

General terms and conditions HERCO Wassertechnik GmbH

General Terms of delivery and payment status March 2015

1. Scope of Application of these General Terms and Conditions

1.1 All deliveries, services and quotations provided by HERCO Wassertechnik GmbH (hereinafter referred to as HERCO) shall be made solely on the basis of these General Terms and Conditions. These General Terms and Conditions shall be deemed accepted at the latest upon receipt of the goods or services. These General Terms and Conditions shall also apply to all future business relationships of HERCO with the purchaser, even if they are not once again expressly agreed upon. Conflicting or contradictory General Terms and Conditions or purchase terms and conditions of the purchaser are herewith rejected. Conflicting or contradictory General Terms and Conditions or purchase terms and conditions of the purchaser shall also not apply if they are part of a confirmation letter by the purchaser sent subsequent to our confirmation of the contract and even if we do not separately object to same.

1.2 Unless employees of HERCO do not hold any power of attorney vested in them by statute, said employees shall not be authorized to enter into ancillary agreements or make warranties. Any verbal agreements made with employees of HERCO holding respective power of attorney shall only be effective if they have been confirmed in writing.

2. Offer, Execution of the Agreement

2.1 All offers made by HERCO shall be subject to change, prior sale and non-binding. For any acceptance declarations and orders to be legally effective, same shall require a written order confirmation from HERCO. An agreement shall have been finalized only upon issuance of said written order confirmation.

2.2 HERCO's written order confirmation shall govern the contents and scope of the agreement. Documents that are part of the offer, such as figures, drawings, size and dimension information shall be approximate and non-binding, unless expressly identified as binding.

2.3 For the entire delivery time, HERCO reserves the right to implement design and form changes resulting from the further development of technology or statutory mandates.

2.4 The scope of delivery and the delivery object shall be stipulated in the order confirmation as well as, if applicable, our service and product descriptions, provided same have been made objects of the contractual agreement.

3. Intellectual Property Rights, Reservation of Right to Modify

3.1 HERCO reserves all property and intellectual property rights in all figures, drawings, calculations and other documents. Same shall neither be duplicated nor made accessible to any third parties without HERCO's written consent.

3.2 HERCO shall have the right to perform expedient modifications and improvements on its products and services at all times; it shall, however, be under no obligation to make such changes.

4. Prices

4.1 Unless otherwise stated in the order confirmation, HERCO's prices shall be quoted ex factory, net. Prices do not include sales/value added tax. Same shall be added separately to the invoice in the statutory amount on the day the invoice is issued.

4.2 Prices do not include packaging and shipping costs and are quoted without the cost of transportation insurance. The afore-mentioned costs shall be billed to the purchaser separately. Transportation insurance shall be obtained only upon purchaser's express written request.

4.3 For orders less than EUR 50.00 net we charge EUR 20.00 extra handling fee (+ VAT).

5. Delivery, Transfer of Risks

5.1 The delivery time shall begin only upon posting of the order confirmation, however, no earlier than at the time all documents required have been provided by the purchaser and all technical issues have been clarified. Delivery dates or times, which may be agreed upon as binding or non-binding dates and times, shall be agreed in writing.

5.2 Herco shall not be liable for delays in delivery or services due to force majeure or due to events that make it substantially more difficult or impossible for HERCO to perform the delivery/service – in particular due to events such as strike, lockouts, government agency mandates, etc., including those that occur at the end of HERCO's suppliers, even if delivery times and dates have been agreed upon as binding. In these cases, HERCO shall have the right to delay the delivery or service for the duration of the encumbrance, plus a reasonable start-up period or to rescind from the part of the contract pertaining to the unfulfilled part of same in full or in part. In the event that the hindrance should last more than three months, the purchaser shall, after having set a reasonable deadline for remedial action, have the right to rescind from the contract pertaining to the unfulfilled part. The purchaser shall not have the right to construe any claims for damages in the event that the delivery time is extended or in the event that HERCO is released from its obligations.

5.3 In the event that the purchaser should be in default of acceptance, HERCO shall have the right, upon setting a reasonable deadline for remedial action, to take control of the object and to make delivery to the purchaser within the reasonable extended remedial time period or to rescind from the agreement. In the event that the purchaser is in default of delivery or if the former breaches any other participatory obligations, HERCO shall also have the right to demand reimbursement of any additional expenditures incurred.

5.4 The risk shall transfer to the purchaser as soon as the shipment has been handed over to the transportation carrier or as soon as it has left the warehouse for the purpose of shipping. In the event that shipping becomes impossible for reasons beyond HERCO's control, the risk shall transfer to the purchaser upon notification that the delivery is ready for shipment. This shall apply in particular if shipment is delayed upon purchaser's request after a notice that the consignment is ready for shipment has been sent. In this case the risk of accidental loss or accidental damages shall also transfer to the purchaser. In the event that claims can be filed against liable third parties and/or insurance providers (insurance shall be arranged only upon purchaser's request and at the latter's expense), any claim purchaser might have against HERCO shall be limited to our assignment of the receivable to the purchaser.

5.5 Incidentally, shipment shall be made at purchaser's cost and risk (same shall also apply to any return shipments). This shall also apply if we deliver goods in our own vehicles.

5.6 HERCO shall have the right to make partial shipments and render partial services.

6. Retention of Title

6.1. Until satisfaction of all claims (including any current account balance claims) to which HERCO is entitled against the purchaser now or in the future, HERCO is hereby granted the following securities which HERCO shall release on request at its discretion once their value permanently exceeds the claims by more than 10%.

6.2. The subject of purchase shall remain the property of HERCO until full payment has been made. Processing or transformation shall always be carried out for HERCO but without giving rise to any obligations for HERCO. If HERCO's (co)ownership ceases to exist as a result of combining, it is agreed now in advance that the (co)ownership of the purchaser in the new uniform product shall pass to HERCO in proportion to the value (invoice value). The purchaser shall keep HERCO's (co)owned product free of charge.

6.3. Goods for sale in which HERCO has (co)ownership shall be referred to as the retained goods („Retained Goods“). The purchaser is entitled to process and sell the Retained Goods in the ordinary course of business providing the purchaser is not in default and only subject to the purchaser receiving payment from its customer or providing that title shall only pass to the customer once it has met its payment obligations.

6.4. Pledging or transferring such items as security is not permitted. The purchaser hereby assigns to HERCO now in advance as security all claims in full with respect to the Retained Goods which result from selling goods on or which arise on other legal grounds (insurance, tort). HERCO hereby revocably authorises the purchaser to collect the claims assigned to HERCO in its own name for HERCO's account. This collection authorisation can only be revoked if the purchaser does not properly meet its payment obligations or in the event that the purchaser files an application for the institution of insolvency proceedings or for protective shield proceedings under the German Insolvency Act (Insolvenzordnung).

6.5. If third parties obtain access to the Retained Goods, particularly as a result of pledges, the purchaser shall point out that they are HERCO's property and inform it without undue delay so that HERCO can assert its title rights. For the event that the third party is not in a position to reimburse HERCO for in or out-of-court costs arising in this regard, the purchaser shall be liable herefor.

6.6. In the case of breaches of duty by the purchaser, particularly in the case of default with payment, HERCO is entitled to rescind the agreement and repossess the goods after fruitless expiry of a reasonable period granted to the purchaser for performance. The statutory provisions regarding when setting such a period is unnecessary shall remain unaffected. The purchaser shall be obliged to surrender the goods.

6.7. HERCO does not consent to sale of the Retained Goods in the event that an application is filed for the institution of insolvency proceedings or for protective shield proceedings under the German Insolvency Act.

6.8. If before or during delivery justified doubts arise regarding the solvency of the purchaser, HERCO can request further securities from the purchaser to secure future payment obligations over and above the retention of title and refrain from providing the deliveries and services until such securities have been furnished. Should the purchaser be unable to furnish the required securities, HERCO is entitled to rescind the agreement.

6.9. The purchaser shall treat the Retained Goods with care and shall, in particular, sufficiently insure these at their new value at its own costs against fire, water and theft. Where maintenance and inspection work is necessary, the purchaser shall have this carried out by HERCO in due time at its own cost.

7. Payment Terms

7.1 Unless otherwise agreed upon, all HERCO invoices shall be due for immediate payment, net, without any deductions. HERCO shall have the right to set off any payments made

against older debts of the purchaser, regardless of any instructions to the contrary from the purchaser. In the event that costs and interest have already been incurred, HERCO shall have the right to set off payments in the following order: first against costs, next against interest and subsequently against the principal. All payments shall be made at our domicile, all costs prepaid by purchaser. Payments via deferred bank draft shall not be accepted unless expressly agreed otherwise in writing.

7.2 A payment shall be deemed made only upon credit of the amount to one of HERCO's accounts.

7.3 In the event that the purchaser should be in default of payment, HERCO shall have the right to charge interest in the amount of 8 % above the applicable prime rate published by the European Central Bank for companies and in the amount of 5 % above the applicable prime rate published by the European Central bank for consumers as of the due date.

7.4 In the event that purchaser should fail to meet purchaser's payment obligations or if HERCO should learn of other circumstances that give rise to misgivings about purchaser's creditworthiness, HERCO shall have the right to make any remaining balance due payable immediately. In this case, HERCO shall also have the right to demand advance payments or collateral. In the event that the entire balance of debts is not paid immediately, the purchaser shall lose the right to utilize the object delivered. HERCO shall have the right to either seize the delivered object until fulfilment or to rescind from the agreement – without waiving any of its entitlements. In the event of seizure of the delivered object, all costs shall be for the account of the purchaser. In the event of rescission from the agreement, the purchaser shall pay to HERCO not only remuneration for the use of the delivered object, but also reimburse any decline in value incurred.

7.5 The purchaser shall have the right to set off counter entitlements against our receivables only if said counter entitlements are undisputed or have been finally adjudged by a court of law.

7.6 The purchaser shall have the right to execute withholding rights against our receivables only if said counter entitlements are undisputed or have been finally adjudged by a court of law.

8. Warranty

8.1 In the event that the goods delivered have not been manufactured by us in-house, but have been procured from a supplier, we shall fulfil our warranty obligations by assigning all of our own warranty entitlements against our supplier to the purchaser. The purchaser accepts said assignment as fulfilment. In the event that such rights should not be enforceable or if their execution should fail, the subsidiary warranty entitlements shall be rendered entitlements against us pursuant to subsequent Article 8.2.

8.2 The delivered goods shall be in the condition described in the product description and if not, in standard trade condition. Explanations pertaining to the condition of the goods shall not constitute warranties unless expressly denoted as such in writing. In general, no other obligations than those regarding elimination of deficiencies and remedial action warranties shall be assumed according to these General Terms and Conditions. The purchase shall examine the goods received for deficiencies and condition immediately. Deficiencies shall be reported to us within one week after delivery by written notification. This shall be without prejudice to additional statutory provisions. Concealed deficiencies shall be reported to us in writing not later than one week after their discovery. In all cases of deficiency claims, the purchaser shall undertake to provide us with the goods subject to the complaint for verification immediately. In the event of culpable refusal to do so or delay all entitlements shall be rendered null and void. The aforementioned reporting obligation shall also apply if the purchaser finds

out about deficiencies in our delivered goods or parts from purchaser's customers. In the event that purchaser's claim is justified, purchaser shall have the right to demand repair or replacement of the delivery within the scope of remedial action. We shall have the right to reject the chosen mode of remedial action if same should be possible only at disproportional costs or if the chosen type of remedy is more costly than an alternative and the latter would not translate into any disadvantages for the purchaser in comparison to the remedial option purchaser has elected. In the event of remedial action by way of repair, our repair attempts shall be limited to two in regard to a concrete defect and to four in regard to all deficiencies in the delivery object that is the object of the complaint. If the purchase object is to be moved to another location than the original place of delivery upon performance of the remedial action the purchaser shall absorb any additional costs incurred. The same shall apply if the purchaser sends the deficient object back to us from a different location than purchaser's domicile/the original place of delivery. The purchaser shall have the right to claim further warranty entitlements only after setting us a reasonable deadline for the performance of the repairs or replacement shipment and same has expired to no avail. In the event that the deficiency is only minor, purchaser shall not have the right to rescind from the agreement. This shall be without prejudice to the right to reduce the purchase price.

8.3 No warranty obligations shall exist if a) the deficiency is the result of improper use, operation or care or inadequate maintenance, faulty assembly and start-up, violation or non-adherence to our operating, user and installation instructions or of forced manipulation and other external influences (e.g. chemical, electro-magnetic, electrical, etc.), provided we are not responsible for same, b) the deficiency is the result of an improper modification to the object of delivery, in particular of the use of inadequate, in particular third party spare parts, and the damage was incurred originally in connection with the modification or utilization. Natural wear and tear, or damages resulting from negligent or improper operation or handling shall be excluded from warranty coverage.

8.4 The product subject to the claim must be sent to us along with the original delivery note or a copy of same. The fact that we engage in negotiations on claims shall not constitute our waiver of raising the objection of claims filed late or improperly.

8.5 The purchaser shall have the right to withhold payments or invoke entitlements for deficiencies only insofar as such claims are proportionate to the claimed defect based on good faith, i.e. up to a maximum of the purchase price portion of the concrete item the deficiency claim pertains to.

8.6 In the event that the purchaser or a third party should perform any improper remedial action, we shall not assume any liability for consequential damages. The same shall apply to any modifications made to the delivery object without our prior written consent.

8.7 Article 9 shall apply in supplement to any damage compensation claims.

8.8 In the event that the delivery scope should include software or other products subject to intellectual property rights and related licenses, the purchaser shall be awarded a non-exclusive license to utilize the delivered software along with all related documentation in conjunction with the delivery objects. The purchaser shall be permitted to utilize and process the software only within the scope permitted by law and shall undertake not to remove manufacturer information or to change same without our prior written consent. Without our prior written consent, purchaser shall not be permitted to transfer the software or rights to it, for instance via licenses, to any third parties.

8.9 For business transactions with commercial entities, the warranty period for material defects shall be one year as of the delivery of the goods. This shall not apply if we

are liable due to acts of intent or malicious concealment of a defect we are aware of. In these cases we shall be liable pursuant to statutory requirements. The warranty period for wear and tear parts shall be limited to the time period by which these parts would begin to become subject to normal wear and tear based on ordinary use measured by its concrete frequency and duration.

8.10 The purchaser shall not be authorized to carry out advertising activities we have not approved with our goods. In the event that customers of the purchaser should file claims for deficiencies based on deviations of the purchased goods from advertising statements of the purchaser, which have not been approved by HERCO, the purchaser shall not have the right to establish entitlements from us based on such circumstances.

9. Liability

9.1 For damages of the purchaser, regardless of the legal grounds, and in particular based on breaches of obligations under the agreement and based on illegal acts or pursuant to the Product Liability Act we shall assume liability only in the event of intent or gross neglect unless a) we are liable for loss of life, personal injury or health damages, b) we are liable for the breach of cardinal contractual obligations.

9.2 Entitlements to damage compensation based on the breach of cardinal contractual obligations shall, however, be limited to contract typical, regularly foreseeable damages.

9.3 This shall also apply in the event of liability of deficiencies.

9.4 The liability limitations pursuant to Articles 8 and 9 shall also apply in regards to any liability for erroneous consulting, faulty installation instructions and the breach of any other ancillary obligation breaches.

9.5 If permitted by law, any other entitlements for damage compensation shall be excluded.

9.6 Article 8.9 shall apply to the statute of limitations pertaining to the above entitlements.

10. Governing Law, Jurisdiction, Severability

10.1 These General Terms and Conditions and all legal relationships between HERCO and the purchaser shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG), even if the purchaser's domicile is in a foreign jurisdiction.

10.2 Provided the purchaser is a commercial entity pursuant to the German Trade Law, or a legal entity of public law or a public-legal special entity, the headquarter location of HERCO shall be the sole place of jurisdiction for all litigation arising directly or indirectly from the contractual relationship.

10.3 Unless otherwise provided in the order confirmation, the headquarter location of HERCO shall be the sole place of fulfilment.

10.4 In the event that one of the provisions in these General Terms and Conditions or within the scope of other agreements should be or rendered ineffective, this shall not affect the effectiveness of all other provisions or agreements.

10.5 For any changes, additions and ancillary arrangements pertaining to these General Terms and Conditions or to the individual agreements to become effective, same shall be made in writing. This shall also apply if the requirement of written form is waived in changes. Verbal ancillary agreements have not been made.

Status March 2015

The English version of the General Terms and Conditions of HERCO Wassertechnik GmbH is only a courtesy translation; for interpretation, the German version shall prevail.