

GENERAL CONDITIONS

For delivery of spare/wear parts, repairs, modernizations and provision of personnel by HEKUMA GmbH within the Federal Republic of Germany

1. Scope of application and conclusion of contract

1.1 These terms and conditions shall apply to all deliveries of spare and wear parts ("deliveries") and to all repairs and modernisations, and to the provision of personnel for assembly work in connection with repairs and inspections as well as for assembly supervision, commissioning, training on site and trial operation ("services") to entrepreneurs (Section 14 of the German Civil Code [BGB]) and legal entities under public law and special funds under public law by Hekuma GmbH ("us") as the contractor.

1.2 Other terms and conditions and/or general terms and conditions of the customer or third parties, regardless of whether they contradict or supplement these conditions, shall not become part of the contract, even if we do not expressly contradict them.

1.3 Offers without an acceptance deadline are not binding. The order shall only become binding for us after our written or electronic order confirmation.

1.4 Any amendments to these terms and conditions shall be made in writing. This shall also apply to a modification or elimination of this written form requirement.

1.5 We shall be entitled, at any time, to recall our deployed personnel and replace them with comparably qualified personnel.

1.6 The documents belonging to our offer, such as illustrations, drawings, weight and dimensional data, are only approximate unless they are expressly designated as binding.

1.7 The scope of our Work shall be finally and exclusively determined in our order confirmation including its annexes, if any.

1.8 We are also entitled to execute any order in cooperation with subcontractors without the consent of the customer.

2. Performance time for repairs and modernisations (services)

2.1 Unless otherwise agreed, the dates stated are not binding. Compliance with the performance time requires that all technical and organisational questions have been clarified. If this is not the case, the performance time shall be extended by a reasonable period of time

2.2 In the event of late delivery or provision of the parts to be processed or used or other (technical) documents to be provided by the customer for the performance of the service, a new completion date shall be agreed. The same applies if the parts to be processed are not made freely accessible at the customer's premises. In the case of services which we carry out in our works or have carried out by a subcontractor, the respective workshop capacity utilisation must be taken into account, in particular. In this respect, the customer has no claim to prioritised treatment.

3. Performance time and transfer of risk upon delivery of spare and wear parts

3.1 The agreed delivery clauses shall be governed by Incoterms 2020. Unless otherwise agreed, the delivery items are delivered free carrier (FCA (a) 85399 Hallbergmoos, Germany). The risk shall pass to the buyer in accordance with the agreed Incoterms

3.2 Partial deliveries are permissible in the absence of any other agreement.

3.3 The delivery time is based on the agreements between the parties. Compliance with them presupposes that all technical and organisational questions have been clarified. If this is not the case, the delivery time shall be extended by a reasonable period of time.

3.4 The delivery period begins with the receipt of the down payment, unless otherwise agreed.

3.5 The minimum order value for spare parts orders is € 250. For order values < € 250, the following surcharges apply to small quantities: Europe: € 70 ROW: € 180 Russia: € 200

4. Working hours

4.1 The regular weekly working hours are specified in our currently valid offer. Working hours exceeding the regular weekly working hours require our prior written consent. Unless otherwise agreed, overtime shall be deemed to be work in excess of seven and a half (7.5) hours of working time per day. For this, as well as for work on Sundays and public holidays, the surcharges listed in our offer apply.

4.2 The Federal German and Bavarian holiday regulations apply.

5. Performance of services at the customer's premises

5.1 The provisions of this clause 5 shall apply in addition to clause 4 in the event that our services are provided on site at the customer's premises.

5.2 Our staff shall be entitled to a return journey home every two (2) weeks if the place of performance is at least 150 km from the place of employment. The costs of the journey home (fare, travel time, release during the travel time) are borne by the customer. Accommodation costs are to be reimbursed by the customer according to expenditure, unless an all-inclusive price has been expressly agreed.

5.3 Travel and waiting times, as well as time spent on safety instructions, are working time. Driving a motor vehicle is working time. For trips carried out on Sundays and public holidays, we charge the surcharges listed in our offer in addition.

5.4 The costs for the necessary use of appropriate means of transport shall be borne by the customer unless appropriate means of transport are provided free of charge.

5.5 The customer shall certify the hours worked by our personnel, at the latest, weekly on the work certificates submitted to him. If the customer does not issue the certificates in time, the records of our personnel serve as the basis for invoicing.

5.6 The allowance shall be calculated per calendar day of absence from the registered office of Hekuma GmbH.

6. Delivery and condition of material

6.1 If a contract involves the provision of services for items belonging to the customer and/or the use of materials provided by the customer ("parts") at the customer's works, the customer shall be obliged to provide us with the parts in good time and to make them freely available to us by the agreed date.

6.2 If a contract involves services on parts belonging to the customer and/or the provision of parts belonging to the customer in our or one of our subcontractors' workshops, the customer is obliged to deliver the parts on time by the agreed date. The delivery by the customer is delivery duty paid (DDP – destination named by us) according to Incoterms 2020. The return delivery from us to the customer is carried out free carrier (FCA (a) 85399 Hallbergmoos, Germany) according to Incoterms 2020.

6.3 The customer shall provide us in good time with all the technical documents relating to the performance of the service.

6.4 We are not obliged to carry out a special inspection of the (technical) documents or the parts to be processed or used without a contractual obligation to the customer.

6.5 The customer shall be responsible for ensuring that the parts have the design, materials, dimensions and limit dimensions, mechanical properties and condition either known to us or made known to us by him. If this is not the case, we reserve the right to charge the customer for any additional costs that may have arisen as a result. If, during the performance of the service, the parts prove to be incompatible with the above requirements, we may demand the part of the remuneration corresponding to the work performed and the expenses not included in the remuneration

7. Remuneration and cost estimate

7.1 The remuneration shall be agreed separately. If, in individual cases, the specification of a specific remuneration has not been made or is not possible, the service will be invoiced according to time and effort on the basis of the usual remuneration.

7.2 Unless otherwise agreed, our prices are exclusive of the provision of (assembly) tools, equipment, machines, measuring and testing devices etc. If the aforementioned tools/devices are used, we are entitled to charge fees from the day of dispatch to the day of re-arrival at the dispatch point plus transport costs. Consumable tools and materials will only be sold to the customer, namely at our prices and terms of delivery valid at the time. If necessary preparatory work is to be carried out by us, we may invoice the costs incurred for this separately.

7.3 Our cost estimates are not binding unless they have been expressly designated as binding in writing. If, during the performance of the service, we discover that it cannot be performed without significantly exceeding the non-binding cost estimate, we shall inform the customer of

this immediately. A significant excess of the non-binding cost estimate is deemed to be at least fifteen percent (15%).

7.4 If we notify the customer that the cost estimate has been significantly exceeded, it is up to the customer to decide whether he wishes to continue the service under these circumstances. If he does not wish to retain the service provision due to the additional costs, he may terminate the contract within two (2) weeks after receipt of the notification. If the customer makes use of his right of termination, he is obliged to pay us the agreed remuneration minus saved expenses and to reimburse the expenses not included in the remuneration. If the customer does not respond immediately, but at the latest within three (3) working days after receipt of the notification, we shall be entitled to withhold further performance of the services until an agreement has been reached on their continuation and the bearing of costs. The contractually agreed service dates shall be adjusted accordingly, taking into account, in particular, the affected workshop capacity utilisation. In this respect, the customer has no claim to prioritised treatment.

8. Terms of payment

8.1 a) Unless otherwise agreed, payment of remuneration for services (repairs and modernisations) shall become due upon acceptance of the services and shall be made without deductions within fourteen (14) calendar days of the invoice date

b) Unless otherwise agreed, payments for deliveries of spare and wear parts shall be made as follows: 50% down payment after receipt of the order confirmation and 50% upon notification of readiness for dispatch.

c) Decisive for the timeliness and fulfilment of payment is the complete and unconditional receipt of payment in our account.

8.2 The statutory value added tax is not included in our prices. If the factors decisive for pricing (such as production costs, (running) material costs, consumables, wages etc.) increase significantly, we shall be entitled to adjust prices accordingly upon proof.

8.3 If the agreed payment deadlines are exceeded, we may, without the need for a reminder, demand interest at the statutory rate from the day on which the deadline is exceeded. This does not exclude the assertion of a further claim for damages. We may withdraw from the contract as soon as a reasonable grace period set by us has expired without result.

8.4 The right of the customer to withhold payments or to offset them against counterclaims is only available to him insofar as they are undisputed, legally established or ready for decision.

9. Obligations of the customer

9.1 This clause 9 shall apply if we provide services at the customer's works.

9.2 The customer shall be responsible for construction, scaffolding and assembly work (except in cases where assembly is carried out by us), including the necessary safety devices, unless expressly agreed otherwise. He must complete all construction and other preparatory work so that our personnel can start work immediately upon arrival and carry out the services without interruption. In particular, the approach routes and the assembly points at floor level must be levelled and cleared and suitable for the transfer of loads. If other companies are active on the construction site, the customer is responsible for the coordination of all activities on the construction site.

9.3 In the absence of any agreement to the contrary, the customer shall keep available free of charge and in good time at the place of work all devices, cranes, hoisting gear, equipment for transport at the place of work, (auxiliary) tools, machines, materials and operating supplies (including petrol, fuel, oils, greases and other materials, gas, water, electricity, steam, compressed air, heating, light including the necessary connections etc.) required for the performance of our services, as well as the customer's measuring and testing equipment available at the place of work. The same shall apply, if applicable, to all auxiliary and operating materials, including the initial filling, as well as to assembly materials such as scaffolding timber, wedges, underlays, plaster and sealing material, lubricants etc.

9.4 The customer shall provide telephone, fax, an Internet connection and suitable lockable and heatable rooms with lighting and washing facilities free of charge for the stay of our personnel.

9.5 Upon timely request on our part, the customer shall provide us free of charge with trained and untrained assistants in accordance with the order or as is appropriate for the purpose of the order.

9.6 The customer shall be responsible for the parts to be used and/or installed during the performance of the services, as well as for the tools and equipment provided by him. We retain the right to the agreed remuneration even if the services cannot be performed, or can only be partially performed, due to destruction or partial destruction of the objects of the service provision.

10. Health and safety at work

10.1 The customer is obliged to take all necessary precautions for the safety of the workplace, accident and environmental protection and to take into account all official and statutory requirements and to provide written proof of compliance with these requirements on request. Our personnel must be informed and instructed in writing about the safety regulations existing in the customer's company and to be observed.

10.2 The customer shall provide, at his own expense, for the possibility of first aid and medical care at the place of operation, as well as for suitable means of transport for immediate transfer to a hospital. The customer is liable for accidents, consequences of accidents and material damage which are due to the insufficient quality of the equipment, facilities and auxiliary materials provided by him, even if these are used by our personnel without complaint.

10.3 In the event of incapacity for work during the work, the allowance shall continue to be paid as long as the person concerned remains at the place of work. During a stay in hospital, the allowance is reduced by half. If it is necessary for the incapacitated person to travel home, the costs (fare, travel time and allowance) shall be borne by the customer. The same provisions shall apply to replacement staff.

11. Acceptance of services

11.1 After completion of our processing of the parts or completion of the services, acceptance shall take place at the place of performance. The handover and/or unopposed use of the processed items or payment by the customer shall be deemed acceptance of the services.

11.2 The costs of the acceptance shall be borne by the customer who is obliged to accept the goods.

11.3 If acceptance is delayed through no fault of our own, acceptance shall be deemed to have taken place two (2) weeks after receipt of the notification of completion of our processing of the parts or completion of the services

11.4 If we have carried out the services in our factory or at our subcontractor's premises and the customer is in default of acceptance, we shall be entitled to store the items affected by the services at our premises or those of third parties at his risk and expense.

12. Retention of title

12.1 We retain the title of ownership of the items delivered by us until receipt of the complete and unconditional payments from the respective contract with the buyer. From delivery until the transfer of ownership, the buyer must store the delivery items for us free of charge and insure them against any impairment to their full value. The buyer may neither sell nor pledge the delivery items nor assign them as security. The purchaser must inform us immediately of any seizure, confiscation or other impairment of our rights by third parties, handing over and providing us with the documents and information necessary for the assertion of our rights. Irrespective of this, the buyer/customer must inform the third parties in advance of our rights to the delivered reserved goods.

12.2 Our machining and processing of parts belonging to the customer is always carried out on behalf of the customer. The parts remain the property of the customer at all times. If the service is not performed in our or our subcontractors' works, the customer shall ensure environmentally sound disposal of the waste produced during the performance of the service.

12.3 If we manufacture new items for the customer or use items purchased from us, we shall retain the title of ownership of them until receipt of the full, irrevocable payment. If the customer provides us with materials for use, this shall only apply if the materials and items used which are our property are to be regarded as the main item.

13. Force majeure

13.1 In cases in which one party is affected by force majeure (including strikes and lockouts in third-party companies), each party shall be entitled to suspend the performance of its contractual obligations without being liable for damages and/or reimbursement of expenses. However, the above provisions shall not apply to claims for damages by the customer arising from injury to life, body or health or from wilful or grossly negligent breaches of obligations by the seller or his vicarious agents. The impediment to performance must be immediately reported to the other contracting party without culpable delay. Force majeure in this sense shall be deemed to be an event external to the business, externally caused by elementary forces of nature or by actions of third parties, which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even by the utmost care reasonably to be expected in the circumstances, and is not to be accepted by the business operator due to its frequency of operation.

13.2 If fulfilment of the contract is delayed by more than four (4) months for reasons of force majeure as defined above, and if the parties have not agreed on a new basis for continuing fulfilment of the contract at the end of the delay, either party may, after this period and if the cause of non-fulfilment continues to exist, terminate the contract in writing to the other party or, if the legal requirements are met, withdraw from the contract. However, our claim to the (pro-rata) contractual consideration (payment) for the deliveries and services rendered up to the occurrence of the impediment, including expenses, shall remain valid, unless the partial performance already rendered is objectively no longer of economic interest to the customer due to the delay caused by force majeure. The procedural burden of proof for such a loss of interest lies with the customer. In this case, the customer can demand the return of payments already made to which we are not entitled according to the above provisions.

13.3 Any services to be reimbursed shall be performed by both parties immediately and without culpable delay.

14. Liability for defects

The following liability for material defects and defects of title applies to the exclusion of further claims subject to clause 16:

14.1 Material defects

14.1.1 Any defect must be reported to us in writing without undue delay.

Items delivered by us must be carefully examined without undue delay after delivery to the customer or to the third party designated by him. With regard to obvious defects or other defects which would have been recognisable in an immediate, careful inspection, they shall be deemed to have been approved by the customer if we do not receive a written notice of defects within seven working days of delivery. With regard to other defects, the delivery items shall be deemed approved if we do not receive the notification of defects within seven working days after the time at which the defect became apparent; if the defect was already apparent to the customer at an earlier time during normal use, however, this earlier time shall be decisive for the start of the notification period. At our request, a delivery item which is the subject of a complaint shall be returned to us carriage paid. In the event of a justified notice of defect, we shall reimburse the costs of the most economical dispatch route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use.

In the event of justified notices of defect, we shall, at our discretion and at our expense, remedy the defect by either providing new services or eliminating the defect in our services. Replaced items become our property.

14.1.2 In particular, we do not assume any liability for defects for unsuitable or improper use, faulty installation (unless the installation was carried out by us), commissioning or unsuitable or improper maintenance and servicing by the customer or third parties, natural wear and tear, faulty or negligent handling (in particular, excessive strain), unsuitable operating materials, replacement materials, defective construction work, unsuitable building ground, chemical, electrical or electrochemical influences, unless they are attributable to our fault. If the customer or a third party carries out improper repairs or changes are made without our prior consent, we do not accept any liability for the resulting consequences.

14.1.3 In the case of production according to drawings provided by the customer, we shall only be liable for the execution in accordance with the drawing and not for defects based on parts within the meaning of clause 6.1 or on a design prescribed by the customer.

14.1.4 The customer shall give us the necessary time, sufficient opportunity and access to the defective items to carry out all necessary subsequent rectification work. We may refuse to remedy the defect if it requires disproportionate effort.

14.1.5 The warranty shall not apply if the customer modifies the delivery item or has it modified by third parties without our consent and the elimination of the defect is thereby rendered impossible or unreasonably difficult. In any case, the client must bear the additional costs of the correction of defects arising from the change himself.

14.1.6 We shall not be liable for the suitability of the contractual objects after our performance for a purpose expected by the customer (but not expressly agreed upon in the contract). We exclusively guarantee the fulfilment of the expressly agreed technical quality as agreed in the technical description of a contract.

14.2. Defects of title

14.2.1 If the use of the object of the services leads to a judicially determined infringement of industrial property rights of third parties due to our fault, we shall, at our own expense and at our discretion, either procure the right of further use for the customer or modify the object of the services in a manner reasonable for the customer in such a way that the infringement of property rights ceases.

14.2.2 Our obligations mentioned in clause 14.2.1 are, subject to clause 16, conclusive in the event of infringements of industrial property rights. They only exist if

- the customer informs us immediately of any asserted infringements of property rights,
- the customer supports us in defending the claims asserted or enables us to carry out the modifications according to clause 14.2.1,
- we reserve the right to take all defensive measures including out-of-court settlements,
- the defect of title is not based on an instruction by the customer and
- the infringement of property rights was not caused by the fact that the customer has arbitrarily changed the object of the service provision or used it in a way not in accordance with the contract.

14.3 The limitation period for claims for defects shall be twelve (12) months after acceptance. If the services are delayed for reasons for which we are not responsible, the period of limitation shall be a maximum of fifteen (15) months after notification of the completion of our processing of the parts or termination of the services. If we perform our services on a building and thereby cause its defectiveness, the statutory periods shall apply. Irrespective of the aforementioned periods, the period of limitation for liability for defects shall be extended by the duration of any subsequent rectification work. The above provisions shall not apply to claims for damages by the customer due to defects. For such claims for damages, the provisions under clause 16 of these terms and conditions shall apply exclusively.

14.4 The customer does not receive guarantees in the legal sense from us.

15. Software

15.1 Insofar as software is included in our scope of services, we reserve all property rights and copyrights to the software. The customer is granted a non-exclusive, non-transferable and non-sublicensable right to use the software supplied, including its documentation, for the operation, repair and maintenance of the objects of the services. Use for other purposes is prohibited.

15.2 The source code is not released. The customer has neither the right to reconstruct the source code, nor to recompile the software, nor to change or duplicate it and the associated documentation. The customer undertakes not to remove manufacturer's details – in particular, copyright notices – or to change them without our prior written consent.

15.3 The liability for material defects of the software applies only to reproducible defects. Defects are to be reported to us immediately and will be remedied at our discretion and at our expense by repair or replacement. The period of limitation shall commence with the start of use of the software and shall be twelve (12) months. The aforementioned limitation period shall be extended by the duration of any subsequent rectification work.

15.4 We do not accept any liability for damage resulting from unsuitable use, incorrect handling or other influences beyond our control.

16. Liability for compensation due to fault

16.1 Our liability for damages, irrespective of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and illegal acts, shall be limited in accordance with this clause 16, provided that fault is involved in each case.

16.2 We shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, unless it is a matter of a breach of essential contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item in due time, its freedom from defects of title and such material defects that impair its functionality or usability more than only insignificantly, as well as consulting, protection and care obligations that are intended to enable the customer to use the delivery item in accordance with the contract or to protect life and limb of the customer's personnel or to protect its property from substantial damage.

16.3 Insofar as we are liable for damages on the merits pursuant to the above clause 16.2, this liability shall be limited to damages which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen if we had exercised due diligence. Indirect damages and consequential damages resulting from defects of the delivery item are, furthermore, only eligible for compensation if such damages are typically to be expected when the delivery item is used for its intended purpose.

16.4 The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

16.5 Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be free of charge and to the exclusion of any liability.

17. Confidentiality and industrial property rights

17.1 If we produce detailed processing documents on the basis of general processing notes by the customer, they shall be our exclusive property. Except in special (emergency) cases and in the event of our insolvency, the customer has no claim to the surrender of these documents.

17.2 All drawings, documents and any other information exchanged directly or indirectly, orally or in writing, between the parties under this contract or the initiation of the contract shall be used exclusively for the operation, repair and maintenance of the subject matter of the services, shall be kept strictly confidential and may not be disclosed to third parties without

the express prior consent of the other party. This obligation exists for a period of ten (10) years from the initiation of the contract.

17.3 Both we and the customer are obliged to oblige all employees who have access to the aforementioned information to keep this knowledge secret and neither to use it themselves nor to make it available to third parties. This obligation must be imposed on employees not only for the duration of their company affiliation but also for the period after they leave the company.

17.4 All industrial property rights to our cost estimates, drawings and other documents remain with us and may not be exploited or made available to third parties without our prior written consent. The same applies to other technical details resulting from the services or which are disclosed in the offer, in other correspondence or in negotiations. No provision of these terms and conditions can be interpreted as if the customer establishes rights of any kind to our industrial property rights.

17.5 If the customer hands over to us parts or drawings which we are to process or use for processing, the customer warrants that it may grant us the processing or use of such parts or drawings free of any rights of third parties. The customer shall indemnify us on first demand against claims by third parties arising from breach of confidentiality obligations, industrial property rights or other rights of third parties.

17.6 The parties already recognise these obligations by commencing contractual negotiations, irrespective of whether a contract is concluded.

18. Applicable law, place of jurisdiction

18.1 German law shall apply to these terms and conditions and to all contracts concluded under them.

18.2 If the customer is a merchant, a legal entity under public law or a special fund under public law or if he has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between us and the customer shall be, at our discretion, the court responsible for our registered office or the court responsible for the customer's registered office. In these cases, however, the exclusive place of jurisdiction for legal action against us is the court responsible for our registered office. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.