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1. Scope, form

(1) All orders are subject solely to these General Terms and Conditions of Purchase (TCPs). Herco will only recognise or acknowledge the terms and conditions of supply of the supplier which differ from or conflict with its own if it states this expressly in writing. This consent requirement applies in all cases, including for example if the supplier stipulates its own terms and conditions of purchase in its order confirmation and Herco does not expressly object.

(2) These TCPs apply in particular to contracts for the sale and/or supply of movable items ("goods") irrespective of whether the supplier produces the good itself or purchases it from other suppliers (secs. 433, 650 German Civil Code (*Bürgerliches Gesetzbuch*)). Unless otherwise agreed, these TCPs – in the version which applies when the buyer places its order or, at least, the last version communicated to the supplier in text form – will also apply as a frame agreement to any future contracts of the same type without Herco having to expressly point this out in each individual case.

(3) Individual agreements (for example, frame supply agreements, quality assurance agreements) and data contained in the order will prevail over these TCPs.

(4) Any legally relevant statements or notifications (such as deadlines, formal warnings, withdrawal) which the supplier makes regarding the contract must be made in writing. For the purpose of these TCPs this includes written form (i.e. letter with an original signature) or text form (i.e. email, fax). This has no effect on statutory requirements regarding form and other evidence, particularly where there is doubt as to whether the person making the declaration is authorised to do so.

2. Conclusion of contract

Herco's order is not binding until Herco has provided or confirmed it in writing. The supplier will alert Herco to obvious errors (such as typographical and mathematical errors) and omissions in the order and the order documents so that they can be corrected or completed before acceptance; otherwise the contract will be deemed not to have been concluded. Unless otherwise agreed in an individual case, orders are only binding if confirmed in writing by the supplier, stating a binding delivery date, within 14 days of receipt. Delayed acceptance will be deemed to be a new offer and is subject to Herco's acceptance. If the supplier changes the scope of the order Herco may cancel the order and withdraw from the contract. Invoicing will be based on the quantities, weights and dimensions verified by Herco after receipt. By accepting the order the supplier acknowledges that it has informed itself, the manner of execution and the scope of performance by inspecting the documents provided.

3. Prices, invoicing, terms of payment

(1) The price shown in the order will be binding. Unless otherwise agreed, the prices are free domicile to a shipping address stipulated by Herco, including value added tax at the applicable statutory rate and costs of packaging.

(2) Invoices will state the net prices of the goods, indicating value added tax and the applicable rates. The wording, the sequence of the text and the prices must be the same as in the order. Invoices will be sent separately from the shipment and must not arrive before date on which the goods are delivered. They must not be attached to shipments.

(3) Payments will be made subject to verification and acknowledgement that the order has been executed in accordance with the contract. Unless otherwise agreed, payment will be made within 14 days less 3% discount or within 30 days less 2% discount or 90 days net at Herco's discretion. Such periods begin on receipt of the invoice provided that the obligation to render goods/services has been fulfilled by that date. Where goods/services are not rendered until after the invoice is received, such periods will begin on the date on which goods are supplied or on which the contract is fulfilled. Herco will not pay interest for late payment. Late payment will be governed by statutory provisions. Herco is entitled to offset and withhold payment and to plead the defence of unfulfilled contract as provided for by statute. In particular, Herco may withhold due payments for such time as it has claims against the supplier for incomplete or deficient performance. The supplier may only offset or withhold performance in respect of counterclaims which are undisputed or which have been ruled final and absolute in a court of law.

4. Confidentiality and reservation of title

(1) Herco reserves all title and copyright in illustrations, plans, drawings, calculations, instructions on execution, product descriptions and other documents. Such documents may be used solely for performing the contract and must be returned to Herco once the contract has been completed. Documents may not be disclosed to third parties at any time, including after the contract has ended. The confidentiality obligation will lapse if and in so far as the knowledge contained in the documents provided has become generally known. This will have no effect on other confidentiality agreements and statutory rules on protection of secrets.

The above provision applies accordingly to substances and materials (such as software, finished and semi-finished products) and to tooling, templates.

(2) Samples and other items which Herco provides to the supplier for manufacturing purposes. As long as such items have not been processed they must be stored separately at the supplier's cost and appropriately insured against destruction and loss.

(3) Any processing, mixing or combining (further processing) of such items by the supplier will be deemed to have been carried out for Herco. The same applies if Herco further processes the goods supplied; Herco will then be deemed to be the manufacturer and at the latest on such further-processing will acquire title in the goods as provided for by statute.

(4) Title in the goods must pass to Herco unconditionally and irrespective of whether the price has been paid. However, if – in an individual case – Herco accepts an offer from the supplier under which transfer of title is conditional on payment of the

purchase price, the supplier will forfeit its right to retain title at the latest when the purchase price for the goods supplied is paid. Herco is authorised to resell the goods in the ordinary course of business before payment, in which case the ensuing claim will be assigned in advance (in the alternative simple reservation of title extended to resale). Thus, all other forms of reservation of title are excluded, including without limitation the extended and delegated reservation of title and reservation of title extended to apply to further processing.

5. Delivery, passage of risk

(1) The risk of accidental loss or accidental deterioration of the goods will pass to Herco on proper and full delivery free domicile at the stipulated place of destination. The risk of shipping and transport will be borne by the supplier. The delivery period is binding and will begin to run from the date of order. Any correspondence must state the order details.

(2) The supplier will be in default immediately without a reminder being necessary if the agreed delivery date is not met. If the supplier cannot fulfil by the date or within the period agreed, it will be liable as provided for by statute. If Herco takes delivery of late shipments or performance without reserve, this will not be construed as a waiver of its rights associated with late supply/performance.

If the parties have agreed to a contractual penalty for late delivery, this will not be affected provided the contractual penalty is consistent with sec. 340(2) German Civil Code (*Bürgerliches Gesetzbuch*).

(3) As soon as the supplier realises that it will be unable to render some or all the services/goods by the date/within the period agreed, it will notify Herco without undue delay in writing, stating the reasons for and the length of the delay. This has no effect on its liability for losses caused by such default. Part shipments are only permitted if Herco has consented in text form.

(4) The delivery note and packing slip must accompany the shipment. Unless otherwise agreed, the supplier must pack, label and ship hazardous products in accordance with applicable national/international regulations. Accompanying documentation must be issued accordingly. The supplier will be liable for any losses and for costs resulting from failure to comply with these requirements. It is also responsible for ensuring that its sub-contractors comply with the shipping requirements.

(5) The supplier will bear all material and labour costs arising from any tests to be carried out in respect of the goods/services. The supplier will notify Herco that it is ready to perform testing in writing at least one week before shipment and arrange a testing date with Herco. If the tests have to be repeated or if additional testing is necessary because a testing date is missed or because defects are detected, the supplier will bear any material and labour costs including administrative costs and other costs incurred by Herco.

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(5) In the event of late delivery Herco may – subject to advance warning – demand a contractual penalty of 0.5% to max. 5% of the respective order value for each week or part week of delay. The contractual penalty will be offset against any claims for compensation for which the supplier is liable.

6. Liability for defects, warranty

(1) The supplier warrants that the goods/services to be supplied do not contain any defects which impair their value or fitness for purpose and that they are consistent with the quality specified or agreed and that they have the attributes promised, conform to generally accepted engineering practice and the most current official regulations, the German Product Safety Act (*Gerätesicherheitsgesetz*), applicable requirements on technical safety and on safety and accident prevention at the workplace.

(2) The supplier will carry out and maintain effective quality assurance and provide Herco with evidence of this on request. Herco may verify the supplier's quality assurance measures at any time. Unless otherwise stipulated below, Herco may assert its statutory rights as it sees fit if the services/goods do not conform to the contractually agreed quality, quantity and/or class.

(3) Herco's duty to inspect incoming goods and report defects is as set out in statute (secs. 377, 381 German Commercial Code – *Handelsgesetzbuch*) subject to the following: Herco's duty to inspect incoming goods is confined to defects which are identified by Herco's incoming goods inspection staff in an external inspection, including the shipping documents, (such as transport damage, goods not what was ordered or quantity less than ordered) or which are identified by quality control in random checks. Where the parties have stipulated acceptance, there is no obligation to inspect. In all other respects, it depends on the extent to which an inspection is practicable in the ordinary course of business, taking account of the circumstances of the specific case. This has no effect on Herco's duty to report defects which are not discovered until later. Without prejudice to Herco's duty to inspect, any defect report submitted by Herco will in any event then be deemed to have been submitted without undue delay and in a timely manner if it is sent within 3 – 5 working days of discovery and, in the event of obvious defects, if sent within 3 – 5 working days of delivery.

(4) Where the defective good has already been installed in another item consistent with its designated purpose, subsequent performance will also include its removal and re-installation in or attachment to another item. This will not affect Herco's statutory right to be reimbursed for costs incurred

The supplier will bear the costs incurred for inspection and subsequent performance even it transpires that there was no defect. Herco's liability for compensation is not affected where the claim for defect remedy was not valid; Herco will only be liable if Herco has acknowledged that there was no defect or if, through gross negligence on Herco's part, it failed to see that there was no defect.

(5) The following applies without prejudice to Herco's statutory rights and the above provisions: If the supplier does not fulfil its obligation to render subsequent performance – either by remedying the defect (remedy) or by supplying a non-defective item (replacement) – within a reasonable period stipulated by Herco, Herco may remedy the defect itself and demand that the supplier refund necessary costs and/or demand an advance on the refund. Herco is not obliged to set a deadline if subsequent performance by the supplier fails or is not reasonably acceptable (e.g. for reasons of particular urgency, danger to operating safety or impending disproportionate damage); Herco will notify the supplier of such circumstances without undue delay, if possible beforehand.

(6) Subsequent performance will be deemed to have failed after the first failed subsequent performance attempt. Where a complaint has been filed within the limitation period for claims for defects, the parts will remain at Herco's disposal until replacement has been provided. In all other respects, the supplier's liability will be as provided for by statute. Secs 439(4), 635(4) German Civil Code will not apply.

7. Recourse against suppliers

(1) In addition to claims for defects, Herco is also entitled to statutory rights of recourse within a supply chain (supplier's recourse purs. to secs. 445a, 445b, 478 German Civil Code). In particular, Herco may demand that the supplier render subsequent performance (remedy or replacement) in the same manner as Herco is obliged to render to its customer. This has no effect on Herco's statutory right to choose (sec. 439(1) German Civil Code).

(2) Before acknowledging or fulfilling a defect claim asserted by one of its customers (including refund of expenses pursuant to sec. 445a(1), 439(2) and (3) German Civil Code) Herco will notify the supplier, outlining the facts and asking the supplier to comment in writing. If substantiated comment is not provided within a reasonable period and if a mutually acceptable solution is not achieved, the warranty claim granted by Herco will be deemed to be owed to Herco's customer, in which case the obligation to prove otherwise will lie with the supplier.

(3) Herco's claims to recourse against suppliers apply even if Herco or another company has processed the defective good further, for example by installing it in another product.

8. Manufacturer's liability

(1) If the supplier is responsible for product damage, it will indemnify Herco from third-party claims in as far as the cause lies within the supplier's sphere of control and organisation and the supplier is itself liable in its external relations with third parties.

(2) Under its indemnification obligation the supplier will reimburse expenses incurred owing to claims asserted by third parties, including product recalls carried out by Herco, pursuant to secs. 683, 670 German Civil Code. As far as is possible and reasonable, Herco will inform the supplier of the content and extent

of the recall measures and give the supplier an opportunity to comment. This will not affect any broader statutory rights.

(3) The supplier will take out and maintain product liability insurance providing cover for personal injury and property of at least EUR 10 million per loss occurrence.

9. Limitation period

(1) Unless otherwise stated below, the limitation period for mutual claims of the parties will be as provided for by statute.

(2) Notwithstanding sec. 438 (1) no. 3 German Civil Code, the general limitation period for claims arising from defects is three years from the passage of risk. Where the parties have stipulated acceptance, the limitation period will begin on acceptance. The three-year limitation period will apply likewise to claims from defects in title and will not affect the statutory limitation period for real claims of third parties for the release of property (sec 438(1) no. 1 German Civil Code); Claims from defects in title will not become statute-barred for such time as the third party still has the right to assert claims against Herco, particularly where the limitation period has not expired. The limitation period for goods which are customarily used in a building is five years from when the materials are incorporated in the building but no more than 5 ½ years after the materials have been delivered.

(3) Where defects have been formally reported, the limitation period will be extended by the period between such formal report and remedy of the defect. If the good supplied is replaced, the limitation period will start again from zero. In the event of partial replacement, this will apply to the parts replaced. If the defect can only be identified by means of analyses, etc., Herco may charge the supplier all costs of researching the loss if such research shows that the loss is attributable to the supplier. In all other respects, once the supplier has received Herco's formal defect report sec. 203 German Civil Code will apply

(4) To the extent permitted by statute, the limitation periods under sales law – including the above extension thereto – will apply to all contractual claims for defects. Where Herco is entitled to non-contractual compensation claims owing to a defect, the usual statutory limitation period will apply (secs. 195, 199 German Civil Code) unless in a specific case application of the limitation periods under sales law gives rise to a longer limitation period.



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10. Assignment of claims

Rights and duties under this order and execution of this order may not be transferred without Herco's written consent. Claims which the supplier has against Herco may not be assigned without Herco's written consent.

11. Place of performance, place of jurisdiction, choice of law

The place of performance for all goods and services will be the reception point stipulated in the order. The sole place of jurisdiction is the domicile of Herco Wassertechnik GmbH in 71691 Freiberg, Germany. However, Herco is also entitled to bring action at the place of performance for the supply obligation stipulated in these TCPs or in an overarching individual agreement, or at the supplier's general place of

jurisdiction. The contract is governed by German law excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

12. Environmental concerns

Herco requires its suppliers to comply with applicable national energy and environmental laws, requirements and standards. It also expects suppliers to establish and operate an appropriate environmental and energy management system. Economical and responsible use of energy, water and resources should be standard practice; likewise suppliers should use technologies designed to avoid and reduce waste, CO₂, waste water pollution, emission of pollutants.

Herco also expects the supplier to have transparency regarding its own emissions and upstream activities.

Suppliers are also expected to establish effective measures consistent with the Paris Climate Accord to reduce their direct and indirect CO₂ emissions and to work continually on improving such measures, and progressively increase the use of renewable energies and alternative energy sources.

Last amended: September 2023