent court.
- 3.7 If, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to considerably diminish the Customer's creditworthiness and which may jeopardise the making of payments by the Customer of debts owed to the Supplier under any contract (including other individual orders subject to the same framework agreement), the Supplier shall be entitled to effect outstanding deliveries or render outstanding services only against receipt of advance payment from or, if appropriate, security has been provided 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. Upon the request and at the cost of the

Customer 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*")).

- 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 Supplier receiving correct and timely supplies itself.
- 4.4 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.

5. Reservation of Title

- 5.1 The Supplier shall retain title to goods delivered by the Supplier until all of the Supplier's claims arising out of the entire business relationship with the Customer have been satisfied in full (extended reservation of title ("*erweiterter Eigentumsvorbehalt*")).
- 5.2 If any goods subject to a reservation of title are processed or transformed, such processing or transformation shall be effected on behalf of the Supplier as the manufacturer without any obligations arising therefrom for the Supplier. If any goods subject to a reservation of title are processed with any materials of other owners or if the value of the processed object is greater than the value of the goods subject to a reservation of title, the Supplier shall thereby acquire co-ownership of such object commensurate to the invoice value of the goods subject to the reservation of title. In the event that the Supplier does not acquire such ownership, the Customer hereby transfers its future ownership or co-ownership - in the above-mentioned proportion - of the newly created object to the Supplier as security. Moreover, the same shall apply to the object created by means of the processing as applies to the goods purchased subject to a reservation of title.

6. Damages

- 6.1 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 pursuant to the intentional or grossly negligent acts or omissions of its statutory representatives ("*gesetzliche Vertreter*") or any persons engaged by the Supplier to assist it in complying with its obligations in terms hereof ("*leitende Erfüllungsgehilfe*").
- 6.2 In the absence of intentional conduct, the Supplier shall be liable only for reasonably foreseeable damage that occurs.
- 6.3 The foregoing shall neither affect the Supplier's liability under the German Product Liability Act ("*Produkthaftungsgesetz*"), nor its liability for culpable ("*schuldhaft*") injury to life, body or health. If a guarantee has been assumed the Supplier shall be liable in accordance with the statutory provisions.
- 6.4 Unless otherwise provided above, claims against the Supplier for damages arising out of a breach of duties ("*Pflichtverletzungen*") shall be excluded.
- 6.5 The claims for damages under Clauses 6 to 6.2 above prescribe in accordance with the statutory periods.

7. Warranty

- 7.1 Any warranty claims ("*Mängelansprüche*") against the Supplier shall be conditional on fulfilment of the duties incumbent upon the Customer under Paragraph 377 German Commercial Code (HGB) to inspect any goods delivered and to report any complaints.
- 7.2 If the new replacement parts delivered by the Supplier are defective, the Supplier shall be under a duty to remedy the defects by, at the Supplier's option, either rectifying the defect or by delivering a replacement ("*Ersatzlieferung*"). The costs of such supplementary performance ("*Nacherfüllung*") by the Supplier, in particular the transport costs, labour costs and cost of materials, shall be borne by the Supplier. The Customer shall bear any increased costs as a result of goods being located somewhere other than the intended place of use. If the supplementary performance fails, 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 in the case of a negligible defect. In addition the Customer can claim damages in accordance with Clause 5.2. Any other warranty claims are excluded.

- 7.3 The buyer's warranty claims are excluded in the case of used replacement parts. This is without prejudice to the damage claims under Clause 5.2.
- 7.4 Save in the case of bad faith ("Arglist") and subject to the provisions of Clause 6.4, all warranty claims shall prescribe after 12 months.

8. Information and Technical Advice

8.1 Information and recommendations provided by the Supplier are not binding and are made excluding all liability unless the Supplier has expressly and in writing undertaken to provide information and recommendations. The Customer shall be responsible for investigating whether a product is suitable for the Customer's particular requirements. 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.

9. Use of Software

- 9.1 To the extent that the scope of delivery includes software, the Customer is granted a non-exclusive right to use the goods supplied including their documentation. The software is provided to be used only on the goods delivered and intended for such use. The software may in particular not be used on more than one computer system.
- 9.2 The Customer may copy, revise, translate or convert the object code into the source code only to the extent permitted by statute (Paragraphs 69 a et seq. German Copyright Act ("Urheberrechtsgesetz")). The Customer undertakes not to remove and not to alter any manufacturer's details - in particular copyright notices - without the express, prior consent of the Supplier.
- 9.3 All other rights in the software and in the documentation including any copies shall remain with the Supplier, alternatively, the supplier of the software, as the case may be. The grant of sub-licences is not permitted.

10. Choice of Law, Place of Jurisdiction, Place of Performance

- 10.1 Unless otherwise provided or another place of performance results out of the nature of an obligation, the place of performance for all of the Supplier's and
- 10.2 Customer's obligations shall be Sankt Augustin/Birlinghoven.
- 10.3 German law shall apply; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 10.4 It is agreed that the place of jurisdiction shall be Cologne. In addition, the Supplier shall be entitled to assert its claims at the Customer's place of general jurisdiction. The Supplier shall additionally 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 International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with said Rules.
- 10.5 Even if individual provisions are void all of the remainder of the provisions of contracts concluded in accordance with these Terms and Conditions of Delivery shall remain binding.

Hennecke GmbH