

GENERAL TERMS and CONDITIONS of SALE and DELIVERY



HJS EMISSION TECHNOLOGY GMBH & CO. KG · (hereinafter referred to as "HJS")

1. GENERAL INFORMATION, SCOPE AND APPLICABILITY

- 1.1 Deliveries, services and respective offers of HJS EMISSION TECHNOLOGY GMBH & CO. KG (hereinafter also referred to as „HJS“) shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery (hereinafter also referred to as „T&Cs“); HJS shall not recognize any terms and conditions of the contractual partners, customers and purchasers (hereinafter also referred to as „CUSTOMERS“) that conflict with, supplement or deviate from these T&Cs and shall expressly reject any such terms and conditions unless HJS has expressly agreed to their validity in writing. HJS's T&Cs shall also apply should HJS carry out unconditional delivery to the CUSTOMER despite being aware that the conditions of the CUSTOMER conflict with, are contrary to or supplement HJS's own T&Cs. These T&Cs shall be deemed agreed for future business relations even if they have not been explicitly referred to again.
- 1.2 Furthermore, unless otherwise approved by HJS in individual cases, HJS rejects all references made by the CUSTOMER to third-party clauses and other rules and regulations to which the CUSTOMER refers. HJS also expressly rejects the secondary validity of such clauses, rules and regulations referred to by the CUSTOMER. If, in a specific case, other agreements are to be reached with the CUSTOMER that are to take precedence over these General Terms and Conditions of Sale and Delivery, this shall in each case require the drafting of a contract or our express confirmation in writing.
- 1.3 These General Terms and Conditions shall apply to all business relations between HJS and its CUSTOMERS. The T&Cs shall apply only to traders as defined by Section 14 of the German Civil Code (BGB), legal persons and special funds under public law. They shall apply irrespective of whether HJS manufactures the goods itself or purchases them from suppliers.
- 1.4 Legally relevant declarations and notifications by the CUSTOMER with regard to the contract (e.g. the setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing (e.g. by letter, email or fax). Legal formal requirements and further proof, in particular in case of doubt concerning the legitimation of the declarant, shall remain unaffected.
- 1.5 References to the applicability of legal requirements are for clarification purposes only. Even without such clarification, the legal provisions requirements shall therefore apply unless they are directly amended or expressly excluded in these T&Cs.
- 1.6 Individual agreements made with the CUSTOMER (including subsidiary agreements, supplements and amendments) shall take precedence over these T&Cs. Subject to proof to the contrary, a written contract or written confirmation issued by HJS shall be decisive for the content of such agreements.
- 1.7 HJS shall be entitled to deploy subcontractors for the purpose of fulfilling its contractual obligations.

2. ORDER, CONCLUSION OF CONTRACT, CONTRACTUAL PARTNERS, DOCUMENTS, DESIGNS AND PRODUCT SPECIFICATIONS

- 2.1 Individual offers submitted by HJS are always subject to alterations and are non-binding.
- 2.2 An order place by the CUSTOMER for goods shall be deemed a binding offer of contract. Unless otherwise stated in the order, HJS shall be entitled to accept this offer of contract within 10 working days of its receipt. The CUSTOMER is not permitted to cancel the order within this period. An amendment to the order shall only become effective if it is confirmed by HJS in writing.
- 2.3 Acceptance shall be effected by HJS confirming the order. Orders shall be deemed to be accepted only once confirmed by HJS. Final confirmation of an order always requires clarification of the CUSTOMER, the CUSTOMER's address, the invoice and shipping address(es), the content of the order (the articles to be delivered, quantities and designs), discounts, delivery requests or delivery dates and any special conditions.
- 2.4 Pre-contractual communications prepared by HJS, such as cost estimates and descriptions, shall not be binding unless otherwise agreed in writing.

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- 2.5 Verbal promises made by HJS prior to the conclusion of this contract are not legally binding. Subsidiary agreements, supplements and other amendments to the contract, including amendments to these T&Cs, shall require written confirmation by HJS to be effective.
 - 2.6 Catalogue and brochure information, leaflets, technical application-related details, information on websites and other general information do not form part of the contract and do not guarantee any properties unless otherwise agreed in writing.
 - 2.7 HJS expressly reserves the right to prior sale of the products.
 - 2.8 HJS sales representatives are business agents, not agents authorized to finalise contracts. The CUSTOMER shall have no transfer rights under any contract to any third party.
 - 2.9 The documents supplied by the CUSTOMER (details, drawings, patterns, models or the like) shall be deemed decisive for and by HJS. The CUSTOMER shall be liable for their correctness in terms of content, technical feasibility and completeness. HJS is not obliged to carry out an inspection to confirm this.
 - 2.10 Insofar as HJS develops solutions, plans, concepts or other designs for the CUSTOMER, HJS shall be entitled to send the relevant design („redlined drawing“) to the CUSTOMER for review and approval and to commence further work on the basis of the design only after the design has been approved. The CUSTOMER shall be obliged to verify the design with respect to its correctness in terms of content, technical feasibility and completeness prior to its release.
 - 2.11 The information and illustrations contained in brochures and catalogues published by HJS are approximate values as customarily used in the industry unless they have been expressly designated as binding. The CUSTOMER shall satisfy themselves of the suitability of the products for the intended use by conducting their own tests.
 - 2.12 The contractual party of HJS shall be exclusively the CUSTOMER who has placed the order and to whom the order confirmation has been issued.
 - 2.13 Any liability towards third parties not named as the CUSTOMER(S) in the offer or the order confirmation is expressly excluded.
- 3. DELIVERY, DUTY TO DELIVER & PROVISIO SUBJECT TO AVAILABILITY OF SUPPLIES AND RAW MATERIALS, DELIVERY QUANTITIES, STORAGE CHARGES IN THE EVENT OF DELAY**
- 3.1 Unless otherwise agreed, HJS's deliveries shall be conducted ex works, excluding value-added tax, packaging and other expenses.
 - 3.2 HJS's duty to deliver shall be subject to its own receipt of correct and timely supplies from its suppliers. Individual delivery commitments and delivery times shall also only be agreed subject to the correct and timely delivery of supplies and raw materials. The proviso pertaining to the availability of supplies and raw materials shall only apply if non-delivery is not the fault of HJS and HJS has concluded a congruent covering transaction. The CUSTOMER shall be informed immediately should supplies not be available. If HJS's suppliers are not able to supply HJS with supplies and raw materials, HJS shall be entitled to withdraw from the contract without having to pay compensation. HJS undertakes to reimburse the CUSTOMER for any consideration already received insofar as HJS's corresponding performance is cancelled due to HJS not receiving said supplies and raw materials.
 - 3.3 HJS shall only be obliged to execute and deliver if the CUSTOMER – insofar as advance payment has been agreed – has made all agreed payments. If payments are made late, HJS may extend the delivery periods accordingly.
 - 3.4 After the expiry of an acceptance period for the delivery, HJS shall no longer be obliged to deliver.
 - 3.5 Production-related and customary excess or short deliveries of up to 10% of the ordered quantity are permissible, unless deviation from the contract quantity is unacceptable for the CUSTOMER in the case in question.

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- 3.6 HJS reserves the right to make other deviations related to production and reasons customary in the industry.
- 3.7 Partial deliveries shall be allowed insofar as they are acceptable to the CUSTOMER and their interests.
- 3.8 In the event of additional costs for the transport or unloading of the goods caused by culpably delayed unloading by the CUSTOMER or the recipient of the goods named by the CUSTOMER, HJS reserves the right to subsequently charge the CUSTOMER for these additional transport or unloading costs invoiced to HJS.
- 3.9 If dispatch is delayed at the CUSTOMER's request or for other reasons for which the CUSTOMER is responsible, HJS may, starting one month after notification of readiness for dispatch, charge the CUSTOMER for the resulting additional expenses, in particular the costs incurred for storage, but at least storage charges amounting to 0.5% of the invoice amount for each month or part thereof. The storage charges shall be limited to a total of 5% of the invoice amount, unless HJS has demonstrably incurred higher costs. The CUSTOMER shall be permitted to demonstrate that no costs have been incurred at all or that costs are significantly lower than the flat rate.
- 3.10 If delivery on call has been agreed, the CUSTOMER undertakes to set the date for complete delivery within a reasonable period of time not exceeding one month and to notify HJS thereof in writing. This shall also apply in the case of delivery schedules set for specific acceptance dates. After expiry of the call-off obligation, HJS's prices valid at the time of the delayed call-offs shall apply to further call-off schedules, having regard to Clause 8.6. After expiry of the call-off obligation, HJS shall furthermore be entitled to demand immediate acceptance of and payment for goods ordered on call-off.
- 3.11 HJS shall not grant any freight reimbursement in the event of goods being collected.
- 3.12 The CUSTOMER shall unload the goods at their own expense. If the CUSTOMER fails to unload the goods, they shall be deemed to have defaulted on acceptance.

4. PACKAGING

- 4.1 The packaging costs shall be borne by the CUSTOMER. Packaging costs shall be charged at cost price.
- 4.2 The CUSTOMER shall release HJS from the obligation to take back packaging pursuant to Sec. 15 of the German Packaging Act.
- 4.3 Skeleton-box and Euro pallets used for deliveries are to be replaced in exchange. In the case of delays in such exchange, the costs incurred by HJS shall be charged to the CUSTOMER.

5. TRANSFER OF RISK

- 5.1 If shipment has been agreed, the risk of accidental loss and accidental deterioration of the goods shall pass to the CUSTOMER upon handover to the forwarding agent, the carrier or any other person or institution designated to execute shipment. This shall also apply if HJS has assumed the transport costs or has paid them for the CUSTOMER. If shipping or delivery is delayed for reasons for which the CUSTOMER is responsible, the risk shall pass to the CUSTOMER with effect from the day on which the goods are ready for dispatch and the CUSTOMER has been notified thereof.
- 5.2 If, in individual cases, goods are taken back for reasons for which HJS is not responsible and on the basis of special written agreements, the CUSTOMER shall bear all risks until the time HJS takes receipt of the goods.

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6. DELIVERY PERIODS, FIXED-DATE TRANSACTIONS, DELAYS CAUSED BY HJS

- 6.1 Unless expressly agreed otherwise, information regarding delivery periods is only approximate. A delivery period shall not commence until all details regarding execution have been clarified and both parties have agreed on the terms of the order. Agreed delivery dates will be deferred accordingly. The delivery period shall commence at the earliest with the sending of the written order confirmation by HJS and the delivery date stated therein, but not before the CUSTOMER has provided any documents to be procured or materials to be made available and the agreed terms of payment have been complied with.
- 6.2 If subsequent amendments or additions to the delivery contract are agreed, a new delivery period shall be agreed at the same time. The new delivery period shall not commence until HJS has sent the new order confirmation.
- 6.3 Transactions for delivery by a fixed date require express written confirmation as such by HJS.
- 6.4 Fulfilment of the duty to supply shall be contingent on the CUSTOMER fulfilling their duties correctly and in due time. We explicitly reserve the right to plea non-fulfilment of contractual duties. Furthermore, HJS shall be entitled to postpone delivery as long as the CUSTOMER has unjustifiably failed to fulfil due payment obligations from previous deliveries.
- 6.5 If the delivery period is exceeded, the CUSTOMER shall grant HJS a reasonable period of grace of no less than three weeks.
- 6.6 If HJS is responsible for non-compliance with bindingly agreed deadlines following fruitless expiry of the grace period set by the CUSTOMER pursuant to Sec. 6.5, the CUSTOMER's claim to compensation for delay – if and to the extent that the CUSTOMER can prove they have suffered damage as a result of the delay – shall be limited to an amount of 5% of the net invoice value of the delivery or service affected by the delay. More extensive claims are excluded except in cases in which the delay is due at least to gross negligence or culpable fundamental breach of contract. In this case, however, compensation shall be limited to typical, foreseeable damages.
- 6.7 Upon request by HJS, the CUSTOMER shall declare within a reasonable period of time whether they wish to withdraw from the contract due to delayed delivery and/or assert claims for compensation in lieu of service, or whether the CUSTOMER continues to expect delivery to be made. The setting of a grace period shall not be required if HJS genuinely and finally refuses performance or if the underlying contract relates to a transaction for delivery by a fixed date within the meaning of Sec. 323 (2) no. 2 of the German Civil Code (BGB) or Sec. 376 of the German Commercial Code (HGB), or if there are special circumstances that justify immediate withdrawal from the contract after weighing the interests of both parties.
- 6.8 If HJS is in default of delivery, HJS shall only be liable for damages in accordance with Clause 12 of these T&Cs.

7. FORCE MAJEURE

- 7.1 If HJS is prevented from performing timely delivery due to force majeure, labour disputes for which HJS is not responsible, official measures, energy or raw material shortages, transport bottlenecks or obstacles to transport, operational hindrances such as a fire, water damage and/or damage to machinery, an epidemic or pandemic (such as COVID-19, including mutations), war, mobilizations, export and import bans, traffic closures or other disruptions to its own operating procedures or the operating procedures of upstream suppliers/subcontractors for which HJS is not responsible and which are demonstrably of considerable influence, HJS shall be obliged to inform the CUSTOMER without delay.
- 7.2 In the cases referred to in Clause 7.1, HJS shall be entitled to postpone the delivery date by the duration of the event of force majeure or the disruption provided that HJS has complied with the above obligation to inform the CUSTOMER. If delivery becomes impossible as a result, HJS's obligation to deliver shall lapse to the exclusion of any compensation for damages.
- 7.3 The circumstances referred to in Clause 7.1 shall not be deemed to be the responsibility of HJS should they occur during an existing delay.

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- 7.4 If the obstacles to delivery or performance listed in Clause 7.1 endure for an unreasonably long period of time, both contracting parties shall be entitled to withdraw from the contract. The CUSTOMER shall only be entitled to withdraw from the contract after the fruitless expiry of a reasonable period of grace, unless a transaction for delivery by a fixed date under commercial law has been agreed in writing.
- 7.5 The CUSTOMER shall not be entitled to assert any further claims against HJS in the event of force majeure pursuant to Clause 7.1.

8. PRICES, PRICE ADJUSTMENT, COSTS

- 8.1 All prices and price adjustments shall be based on the prices communicated in the order confirmation.
- 8.2 Prices are valid ex HJS's registered office and warehouse.
- 8.3 The prices are in euros and do not include the applicable statutory value-added tax, which will be shown separately on the invoice at the legally valid rate on the day of invoicing. Furthermore, the prices stated in the offers and order confirmations exclude packaging costs, postage, insurance, customs clearance costs and shipping costs.
- 8.4 Customs duties, taxes and fees shall be borne by the CUSTOMER. This also applies to packaging, shipping, loading and unloading costs. The CUSTOMER shall bear the valid and applicable value added tax. Unless otherwise agreed, the CUSTOMER shall also bear the costs of freight insurance.
- 8.5 If HJS takes into account the CUSTOMER's wishes with regard to the mode and route of shipping, any additional costs incurred as a result, such as express or urgent delivery, shall be borne by the CUSTOMER, even where delivery is carriage-paid. This shall also apply if shipping is performed entirely or in part by employees or suppliers of HJS.

8.6 Pricing and price adjustment

- 8.6.1 HJS may, at its own reasonable discretion and subject to the following conditions, adjust its prices and inform the CUSTOMER in writing if the costs of e.g. energy, fuel, transport or raw materials/substances increase or decrease by more than 5% of the respective price level (materiality threshold). The amended price level shall be presented by HJS in an appropriate manner, e.g. on the basis of anonymized average costs incurred by HJS, the accuracy of which is to be assured to the CUSTOMER.
- 8.6.2 The rights of HJS pursuant to Clause 8.6.1 shall also apply if the terms of delivery are subject to other changes that are decisive in respect of pricing in the context of the contract and lead to a comparable, changed cost situation.
- 8.6.3 Increases in one type of cost may only be used as the basis for a price increase to the extent that they are not offset by possible decreases in other cost areas. In the event of cost reductions in one cost area, HJS shall reduce the prices insofar as such cost reductions are not fully or partially offset by increases in other cost areas.
- 8.6.4 Exercising reasonable discretion, HJS shall ensure that cost reductions are considered according to criteria that are not less favourable to the CUSTOMER than the standards used when considering cost increases.
- 8.6.5 In the event of a change in HJS's costs that is exceptional even for a volatile market situation and that is unacceptable for one or both parties taking into account their mutual interests and the principle of good faith (Sec. 242 BGB), both HJS and the CUSTOMER shall be entitled to unilateral withdrawal from the contract. This must be asserted in writing immediately after the CUSTOMER has received notification by HJS of such a cost development, otherwise this right of withdrawal will expire.

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9. PAYMENT, ASSIGNMENT OF CLAIMS BY HJS, DUE DATE

- 9.1 Invoicing shall take place upon delivery. Furthermore, HJS shall be entitled to demand advance payment in whole or in part.
- 9.2 HJS shall be entitled to assign its own claims arising from the business relationship within the scope of the statutory provisions.
- 9.3 HJS's invoices shall be payable without deduction within ten (10) days of receipt. The CUSTOMER shall be in default without further reminder after exceeding the aforementioned payment deadline or an individually agreed payment deadline if one has been set. In the case of transactions in which no consumer is involved, HJS shall be entitled to demand interest on arrears in the amount of 9 percentage points above the basic rate of interest (as announced by the Deutsche Bundesbank) from the CUSTOMER. HJS reserves the right to assert further claim for damage caused by default. In a commercial transaction with merchants, the claim to interest as of the due date (Sec. 353 HGB) remains unaffected.
- 9.4 All claims made by HJS against the respective CUSTOMER shall be due for immediate settlement in the event of default of payment by the CUSTOMER, including bills of exchange accepted but not yet honoured.
- 9.5 In the event of default of payment and reasonable doubts regarding the CUSTOMER's solvency or creditworthiness, HJS shall be entitled – without prejudice to other rights – to demand securities or advance payments for outstanding deliveries. The CUSTOMER may no longer sell goods owned or co-owned by HJS (see Clause 14 Retention of title) while in default of payment.
- 9.6 Irrespective of separately agreed payment arrangements in individual cases, receivables due to the Seller shall become due immediately if circumstances arise on the part of the Purchaser that make it unreasonable to adhere to payment arrangements made. This shall be the case in the event of justified indications of a significant deterioration in the financial situation of the Purchaser, in particular in the event of suspension of payments, cheque and bill protests or default of payment, if thereby it becomes apparent that the Seller's claim to payment is jeopardized by the Purchaser's inability to pay. In this case, the Seller shall also be entitled to set the Purchaser a deadline by which the Purchaser must, at the Seller's discretion, match payment with delivery (that is, delivery versus payment) or provide additional securities. In the event of the deadline set by the Purchaser not being met, the Purchaser shall be entitled to withdraw from the contract.
- 9.7 Payment shall only be deemed to have been made once the amount is at HJS's disposal. In the case of bills of exchange or cheques, payment shall only be deemed to have been made once the bill of exchange or cheque is redeemed.
- 9.8 The submission of bills of exchange or cheques shall require the prior, express, special written consent of HJS; HJS's charges and all costs, as well as the risk to timely presentation and protesting, shall be borne in full by the CUSTOMER.
- 9.9 The CUSTOMER shall not be entitled to withhold payments on account of counterclaims or to set them off against counterclaims unless these are recognized by HJS, are undisputed, ready for decision or have been finally determined by a court of law. Opposing rights of the CUSTOMER arising from the same contract and due to defects, non-performance and/or unfinished or incomplete performance shall remain unaffected.
- 9.10 In the case of partial deliveries, the CUSTOMER shall be obliged to make partial payments upon request.

10. WARRANTY, DUTY TO INSPECT AND GIVE NOTICE OF DEFECTS

- 10.1 The rights of the CUSTOMER in the event of material defects and defects in title (including wrong and short delivery) shall be determined by the statutory provisions, unless otherwise stipulated below.
- 10.2 The CUSTOMER shall inspect the delivered goods for defects immediately upon receipt, including by means of trial processing; otherwise the goods shall be deemed approved with regard to a defect subsequently found.

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- 10.3 The CUSTOMER shall inspect the goods immediately after delivery with the diligence of a prudent businessman. Notifications of defects shall only be taken into account if they are made in writing immediately after the defect has become apparent, but at the latest immediately after its discovery, enclosing supporting documents or specifications and a description of the defect pattern. Discernible defects shall be given notice of within ten days at the latest. If the CUSTOMER fails to give such notice of a defect, the goods shall be deemed approved with regard to this defect.
- 10.4 Claims regarding material defects comprising insignificant deviations from agreed quality levels and fitness for use shall be excluded.
- 10.5 An insignificant defect shall not entitle the CUSTOMER to submit a warranty claim against HJS. If the CUSTOMER have themselves caused a defect that is substantial, they likewise have no right to claim against warranty. This is the case if the CUSTOMER
- uses the delivery item for a purpose other than that stipulated in the contract or intended within the framework of sampling, or
 - has impaired the delivery item by using it under disturbed operating conditions (e.g. overheating, frost, running dry, contamination and the like), or
 - has impaired the delivery item by using inappropriate supplies (e.g. sealing media, lubricants, frost-protection and anti-corrosion additives, etc.), or
 - has impaired the delivery item through improper handling (e.g., incorrect storage, unprofessional installation, etc.), or
 - has impaired the delivery item by using it in an incorrect/unsuitable location
- and has caused the defect in question as a result. The above list is not exhaustive
- 10.6 Furthermore, claims for defects shall be excluded in cases of natural wear and tear or damage that occur after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials, defective assembly work, unsuitable working materials, disregard of operating instructions, defective maintenance or as a result of special external influences (including chemical or electrolytic influences), unless provided for in the contract.
- 10.7 Defects in the Works for which the CUSTOMER is responsible: If a defect in the service provided by HJS is due to reasons for which the CUSTOMER is responsible, in particular due to the provision of faulty specifications or the withholding of information that is decisive for the application and design, HJS shall bear no warranty liability.
- 10.8 The special statutory provisions of Sections 445a, 445b and 478 (1) BGB shall not apply upon final delivery of the goods.
- 10.9 All information on the suitability, processing, application and results achievable with the HJS products, the technical and chemical advice and all other information is given to the best of HJS's knowledge. This, however, shall in no case release the CUSTOMER from the obligation to verify the suitability and results achievable with the HJS products in its own appropriate tests for the respective end application and required needs. The information provided by HJS is in no way to be understood as a form of product warranty.
- 10.10 HJS must be given the opportunity to inspect on site any defect complained of. Any warranty claims asserted shall be excluded if HJS is not given the opportunity to inspect the goods complained of within ten days of notification of the defect. In the event of unauthorized reworking, modifications, repairs and/or improper handling, claims for defects arising from these actions and the resulting consequences shall be excluded.
- 10.11 If the product delivered is defective and the CUSTOMER has properly fulfilled their obligation to inspect and give notice of defects, the CUSTOMER shall be entitled to the following statutory rights:
- HJS shall initially have the right, at its discretion, either to remedy the defect or to supply the CUSTOMER with defect-free contract goods (subsequent performance). Sections 439 (4) and 635 (3) BGB remain unaffected. The CUSTOMER shall give HJS sufficient time and opportunity to carry out the subsequent performance within normal working hours. If HJS delivers a defect-free item to implement subsequent performance, the CUSTOMER shall surrender the defective item. This shall apply accordingly to defective components if these are replaced with defect-free components within the scope of rectification. HJS's right to refuse subsequent performance under the statutory conditions shall remain unaffected.

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- (ii) HJS shall bear the expenses necessarily incurred in relation to subsequent performance, including but not limited to transport, travel, labour and material costs, if a defect actually exists. Should the CUSTOMER's request to rectify the defect turn out to be unjustified, HJS shall be entitled to demand reimbursement of the resulting costs from the CUSTOMER. Subsequent performance shall include neither removal of the defective item nor reinstallation/refitting if the CUSTOMER was already aware of the defect at the time of installation/fitting or if installation/fitting was not carried out correctly. This shall also apply if the CUSTOMER failed to recognize the defect prior to installation/fitting due to gross negligence, but not if HJS has fraudulently concealed the defect or provided a guarantee.
 - (iii) Should subsequent performance prove unsuccessful twice, or if HJS refuses it pursuant to Sec. 439 (3) BGB, or if there is a delay in subsequent improvement work or subsequent delivery beyond a reasonable period of time for which HJS is responsible, or if subsequent delivery or subsequent improvement work proves unsuccessful twice, the CUSTOMER shall be entitled, at its own discretion, to demand a reduction in the purchase price or to withdraw from the contract. If the defect is insignificant or if the product has already been sold, processed or redesigned, the CUSTOMER shall only be entitled to demand a reduction in price.
 - (iv) Claims by the CUSTOMER for damages or reimbursement for wasted expenses shall be covered by Clause 12 of these T&Cs.
- 10.12 HJS shall be entitled to make the subsequent performance owed dependent on the CUSTOMER paying the purchase price due. The CUSTOMER shall, however, be entitled to retain a share of the purchase price that is appropriate in relation to the defect.
- 10.13 The CUSTOMER's right of recourse against HJS shall be limited to the extent that the statutory requirements are fulfilled. Consequently, there shall be no right of recourse if the CUSTOMER has reached an agreement with their customer that exceeds the scope of statutory claims for material defects within the scope of a guarantee or as a gesture of goodwill.
- 10.14 HJS shall deliver used goods to the exclusion of any warranty unless otherwise agreed in writing.
- 10.15 Clause 13 of these T&Cs shall apply to the limitation periods.
- 10.16 Claims for damages are governed in all other respects by Clause 12. More extensive claims or other claims asserted by the CUSTOMER against HJS and its vicarious agents on basis of material defects other than those claims governed by this clause and Clause 12 are excluded.

11. INDUSTRIAL PROPERTY RIGHTS, COPYRIGHTS AND IMAGE RIGHTS

- 11.1 All rights to patents, utility models and designs, trademarks, equipment and other industrial property rights, as well as copyrights covering the subject matter of the contract and services, shall remain with the holders of the rights. This also applies in particular to the product designations, to software, to the rights to a name and to the rights to logos, brands and trademarks.
- 11.2 Claims by the CUSTOMER against HJS in respect of an infringement of intellectual property rights shall be excluded if the CUSTOMER themselves are responsible for said infringement. This shall be the case in particular if HJS is required to perform in accordance with the CUSTOMER's specifications, etc. CUSTOMER claims shall especially be excluded to the extent that the infringement of the intellectual property rights is due to special instructions issued by the CUSTOMER, to a use which could not be foreseen by HJS, or is due to the supplies being modified by the CUSTOMER or used with other products not supplied by HJS.
- 11.3 If HJS has to perform according to the CUSTOMER's specifications, etc., the CUSTOMER shall bear the sole liability risk that no copyrights and/or industrial property rights of third parties are infringed. In this respect, the CUSTOMER shall indemnify HJS against all claims of third parties if an infringement of property rights is attributable to culpable conduct on the part of the CUSTOMER. Licence fees or costs incurred in such cases or incurred to avoid infringement of property rights shall be borne by the CUSTOMER.
- 11.4 If the CUSTOMER forwards goods supplied by HJS abroad, including in processed form, the CUSTOMER shall indemnify HJS against all claims by third parties arising from the violation of intellectual property rights.

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- 11.5 If the CUSTOMER provides documents, e.g. plans and calculations, documentation, the CUSTOMER shall ensure that existing industrial property rights are not infringed in so doing and shall indemnify HJS against all claims of third parties in this respect if an infringement of property rights is attributable to culpable conduct on the part of the CUSTOMER. Licence fees or costs incurred in such cases or incurred to avoid infringement of property rights shall be borne by the CUSTOMER.
- 11.6 All copyrights to HJS publications remain with HJS, regardless of the type of publication medium. Use without the express consent of HJS is not permitted.
- 11.7 HJS reserves the title and copyright to all offers and cost estimates submitted by HJS as well as to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the CUSTOMER. The CUSTOMER may not provide access to these items to third parties, disclose them, use or reproduce them themselves or through third parties without the express consent of HJS, either as such or in terms of content. When requested to by HJS, the CUSTOMER shall return these items to HJS in full and destroy any copies made if they are no longer required by the CUSTOMER in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- 11.8 Should registrable property rights arise in the course of the contributions to performance of the contract, the contracting parties shall consult with each other regarding filing of the property rights. In such cases, HJS shall be granted at least a non-exclusive right to use on reasonable terms.

12. DAMAGES, LIABILITY

- 12.1 Subject to the provision in Clause 12.2, HJS shall be liable for damages - in the case of contractual, non-contractual or other claims for damages, irrespective of the legal grounds, in particular on account of defects, default and impossibility, culpa in contrahendo and tort - only in the event of intent and gross negligence, including intent and gross negligence on the part of representatives and vicarious agents of HJS. Furthermore, in the event of ordinary negligence, including ordinary negligence on the part of representatives and vicarious agents, HJS shall also be liable for damages arising from a fundamental breach of contract, i.e. an obligation the fulfilment of which is essential for proper performance of the contract and fulfilment of which the CUSTOMER may therefore routinely expect (material contractual obligation). However, except in the case of intent, including intent on the part of representatives and vicarious agents, liability for damages shall be limited to typical, foreseeable damages.
- 12.2 Claims arising from injury to life, limb and health, as well as claims by the CUSTOMER under the Product Liability Act and other mandatory statutory liability provisions, shall remain unaffected by the exclusions and limitations of liability set out in Clause 12.1. Furthermore, the aforementioned exclusions or limitations of liability shall not apply insofar as HJS has fraudulently concealed a defect or HJS has accepted a guarantee or expressly accepted the procurement risk. Clauses 12.1 and 12.2 shall also apply if the CUSTOMER claims reimbursement for wasted expenses instead of for damages.
- 12.3 Insofar as HJS provides technical information or acts in an advisory capacity and such information or advice is not part of the contractually agreed scope of services HJS is obliged to provide, these services shall be provided free of charge and to the exclusion of any liability.
- 12.4 In the event that a claim for subsequent performance is justifiably asserted against the CUSTOMER by its customer or its customer's customer under the statutory conditions, the CUSTOMER shall give HJS the opportunity to carry out subsequent performance itself within a reasonable period of time before procuring „replacement performance“ from a third party. The CUSTOMER shall impose this obligation on its customer accordingly. If the CUSTOMER breaches these obligations, HJS reserves the right to reduce the reimbursement of expenses to the amount it would have incurred had it performed subsequent performance itself. Sec. 361 BGB remains unaffected.

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- 12.5 Reimbursement of expenses incurred in the course of the CUSTOMER's subsequent performance vis-à-vis its customer shall also be excluded if the CUSTOMER has not exercised their right to refuse this type of subsequent performance or both types of subsequent performance on grounds of disproportionate costs, contrary to their duty to minimize damages, and/or has not limited the reimbursement of expenses to a reasonable amount.
- 12.6 Claims asserted by the CUSTOMER in respect of expenses necessarily incurred in the course of subsequent performance, in particular transit, transport, work and material costs, are excluded to the extent that such costs increase as a result of the delivery item being subsequently moved to a location other than the contractually agreed place of destination unless such relocation complies with such item's intended purpose. This applies accordingly to recourse liability.
- 12.7 Claims for damages and reimbursement of expenses in connection with defective goods shall be subject to the binding limitation periods for such claims (cf. Clause 13).

13. LIMITATION PERIOD

- 13.1 Claims asserted by the CUSTOMER arising from material defects and defects of title shall be statute-barred within one (1) year from delivery.
- 13.2 Mandatory provisions governing limitation periods shall remain unaffected. The limitation period specified in Clause 13.1 shall therefore not apply in particular to claims based on injury to life, limb or health, to claims based on intent and/or gross negligence, and to claims based on the assumption of a guarantee. The longer limitation periods pursuant to Sec. 438 (1) No. 1 BGB (rights in rem of a third party), Sec.438 (1) No. 2 BGB (buildings and building materials, as well as planning services for a building) and Sec. 438 (3) and 634 a (3) BGB (fraudulent intent) shall also remain unaffected. The statutory limitation periods pursuant to the Product Liability Act shall remain unaffected in all cases.
- 13.3 The limitation periods arising under Clauses 13.1 and 13.2 for claims based on material defects and defects of title shall apply mutatis mutandis to competing contractual and non-contractual claims for damages by the CUSTOMER based on a defect in the contract goods. Insofar as application of the statutory limitation provisions should lead to earlier limitation of the competing claims in individual cases, the statutory limitation period shall apply to the competing claims. The statutory limitation periods pursuant to the Product Liability Act shall remain unaffected in all cases.
- 13.4 Insofar as the limitation of claims against HJS is shortened in accordance with Clauses 13.1 to 13.3, this shortening shall apply mutatis mutandis to any claims asserted by the CUSTOMER against legal representatives, employees, agents and vicarious agents of HJS that are based on the same legal grounds.
- 13.5 A suspension of the limitation period as a result of negotiations (Sec. 203 BGB) shall only arise if these negotiations are conducted with HJS's legal representatives.

14. RETENTION OF TITLE

- 14.1 HJS retains title to goods delivered up until such time as payment has been made in full of all present and future claims arising from the business relationship with the CUSTOMER.
- 14.2 If goods delivered by HJS and to which HJS retains title are processed or transformed by the customer, this shall always be done on behalf of HJS. If goods delivered by HJS and to which HJS retains title are processed with other items/materials that do not belong to HJS, HJS shall acquire co-title to the new item based on the ratio of the value of the materials to which HJS retains title to the other processed items/materials at the time of processing. The CUSTOMER shall hold the co-title generated in this way on behalf of HJS. The provisions that apply to the goods delivered and subject to retention of title shall likewise apply to the item resulting from such processing.

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- 14.3 If goods delivered by HJS and to which HJS retains title are inseparably mixed with other items/materials that do not belong to HJS or are combined with these items/materials in such a way that they form an integral part of a new common item, HJS shall acquire co-title of the new item based on the ratio of the value of the materials to which HJS retains title to the other mixed or combined items/materials at the time of their being mixed or combined (even if the goods subject to retention of title are sold on). If the items are mixed or combined in such a way that the property of the CUSTOMER is regarded as the principal item, it shall already be agreed that the CUSTOMER shall transfer proportionate co-title to HJS. The CUSTOMER shall hold the co-title generated in this way on behalf of HJS. The provisions that apply to the goods delivered and subject to retention of title shall likewise apply to the item resulting from such mixing or combination.
- 14.4 The CUSTOMER shall be entitled to resell the goods subject to retention of title in the ordinary course of business. The CUSTOMER herewith assigns to HJS as security any receivables arising from resale to third parties for an amount equal to the final invoice amount (including value-added tax) charged by HJS or for the amount that corresponds with the co-title share of HJS (cf. Clauses 14.2 and 14.3). The CUSTOMER is authorized to collect such receivables on HJS's account until such authorization is revoked or the CUSTOMER ceases to make payments to HJS. HJS's power to collect the receivables itself shall remain unaffected by the above provision. However, HJS undertakes not to collect the receivables as long as the CUSTOMER meets its payment obligations from the proceeds collected, is not in default of payment and no application for the opening of insolvency proceedings against its assets has been filed or the conditions for the opening of insolvency proceedings threaten to arise. If, however, one of the above situations exists, HJS shall be entitled to demand that the CUSTOMER disclose the assigned receivables and the persons by whom they are owed, provide all the information required for collection purposes, surrender the associated documents and notify the debtors (third parties) of the assignment. At the same time, HJS may in such a situation revoke the permission to resell the goods and collect receivables at any time.
- 14.5 The CUSTOMER shall notify HJS immediately by e-mail should third parties seize or assert claims to the goods and products belonging to HJS.
- 14.6 The goods and the receivables created in their lieu shall not be pledged to third parties nor transferred or assigned by way of security prior to settlement in full of HJS's receivables. The CUSTOMER shall inform HJS immediately in the event of any seizure or other act of intervention by third parties (see Clause 14.5). Insofar as HJS brings an action against a third party in this context, the action is successful and the third party is not in a position to reimburse HJS for the court and out-of-court costs, the CUSTOMER shall be liable to HJS for the costs thus incurred.
- 14.7 If, in the case of deliveries abroad, certain measures and/or declarations by the CUSTOMER are required in the importing country for the aforementioned retention of title or the other rights of HJS referred to in the preceding paragraphs to be valid, the CUSTOMER shall immediately draw attention to this in writing and shall immediately carry out these measures and/or submit these declarations at its own expense. If the law of the importing country does not permit the retention of title, the CUSTOMER shall be obliged to provide HJS with other suitable securities for the delivered goods or other securities at its own reasonable discretion and at its own expense, without delay (Sec. 315 BGB).
- 14.8 Should the value of the securities exceed the value of HJS's receivables by more than 10%, securities selected at the discretion of HJS shall be released upon demand by the CUSTOMER.
- 14.9 The taking back of the goods subject to retention of title shall not constitute withdrawal from the contract. Sec. 449 (2) BGB is excluded.
- 14.10 Should the CUSTOMER commit a breach of contract, in particular by failing to pay the due purchase price, HJS shall be entitled to withdraw from the contract in compliance with statutory provisions and/or to demand surrender of the goods subject to retention of title. The demand for surrender does not automatically include the declaration of withdrawal, rather, HJS shall be entitled to demand solely surrender of the goods and to reserve the right to withdraw from the contract. Should the CUSTOMER not pay the due purchase price, HJS shall only be entitled to assert such rights if HJS has previously and fruitlessly stipulated a reasonable period in which such payment must be made or should the stipulation of such a period not be required by law.
- 14.11 At the request of HJS, the CUSTOMER shall provide all necessary information regarding the stocks of goods owned by HJS and the claims assigned to HJS.

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15. WITHDRAWAL, TERMINATION

- 15.1 If the contract is a contract for work and services or a contract for work and materials relating to movable, non-fungible goods, the CUSTOMER's free right of termination (in particular pursuant to Sec. 651 and 649 BGB) is excluded.
- 15.2 In addition to the statutory grounds, HJS shall be entitled to withdraw from a contract concluded with the CUSTOMER for a delivery or to terminate the contract extraordinarily if one of the following circumstances arises:
- a) A significant deterioration in the financial circumstances of the CUSTOMER arises or threatens to arise. This is the case, for example,
 - (i) if enforcement proceedings are initiated against the CUSTOMER's assets and are not terminated within 4 weeks, or
 - (ii) the CUSTOMER is overindebted or insolvent within the meaning of the German Insolvency Code (InsO) or such a situation threatens to arise, or
 - (iii) if insolvency proceedings are initiated against the CUSTOMER, the initiation of insolvency proceedings is applied for or the initiation of insolvency proceedings is rejected for lack of assets.
 - b) The CUSTOMER, insofar as they are a natural person, dies or is placed under guardianship.
 - c) Due invoice amounts are repeatedly not paid in full despite reminders.
- 15.3 In addition to the statutory grounds, the right to withdrawal or extraordinary termination shall additionally exist in the event of a change in the majority shareholder of the CUSTOMER or in the event of a change in who exercises decisive control over the CUSTOMER.

16. DATA PROTECTION

- 16.1 The personal data of employees of the CUSTOMER shall be processed in accordance with Articles 6(1)(b) and (f) of the General Data Protection Regulation (GDPR) for the purposes of handling and executing already concluded business transactions and ongoing business, and for initiating new contracts as well as for similar business contacts that serve to safeguard the legitimate interests of HJS.
- 16.2 HJS shall collect, process, store and delete the personal data of the CUSTOMER's employees exclusively in accordance with the principles set out in Art. 5 GDPR.
- 16.3 The CUSTOMER shall consent to data processing pursuant to Clauses 16.1 and 16.2.
- 16.4 If, in the course of performance of the contract, HJS provides the CUSTOMER with personal data of its employees (hereinafter referred to as „personal data“) or if the CUSTOMER gains knowledge of such personal data by some other means, the following provisions shall apply:
- a) Personal data that are disclosed in the aforementioned manner may be processed by the CUSTOMER exclusively for the purpose of executing the contract and may not - except where legally permissible - be processed in any other way, in particular disclosed to third parties and/or analyzed for the CUSTOMER's own purposes and/or used to create profiles. This shall also apply to the use of anonymized data.
 - b) The CUSTOMER shall ensure that the personal data are only made accessible to those employees of the CUSTOMER who are deployed in performance of the relevant contract and only to the extent necessary for performance of this contract (need-to-know principle).

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- c) The CUSTOMER shall configure their internal organization in such a way that it meets the requirements of the applicable data protection law, in particular by taking technical and organizational measures to adequately secure the personal data against misuse and loss.
- d) The CUSTOMER shall not acquire any rights to the personal data and shall be obliged to correct, delete and/or restrict the processing of the personal data at any time under the legal conditions. Rights of retention in relation to personal data are excluded.
- e) In addition to its legal obligations, the CUSTOMER shall immediately inform HJS, at the latest within 24 hours, of any breach of the protection of personal data, in particular in the event of loss. Upon termination of the relevant contract, the CUSTOMER shall delete the personal data, including any copies made, in accordance with the statutory requirements.

17. CONFIDENTIALITY, DOCUMENTS

- 17.1 The CUSTOMER is obliged not to disclose to third parties any confidential information (including business secrets) it learns in connection with a contract concluded with HJS and its performance. Confidential information is information that is marked as confidential or whose confidentiality is evident from the circumstances, regardless of whether it has been communicated in written, electronic, embodied or oral form. In particular, this includes information about the nature or composition of HJS products. The following types of information shall not be deemed confidential in the above sense:
- a) information that was obvious or known to the CUSTOMER at the time it was conveyed or has subsequently become so;
 - b) information that has been made available to the CUSTOMER by third parties without any breach of law, or;
 - b) information that has been made available to the CUSTOMER by third parties without any breach of law, or;
- 17.2 The CUSTOMER is prohibited from obtaining confidential information by means of reverse engineering. „Reverse engineering“ in this context refers to all actions, including observing, testing, examining, dismantling and, if necessary, reassembling, with the aim of obtaining confidential information.
- 17.3 Except in those cases covered by Sec. 5 of the German Trade Secrets Act (GeschGehG), the obligation to maintain confidentiality pursuant to Clause 17.1 above shall not apply if the CUSTOMER is obliged to disclose the confidential information by law or on the basis of a final or non-appealable decision by the authorities or a court. In this case, the CUSTOMER shall immediately inform HJS of the obligation to disclose. Furthermore, the CUSTOMER shall indicate in the course of disclosure that, if this is indeed the case, trade secrets are involved, and they shall endeavour to ensure that the provisions of Sec. 16ff. GeschGehG are asserted.
- 17.4 If the CUSTOMER breaches its obligations under Sec. 17, they shall be subject to a contractual penalty of 5,000 euros for each breach, unless they are not responsible for a specific breach. HJS reserves the right to assert further claims, such as for damages or injunctive relief. The contractual penalty shall be offset against any damages to be paid.
- 17.5 HJS reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The documents shall not be made available to third parties without HJS's prior consent and shall, upon request, be returned without delay if the contract is not awarded to HJS.

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18. LEGAL PROVISIONS ON IMPORT, TRANSPORT, STORAGE AND USE

Unless otherwise agreed in individual cases, the CUSTOMER shall be responsible for compliance with statutory and official regulations pertaining to import, transport, storage and use of the goods. The CUSTOMER must ensure that agreed services can be provided without disruption, provided that the place of performance is on their premises.

19. OFFSETTING

The CUSTOMER may only offset claims of HJS against recognized, undisputed counterclaims that are ready for a decision or that have been finally determined by a court of law in connection with the contractually relevant sale.

20. PLACE OF PERFORMANCE, PERFORMANCE

The place of performance shall be the registered office of HJS EMISSION TECHNOLOGY GMBH & CO. KG in Dieselweg 12, 58706 Menden/Sauerland, Germany.

21. LEGAL VENUE, APPLICABLE LAW, PARTIAL INVALIDITY, FINAL PROVISIONS

- 21.1 The legal venue for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of HJS EMISSION TECHNOLOGY GMBH & CO. KG in Dieselweg 12, 58706 Menden/Sauerland, Germany. However, HJS shall also be entitled to bring an action against the CUSTOMER at a statutory legal venue on an individual basis.
- 21.2 The contractual relationship and all claims arising from or relating to supplies and services provided by HJS shall be subject to the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (UN CISG) is expressly excluded.
- 21.3 Should any provision in these terms and General Terms and Conditions or in any other agreements be or become ineffective, this shall not affect the validity of the remaining provisions or agreements.
- 21.4 The contract language is German.