

General Terms and Conditions of Business of Herco Wassertechnik GmbH

General Terms and Conditions of Supply and Payment Last amended: September 2023

1. Scope, form

1.1 All goods, services and offers supplied by Herco Wassertechnik GmbH (Herco) are subject solely to these terms and conditions of supply and payment (TCSPs). These terms and conditions will be deemed to have been accepted at the latest when the customer takes receipt of the goods or services. These TCSPs apply in particular to contracts for the sale and/or supply of movable items irrespective of whether Herco produces the good itself or purchases it from other suppliers (secs. 433, 650 German Civil Code (*Bürgerliches Gesetzbuch*)). These TCSPs are a frame agreement for all future business relations between Herco and the customer even if this is not subsequently expressly agreed.

1.2 These TCSPs apply to the exclusion of any other standard terms and conditions. Standard terms and conditions of business or purchase of the customer which differ from, conflict with or supplement Herco's own will only become a constituent part of the contract in as far as Herco has expressly consented. This consent requirement applies in all cases, including, for example, where Herco supplies to the customer without reserve despite being aware of the customer's standard terms and conditions of business.

1.3 Herco employees are not authorised to enter into ancillary agreements or to make commitments on Herco's behalf unless they are authorised to represent Herco accordingly by act of law.

1.4 Individual agreements entered into with the customer in an individual case (including ancillary agreements, additions and amendments) will always take precedence over these TCSPs. Unless evidence is provided to the contrary, the content of such agreements must be set out in a written contract or confirmed by Herco in writing.

1.5 Any statements or notifications from the customer regarding the contract which are of legal relevance (such as deadlines, notification of defects, withdrawal or reduction of price) must be made in writing, i.e. in written form (with an original signature) or text form (e.g. 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.

1.6 Information on the applicability of statutory provisions is provided for clarification purposes only. Thus, even in the absence of such clarification, statutory provisions apply unless they are directly amended or expressly disappplied in these TCSPs

2. Offer, conclusion of contract

2.1 Herco's offers are subject to confirmation and non-binding. This applies even if Herco has provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic formats. The documents

associated with the order such as illustrations, drawings, sizes and dimensions are only approximate and are not binding unless they are expressly designated as binding.

2.2 The scope of supply and the item to be supplied will be as set out in the order confirmation – if available – and as described in Herco's service and product descriptions in as far as these form part of the contractual agreement.

2.3 Herco reserves the right to make modifications to the design or form during the delivery period owing to technological advances and statutory requirements.

2.4 Once the customer places an order for the goods this constitutes a binding offer to enter into a contract. The content and scope of the contract will be as set out in Herco's written confirmation of order. Declarations of acceptance and all orders are valid in law only when they have been confirmed in Herco's written confirmation of order. A contract has not been entered into until the written confirmation of order (acceptance) has been issued.

3. Copyright, reservation of right to modify

3.1 Herco reserves all title and copyright in illustrations, drawings, calculations and other documents. These may not be reproduced or disclosed to third parties without written consent.

3.2 Herco has the right to make expedient modifications and improvements to products and services at any time; however, it is under no obligation to do so.

4. Prices

4.1 Unless otherwise stated in the confirmation of order, Herco's prices are net ex works at the time the contract is concluded. The prices do not include value added tax, which will be added and indicated separately on the invoice at the applicable statutory rate on the date of invoice.

4.2 For contracts involving the carriage of goods to a place other than the place of performance the customer will bear the transport costs ex warehouse and, where requested by the customer, the costs of transport insurance. Any customs duties, charges, taxes and other public charges will be borne by the customer.

4.3 A processing charge of EUR 20.00 (plus value added tax at the applicable statutory rate) will be applied to orders for goods with a net value of less than EUR 50.00.

5. Delivery period, delay in delivery

5.1 The delivery period will be agreed individually or stated by Herco in its acceptance of the order. It will begin on the date on which the order confirmation is sent, but not before all documents to be provided by the customer have been made available or before all technical issues have been clarified. Delivery dates or

delivery periods, which may be binding or non-binding, must meet written-form requirements.

5.2 If Herco is unable to meet binding delivery periods/dates for reasons outside its control (unavailability of performance), Herco will notify the customer without undue delay, simultaneously advising the new probable delivery time/date. If performance is not possible by the new delivery date, Herco may withdraw from the contract in whole or in part; Herco will refund any consideration already rendered by the customer without undue delay. An example of unavailability of performance within the meaning of this contract would in particular be where Herco were not supplied in a timely manner by a supplier, if Herco entered into a congruent covering transaction (*kongruentes Deckungsgeschäft*), neither Herco nor its supplier are at fault or Herco, in the individual case, is not under an obligation to procure.

5.2 Herco will not be liable for delays in supply and service which are attributable to force majeure or occurrences which make it substantially more difficult or impossible for Herco to supply. These include without limitation strike, lock-out, official orders, etc. even if they affect Herco's suppliers and even if such delays in supply and service concern binding delivery periods and dates. In such cases Herco may postpone the supply or service by the duration of the impediment plus a reasonable starting-up period or may withdraw in whole or in part from the portion of the contract which has not yet been performed. If the impediment lasts for more than three months, the customer may withdraw from the portion of the contract which has not yet been performed provided that it has first set a reasonable extension to the deadline.

If the delivery period is extended or if Herco is released from its obligation, this will not entitle the customer to claim compensation.

5.3 The point at which Herco falls into delay with supply will be as provided for by statute. However, the customer must issue a reminder. If Herco is in delay with supply, the customer may demand liquidated damages for the loss suffered. The liquidated damages will be 0.5% of the net price per complete calendar week but no more than 5% of the net price of the goods affected by the delay. Herco will reserve the right to prove that the customer has suffered no loss or that any loss suffered was significantly lower than the above compensation..

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6. Delivery, passage of risk, acceptance, delay in taking delivery

6.1 Delivery will be ex warehouse, the warehouse also being the place of performance for the shipment and any subsequent performance. The goods will be shipped to a destination other than the place of performance at the customer's cost and request (sales shipment pursuant to sec. 447 German Civil Code (Bürgerliches Gesetzbuch). Unless otherwise agreed, Herco may choose the mode of transport (in particular the carrier, route, packaging) itself.

6.2 If the customer is in default with taking delivery, Herco may – having previously set a reasonable extension to the deadline – dispose of the item supplied and supply it to the customer with a reasonable extension to the deadline or withdraw from the contract. If the customer is in delay with taking delivery or if it breaches other duties to collaborate, Herco may also demand compensation for any additional expenses incurred.

6.3 Risk passes to the customer as soon as the shipment is handed over to the carrier or it has left warehouse for the purpose of shipment. If shipment is impossible for reasons for which Herco is not responsible, risk passes to the customer when the customer is advised that the goods are ready for despatch. This will apply in particular if shipment is deferred at the customer's request after the customer has been advised that the goods are ready for despatch, in which case the risk of accidental loss or accidental damage passes to the customer. In as far as claims can be asserted against liable third parties and/or against insurers (insurance policies only at the customer's request and cost) any claim which the customer may have against Herco is limited to the amount due under the claim assigned to the customer.

6.4 Where the parties have stipulated acceptance, passage of risk will occur on acceptance. In all other respects, acceptance will be subject to the law regarding contracts for mixed work and services (*Werkverträge*). Handover or acceptance will be deemed to have been effected if the customer is in delay in taking receipt of the goods.

6.5 If the customer is in delay with taking receipt of the goods, or if it fails to cooperate as required or if the shipment is delayed for other reasons within the customer's sphere of responsibility, Herco has the right to demand compensation for any resultant loss including any additional expenses (e.g. storage costs). For this Herco will charge compensation of EUR 50.00 per calendar day beginning with the delivery period or – in the absence of a delivery period – beginning on notification that the goods are ready for despatch. This has no effect on the right to prove a higher loss on Herco's statutory rights (including without limitation

reimbursement of additional expenses, appropriate compensation, termination); however, this compensation will be offset against any further monetary claims. The customer will reserve the right to prove that Herco has suffered no loss or that any loss suffered was significantly lower than the above compensation.

6.6 In all other respects, shipment (including any returns) will be at the cost and risk of the customer. This will also apply if the goods are shipped in Herco's own vehicles.

6.7 Herco may provide the goods and services in instalments.

7. Terms of payment

7.1 Unless otherwise agreed, Herco's invoices will be payable immediately and without deductions. However, Herco reserves the right to perform some or all of a supply contract against advance payment at any time even in the context of an ongoing business relationship, in which case Herco will notify the customer accordingly in the order confirmation. Payment by bill of exchange is only possible subject to express written agreement.

7.2 Even if the customer's provisions state otherwise Herco may always assign payments to older debts owed by the customer first. If costs and interest have already arisen, Herco may use payments made to first service such costs, then the interest and finally the principal amount owed. All payments must be made to Herco head office; no charges may be deducted.

7.3 Payment will only be deemed to have been made once the amount is credited to one of Herco's accounts.

7.4 If the customer is in default with payment, Herco may charge interest as of the date concerned as follows: 8% above the applicable base interest rate of the European Central Bank to companies, and 5% above the applicable base interest rate of the European Central Bank to consumers.

7.5 If the customer fails to perform its payment obligations or if Herco becomes aware of other circumstances which cast doubt on the customer's creditworthiness, Herco may demand that the entire balance owed be due. In such an event Herco is also entitled to demand that the customer pay in advance or provide security. If the entire outstanding balance is not paid immediately the customer will forfeit its right to use the item supplied. Herco may either repossess the item supplied without waiving its claims until they have been satisfied or it may withdraw from the contract. All the costs of repossessing the item supplied will be borne by the customer. In the event that Herco withdraws from the contract, the customer

will reimburse Herco for any loss in value as well as compensation for having used the item supplied.

7.6 If it becomes apparent after the contract has been concluded (e.g. in the event of an insolvency filing) that Herco's claim to the purchase price is jeopardised by the customer's lack of solvency, Herco is entitled to refuse performance and – if applicable, having set a deadline – to withdraw from the contract (sec. 321 German Civil Code). In the case of contracts for unique items (custom-made) Herco may declare withdrawal from the contract immediately;

this has no effect on the statutory requirements waiving the setting of a deadline.

7.7 The customer may only offset counterclaims against claims of Herco if the counterclaims are undisputed or have been ruled final and absolute in a court of law.

7.8 The customer may only assert rights of retention against claims of Herco if the counterclaims are undisputed or have been ruled final and absolute in a court of law.

8. Reservation of title

8.1 Herco will reserve title in the goods sold until the customer has paid all Herco's present and future claims under the purchase agreement and a current business relationship (secured claims) in full.

8.2 The customer may not pledge reserved items or assign them as security to third parties until the secured claims have been paid in full. The customer must notify Herco in writing without undue delay if an application is filed for insolvency or if third parties exercise claims (e.g. attachment) on goods belonging to Herco.

8.3 If the customer acts in breach of contract, including without limitation by failing to pay the purchase price due, Herco may withdraw from the contract as provided for by statute and/or demand that the goods be surrendered on the grounds of reservation of title. Demand for surrender of the goods is not to be equated with declaration of withdrawal from contract. On the contrary, Herco is entitled to demand surrender of the goods and reserve the right to withdraw from the contract. If the customer does not pay the due purchase price, Herco may only assert these rights if it has previously set the customer a reasonable deadline for payment without success or if the law does not require such a deadline to be set.

8.4 Until revocation (see (c) below) the customer is authorised to resell and/or process the reserved goods in the normal course of business, in which case the following provisions will also apply: (a) Reservation of title will extend to any products generated by processing, mixing or combining Herco's reserved goods at their full value, whereby Herco will be

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deemed to be the manufacturer. If the goods are processed, mixed or combined with the goods of third parties such that the third parties retain title, Herco will acquire pro rata joint title in proportion to the invoice value of the processed, mixed or combined goods. In all other respects, the same will apply to the product generated as to the goods supplied under reservation of title. (b) The customer hereby assigns to Herco by way of security any claims against third parties arising from the resale of the goods or the product in full or to the value of any joint title of Herco pursuant to the preceding paragraph. Herco hereby accepts such assignment. The customer's obligations under 8.2 also apply in respect of the assigned claims. (c) Both the customer and Herco are authorised to collect the claim.

Herco will not collect the claim as long as the customer performs its payment obligations to Herco, the customer's ability to perform is not impaired and Herco does not assert its reserved title by exercising a right pursuant to 8.3. If the above criteria are satisfied Herco may demand that the customer disclose the assigned claims and the debtors, that it provide all information required for collection, furnish the associated documents and notify the debtors (third parties) of the assignment, in which case Herco may revoke the customer's right to resell and process the reserved goods. (d) If the realizable value of the securities exceeds Herco's claims by more than 10 % at the customer's request Herco will release securities as it seems fit.

9. Warranty

9.1 Unless otherwise stated below, the customer's rights in respect of quality defects and defects in title (including incorrect or short supply, improper assembly or deficient assembly instructions) will be subject to statutory provisions. In all cases this will not affect the special statutory provisions applying to unprocessed goods supplied to a consumer, even if the customer has processed them further (supplier recourse pursuant to sec. 478 German Civil Code). Claims to recourse against suppliers are excluded if the customer or another company has processed the defective good further, for example by installing it in another product.

9.2 In as far as the goods supplied to the customer were not manufactured by Herco itself but bought from another supplier, Herco will meet its warranty obligations by assigning its own warranty claims against its supplier to the customer. The customer accepts this assignment by way of performance. Subsidiary warranty claims against Herco which are not enforceable or fail will be subject to the provisions below.

9.3 Herco's liability for defects is based primarily on the agreement regarding the attributes of the goods. The agreement on the attributes of the goods consists of all product descriptions and manufacturer's data forming the subject of the individual contract or information made publicly known by Herco (in particular in catalogues or on its website) at the time the contract is entered into.

9.4 Where such attributes have not been agreed, the existence of a defect will be judged according to statutory rules (sec. 434(3) German Civil Code). However, Herco will not accept liability for public statements (e.g. advertising claims) of the manufacturer or other third parties which the customer has not indicated to Herco as being a crucial factor in its decision to purchase.

9.5 Statements regarding attributes do not constitute a guarantee unless this has been expressly set out in writing. As a general rule, no obligations regarding the remedy of defects and subsequent performance will be assumed over and above those set out in these terms and conditions.

9.6 Herco will not be liable for defects known to the customer at the time the contract is concluded or of which the customer is not aware owing to gross negligence on its part (sec. 442 German Civil Code). The customer may only assert claims for defects provided it has met its statutory obligations to examine the goods and report defects (secs. 377, 381) German Commercial Code (*Handelsgesetzbuch*). In all cases, building materials and other goods to be installed or otherwise processed must be inspected directly before processing. Herco must be notified without undue delay in writing if any defect becomes apparent on delivery, inspection or at any time thereafter. In any event, obvious defects must be reported within 3 working days of delivery and defects which were not detected on inspection within the same period after detection. If the customer fails to properly carry out inspection and/or to report defects, pursuant to statute Herco will not be liable for defects which are not reported properly or in a timely manner.

9.7 If the item supplied is defective, Herco may initially choose whether to render subsequent performance by remedying the defect (repair) or by supplying a non-defective item (replacement). This has no effect on Herco's right to refuse subsequent performance as provided for by statute.

9.8 Herco may make subsequent performance dependent on the customer having paid the due purchase price. However, the customer may retain a portion of the purchase price commensurate with the defect.

9.9 The customer will grant Herco the necessary time and opportunity to render subsequent performance, in

particular it will hand over the item in question for inspection. Where the defective item is to be replaced, the customer will return it to Herco in accordance with statute. If Herco was not originally required to install it, subsequent performance will not include removal or re-installation of the defective item.

Where there is a defect Herco will bear/refund the necessary expenses incurred by inspection and subsequent performance including without limitation costs of transport, travel, labour and materials and, if applicable, any removal/installation costs. Otherwise Herco can demand that the customer refund the costs incurred from an unjustified request to remedy a defect (in particular, inspection and transport costs) unless it was not possible for the customer to identify that the item was not defective.

9.10 If, after the subsequent performance has been completed, the goods have to be moved somewhere other than the original destination, the customer will bear any additional costs which arise. The same will apply if the customer returns the defective item to Herco for subsequent performance from somewhere other than its head office/the place of delivery.

9.11 Where subsequent performance fails or cannot be rendered within a reasonable period set by the customer or where statutory provisions do not require subsequent performance the customer may withdraw from the contract or reduce the purchase price. However, where the defect is immaterial the customer is not entitled to withdraw from the contract.

9.12 Herco has no warranty obligations if (a) the defect is attributable to improper use, operation, care or inadequate maintenance, deficient assembly and commissioning, breach of or failure to comply with our operating and assembly instructions or instructions for use or to the use of force and other external influences (e.g. chemical, electromagnetic, electrical, etc.) outside Herco's reasonable control or if (b) the defect arose because the item supplied was tampered with in particular using unsuitable spare parts, including without limitation third-party spares, and the loss is attributable to such tampering or use. The warranty does not cover normal wear and tear or damage attributable to negligent or improper use or treatment.

9.13 The goods must be returned to Herco along with the original delivery note or a photocopy thereof. Negotiations about complaints do not mean that Herco will waive the defence of failure to report a defect properly or in good time.

9.14 Herco will not be liable for the consequences if the customer or a third party remedies defects by improper means. The same will apply to any alterations made to the item supplied without Herco's prior written consent.

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9.15 The provisions of section 10 also apply to claims for compensation

9.16 If the scope of supply includes software or other copyright-protected goods and hence associated rights, the customer will be granted a non-exclusive right to use that software including the associated documentation in conjunction with the items supplied. The customer may only use and edit the software to the extent permitted by statute and may not remove manufacturer's data without Herco's prior written consent. The customer may not assign the software or rights therein to third parties – such as by way of licence – without Herco's prior written consent.

9.17 The customer may not use Herco products for advertising purposes unless Herco has approved the advertising. If the customer's clients assert claims for liability for defects on the grounds that the product purchased is not as stated in claims made in the customer's advertising and if such advertising has not been approved by Herco the customer may not assert claims against Herco.

10. Liability

10.1 Unless otherwise stated in these TCSPs and the provisions set out below, Herco's liability for a breach of contractual and non-contractual obligations will be as provided for by statute.

10.2 Herco will only be liable for compensation – irrespective of the legal basis – in the event of fault attributable to intent and gross negligence. In the event of minor negligence – subject to statutory liability limitation (e.g. care in one's own affairs; minor breach of duty) – Herco will be liable only

a) for losses arising from injury to life, the body or health,

b) for losses arising from breach of a material contractual duty (an obligation performance of which is a prerequisite for proper performance of the contract and on which the contractual partner relies

and can normally rely on being performed), in which case Herco's liability will be limited to compensation of foreseeable typically occurring losses.

10.3 The liability exclusions and limitations in 10.2 also apply to third parties and breaches of duty on the part of (or to the benefit of) persons for whose fault Herco is responsible by statute. They do not apply where a defect has been fraudulently concealed or where a warranty has been assumed for the attributes of the product or where the customer has claims under the German Product Liability Act (Produkthftungsgesetz).

10.4 The liability limitations in sections 9 and 10 also apply to liability for incorrect advice, incorrect assembly instructions and other breaches of collateral duties.

10.5 Any claims for compensation over and above this are excluded to the extent permitted by statute

11. Limitation period

11.1 Notwithstanding sec.438 (1) no 3 German Civil Code the general limitation period for claims arising from defects in quality or title is one year from delivery. Where the parties have stipulated acceptance, the limitation period will begin on acceptance.

11.2 If the item supplied is a building or an item which has been used for a building in accordance with its usual purpose and has caused the building to be deficient (building material), the limitation period pursuant to statute is five years from delivery (sec. 438(1) no. 2 German Civil Code). This has no effect on other statutory special rules on limitation (in particular sec. 438(1) no. 1, (3), secs. 444, 445b German Civil Code).

11.3 The above limitation periods under sales law also apply to contractual and non-contractual claims for compensation of the customer arising from a defect in the item supplied except where the standard statutory limitation period applies (secs 195, 199 German Civil Code).

12. Applicable law, place of jurisdiction, severability

12.1 These TCSPs and all legal relations between Herco and the customer are subject to the law of the Federal Republic of Germany excluding uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG) even if the customer's registered office is outside the Federal Republic of Germany.

12.2 If the customer is a merchant (*Kaufmann*) within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal person under public law or a legal entity under public law, the sole – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship will be Herco's domicile in Freiberg am Neckar. The same will apply if the customer is an entrepreneur (*Unternehmer*) as defined in sec. 14 German Civil Code. However, Herco is also entitled to bring action at the place of performance for the supply obligation stipulated in these TCSPs or in an overarching individual agreement, or at the customer's general place of jurisdiction.

12.3 Unless otherwise stated in the confirmation of order the place of performance will be Herco's domicile.

12.4 If any provision of these terms and conditions of business or any provision of other agreements is or becomes invalid this will not affect the validity of all other provisions or agreements.

12.5 Amendments, additions and ancillary agreements to these terms and conditions and to individual contracts are valid only if they comply with written-form requirements. This will apply even if the written-form requirements are to be waived. There are no oral ancillary agreements.

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