

### 1 Scope of Application

- 1.1 These Terms and Conditions apply to installations, assemblies, commissioning, inspections, maintenance, trouble-shooting and repairs (hereinafter referred to as "Customer Services" or "Services") which heat 11 GmbH & Co. KG (hereinafter referred to as the "Contractor") undertakes within the framework of (work) delivery or independent assembly, commissioning or repair contracts and supplement the individual agreements between the Customer and the Contractor.
- 1.2 By placing an order, the Customer accepts these Terms and Conditions of Assembly and their unconditional implementation. If an uncontradicted written order confirmation is available, it shall be authoritative for the content of the contract and the scope of the customer service or installation service.
- 1.3 A contract is concluded - in the absence of a special agreement - with the written confirmation of the Customer's order by the Contractor. The written form of the order confirmation shall also be complied with by text form by means of e.g. e-mail or fax.
- 1.4 Any provisions in the individual agreements that deviate from or supplement these Terms and Conditions shall only apply if they have been signed by both parties or confirmed in the form set out in Clause 1.3. To the extent that these Conditions of Sale and Delivery do not contain any provision, the "General Conditions of Purchase of heat 11 GmbH & Co. KG for Work Deliveries and Assembly Work", which can be viewed on the Contractor's homepage at [www.heat11.com](http://www.heat11.com), shall apply accordingly.
- 1.5 General terms and conditions of the Customer that deviate from or supplement these Terms and Conditions of Assembly shall not be recognized, even if the Contractor does not expressly object to them.
- 1.6 If an item to be repaired or assembled (hereinafter referred to as "Item of Service") is not supplied by the Contractor, the Customer shall point out any existing industrial property rights with regard to the item. Notwithstanding any other statutory claims, Customer shall indemnify Contractor, irrespective of Contractor's fault, against all claims of third parties asserted against Contractor for infringement of the aforementioned industrial property rights if such claims are based on a culpable breach of duty by Contractor. License fees, expenses and costs incurred by the Contractor for the avoidance and/or elimination of infringements of property rights shall in this case be borne by the Customer. Without the prior express written consent of the Contractor, the Customer shall not be entitled to use the Contractor's personnel for work that is not the subject of the contract. The Contractor shall not assume any liability for work which is carried out on the order of the Customer without the Contractor's special instruction.

### 2 Non-Performable Services

- 2.1 The services rendered for the purpose of submitting a cost estimate as well as the further expenses incurred and to be substantiated (troubleshooting time equal to working time) shall be invoiced to the Customer if the service cannot be performed for reasons for which the Contractor is not responsible, in particular because

- the defect complained of did not occur during the inspection,
- spare parts cannot be obtained,
- the Customer has culpably missed the agreed deadline,
- the contract has been terminated during its execution,
- other obstructions for which the Contractor is not responsible.

The object of performance need only be restored to its original condition at the express request of the Customer against reimbursement of the costs, unless the work performed was not necessary.

### 3 Cost Information, Cost Estimate

- 3.1 As far as possible, the Customer shall be given the estimated price for the Customer Service upon conclusion of the contract, otherwise the Customer can set cost limits.

If the service cannot be performed at these costs or if the Contractor deems it necessary to perform additional work during the performance, the Customer's consent shall be obtained if the stated costs are exceeded by more than 15 %.

3.2 If a cost estimate with binding price indications is desired prior to the performance of the service, this shall be expressly requested by the Customer. Unless otherwise agreed, such a cost estimate shall only be binding if it is submitted in writing. It shall be remunerated. The services rendered for the submission of the cost estimate shall not be charged to the Customer insofar as they can be utilized in the performance of the repair.

#### 4 Price and Payment

4.1 Customer services shall be invoiced on a time and material basis at the applicable billing rates, unless a flat rate has been expressly agreed. The respective valid price list for Customer Services shall apply.

4.2 The Contractor shall be entitled to demand a reasonable advance payment upon conclusion of the contract.

4.3 If the service is performed on the basis of a binding cost estimate, a reference to the cost estimate shall suffice, whereby only deviations in the scope of services shall be specifically listed.

4.4 Value added tax shall be charged additionally to the Customer at the respective statutory rate.

4.5 The activity reports prepared by the Contractor shall serve as the basis for invoicing. Invoicing shall take place on a monthly basis or after completion of the customer service.

4.6 Payment shall be made upon acceptance and handing over or sending of the invoice within 30 days net without discount.

4.7 Withholding of payments or offsetting due to any counter-claims of the Customer disputed by the Contractor shall not be permitted.

4.8 If the Customer is in default of payment or if payment has been deferred, the Customer shall pay annual interest of 8 % above the base interest rate.

#### 5 Cooperation of the Customer

5.1 The customer shall support the customer service personnel in the performance of the customer service to the necessary extent at its own expense.

5.2 This includes, in particular, drawing the Contractor's attention to special statutory, official and other regulations at the installation site which relate to the execution of the Customer Services. The Customer shall be responsible for obtaining the official permits in order to ensure an undisturbed execution of the work. The Customer shall bear the risk of any delay or refusal of such permits.

5.3 The Contractor shall comply with the statutory provisions, official and trade association regulations and orders applicable at the respective place of installation when providing the Customer Services. If the statutory provisions change between the conclusion of the contract and the execution of the work, the Contractor shall be entitled to compensation for any additional costs and to adjustment of the contractual deadlines. Additional, non-statutory safety and other regulations at the installation site shall only be observed by the Contractor if they are made known to it in good time by the Customer within the meaning of Clause 5.2 and expressly acknowledged by the Contractor in writing.

5.4 The Customer shall inform the Contractor in writing about existing safety regulations at the installation site and shall provide safety instructions to the installation personnel on site prior to the start of work. Insofar as these safety regulations provide for special protective equipment for the installation personnel, such equipment shall be provided to the Contractor's installation personnel.

5.5 The Contractor shall notify the Customer without undue delay upon their discovery of any violations of occupational safety regulations.

5.6 If one or more of the safety requirements to be fulfilled by the Customer at the assembly site are not fulfilled even after the fruitless expiry of a reasonable remedy period, the Contractor shall be entitled to suspend the performance of the Customer Services until the safety defect has been remedied.

5.7 The Contractor shall also be entitled, after prior notice, to suspend the assignment of employees or to withdraw assembly personnel from the assembly site and/or to terminate the contract for assembly if there is a risk to life or limb for the employees concerned during the assignment.

- 5.8 Such a case shall be deemed to exist in particular if an official body (e.g. the Foreign Office of the Federal Republic of Germany) issues a travel warning for the intended place of use or advises against a stay. The same applies if the Customer repeatedly fails to comply with its obligations pursuant to Article 5.2.
- 5.9 All costs incurred by the Contractor due to the suspension or discontinuation of the work for reasons for which the Customer is responsible pursuant to Section 5.5 shall be borne in full by the Customer.

### 6 Cooperation and Technical Assistance of the Customer

- 6.1 The Customer is obliged to provide technical assistance at its own expense, in particular to the
- a) Provision of the necessary suitable auxiliary personnel (masons, carpenters, locksmiths as well as other skilled workers and manual workers) in the number and for the time required for the Customer Service; the auxiliary personnel shall follow the instructions of the Contractor's Customer Service personnel. The Contractor shall not assume any liability for the auxiliary personnel. If a defect or damage is caused by the auxiliary personnel due to the instructions of the installation manager, Sections 9 and 10 shall apply;
  - b) Undertaking all earthworks, construction, bedding and scaffolding works including procurement of necessary building materials;
  - c) Provision of the necessary equipment and heavy tools (e.g. hoists, compressors) as well as the required commodities and materials (e.g. scaffolding timbers, wedges, under-lays, cement, plaster and sealing materials, lubricants, fuels, driving ropes and belts);
  - d) Provision of heating, lighting, operating power, water, including the necessary connections;
  - e) Provision of necessary, dry and lockable rooms for the storage of the tools of the assembly personnel;
  - f) Transport of the required parts at the assembly/repair site, protection of the work site and the required materials against harmful influences of any kind, cleaning of the assembly site;
  - g) Provision of suitable, theft-proof recreation rooms and working rooms (with heating, lighting, washing facilities, sanitary facilities) and First Aid for the Customer Service personnel;
  - h) Provision of materials and performance of all other acts necessary for the adjustment of the item to be assembled and for the performance of any testing or commissioning provided for in the contract.
- 6.2 Customer's technical assistance shall ensure that the after-sales service can be started immediately upon arrival of Contractor's after-sales service personnel and performed without delay until acceptance by Customer.

For this purpose, the Customer must provide the Contractor

- A Grant access to the site;
- b) Designate a responsible contact person;
- c) Provide the necessary infrastructure for the execution of the work; and
- d) With all necessary information regarding the operating structure and environment

Insofar as special plans or instructions of the Contractor are required, the Contractor shall make them available to the Customer in due time.

- 6.3 If the Customer does not comply with its obligations, the Contractor shall be entitled, but not obliged, after setting a deadline, to perform the actions incumbent on the Customer in its place and at its expense. Otherwise, the Contractor's statutory rights and claims shall remain unaffected.
- 6.4 The Customer shall bear the transport risk of materials required for Customer Services.
- 6.5 At the Customer's request, the outward and, if applicable, the return transport of materials or repair items shall be insured against insurable transport risks, e.g. theft, breakage, fire, at the Customer's expense.

6.6 There shall be no insurance coverage during the repair time of objects of performance in the Contractor's works. Customer shall ensure that the existing insurance coverage for the object of repair is maintained, e.g. with regard to fire, tap water, storm and machine breakage insurance. Insurance cover for these risks can only be procured at the express request and expense of the Customer.

6.7 If the Customer is in default of acceptance, the Contractor may charge storage fees for storage in its works. The object to be repaired may also be stored elsewhere at the Contractor's discretion. The costs and risk of storage shall be borne by Customer.

### **7 Deadlines, Delays**

7.1 Information on repair or assembly deadlines is based on estimates and is therefore not binding.

7.2 The agreement of a binding repair or assembly deadline, which must be designated as binding, can only be made once the scope of the work has been precisely determined and all commercial and technical questions have been clarified and the Customer has fulfilled all obligations incumbent upon it prior to the commencement of the work (e.g. provision of the necessary official certificates and acceptances, payment of a deposit if applicable). If the obligations have not been fulfilled, the deadline will be extended accordingly.

7.3 A deadline shall be deemed to have been met if the Customer Service is ready for acceptance or, in the case of repair items, for acceptance by the Customer, or, in the case of contractually agreed testing, for testing, by the end of the dead-line.

7.4 In the case of additional and extension orders placed at a later date or in the case of necessary additional Customer Service work, the agreed period shall be extended accordingly.

7.5 If the Customer Service is delayed due to the Customer's failure to perform or improper performance, such as breach of the obligations under Sections 5 and 6, the deadline shall be extended accordingly. This shall also apply if such circumstances occur after the Contractor has defaulted. The costs incurred by the delay shall be borne by the Customer.

7.6 If non-compliance with the agreed deadlines is due to force majeure, such as natural disasters, epidemics/pandemics (e.g. Covid19 pandemic), travel restrictions, border closures, transport restrictions or delays, plant closures, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor labor disputes or other events beyond the control of the Contractor, the Contractor shall be released from its performance obligations for the duration of the event and the deadline shall be extended accordingly. The Contractor shall notify the Customer of the beginning and end of such circumstances as soon as possible. If the duration of the event exceeds a period of six months, the Contractor shall also be entitled to terminate the contract.

7.7 If the Customer suffers damage as a result of delay on the part of the Contractor, it shall be entitled to demand a lump-sum compensation for culpably caused delay as exclusive compensation. This compensation shall amount to 0.5 % for each full week of delay, but in total to a maximum of 5 % of the remuneration for that part of the customer service to be provided by the Contractor that cannot be used in time due to the delay.

### **8 Acceptance**

8.1 The Customer shall be obliged to accept the Customer Service as soon as it has been notified of its completion and any contractually stipulated testing of the assembled or repaired item has taken place. If the service proves not to be in accordance with the contract, the Contractor shall be obliged to remedy the defect. This shall not apply if the defect is insignificant for the interests of the Customer or is due to a circumstance attributable to the Customer. If the defect is only insignificant, the customer may not refuse acceptance.

8.2 If acceptance is delayed through no fault of the Contractor, acceptance shall be deemed to have taken place two weeks after notification of completion of the installation.

8.3 Upon acceptance, the Contractor's liability for recognizable defects shall cease, unless the Customer has reserved the right to assert a specific defect.

### **9 Retention of Title, Extended Lien**

9.1 The Contractor shall retain title to all accessories, spare parts and replacement units used until receipt of all payments under the Customer Service Agreement. Further security agreements can be made.

9.2 The Contractor shall be entitled to a lien on the Customer's object of repair which has come into its possession on the basis of the contract on account of its claim arising from the Customer Service Agreement. The lien may also be asserted on account of claims from work previously performed, spare parts deliveries and other services, insofar as they are connected with the object to be repaired or installed. The lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or have become legally binding.

### 10 Claims for Defects

10.1 After acceptance of the Customer Service, the Contractor shall be liable for defects in the Service to the exclusion of all other claims of the Customer, notwithstanding Clause 10.5 and Clause 11, in such a way that the Contractor shall remedy the defects. The Customer shall immediately notify the Contractor in writing of any defect discovered.

10.2 The Contractor shall not be liable if the defect is insignificant for the interests of the Customer or is due to a circumstance attributable to the Customer. This shall apply in particular with regard to parts provided by the Customer.

10.3 In the event of any improper modifications or repair work carried out by the Customer or third parties without the prior consent of the Contractor, the Contractor shall not be liable for the consequences thereof. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the Contractor must be notified immediately, or if the Contractor - taking into account the statutory exceptions - has allowed a reasonable period of time set for it to remedy the defect to expire fruitlessly, shall the Customer have the right within the framework of the statutory provisions to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary costs from the Contractor.

10.4 Of the direct costs arising from the rectification of defects, the Contractor shall bear the costs of the replacement part, including shipping, insofar as the complaint proves to be justified. He shall also bear the costs of dismantling and installation as well as the costs of any necessary provision of the necessary fitters and assistants including travel costs, insofar as this does not result in a disproportionate burden on the Contractor.

10.5 If the Contractor - taking into account the statutory exceptions - allows a reasonable deadline set for it for the rectification of defects to expire fruitlessly, the Customer shall have a right of reduction within the framework of the statutory provisions. Only if the repair is demonstrably of no interest to the Customer despite the reduction, the Customer may withdraw from the contract.

### 11 Liability of the Contractor, Exclusion of Liability

11.1 If parts of the object to be repaired or assembled are damaged through the fault of the Contractor, the Contractor shall, at its option, repair them or deliver new ones at its own expense. The obligation to pay compensation shall be limited to the amount of the contractual repair price.

11.2 If, due to Contractor's fault, the object of repair or assembly cannot be used by Customer in accordance with the contract as a result of omitted or defective execution of suggestions and consultations made before or after conclusion of the contract as well as other contractual ancillary obligations - in particular instructions for operation and maintenance of the object of repair or assembly - the provisions of Clauses 10 as well as 11.1 and 11.3 shall apply to the exclusion of further claims of Customer.

11.3 For damage that has not occurred to the object of repair or assembly itself, the Contractor shall be liable - on whatever legal grounds - only

- a) in case of intent,
- b) in the event of gross negligence on the part of the owner/the executive bodies or senior employees,
- c) in case of culpable injury to life, body, health,
- d) in the case of defects which he has fraudulently concealed,
- e) within the scope of a guarantee promise,
- f) insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used objects.

In the event of culpable breach of material contractual obligations, the Contractor shall also be liable for gross negligence of non-executive employees and for slight negligence, in the latter case limited to the reasonably foreseeable damage typical for the contract. Essential contractual obligations are those whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer may regularly rely on.

Insofar as the Contractor's liability for damages is excluded or limited, this shall also apply with regard to personal liability for damages of the Contractor's employees.

Further claims, for whatever legal reason, are excluded.

### 12 Statute of Limitations

All claims of the Customer - on whatever legal grounds - shall become statute-barred after 12 months. The statutory periods shall apply to claims for damages pursuant to Clause 11.3 a - d and f. If the installation contractor performs the installation work on a building and thereby causes its defectiveness, the statutory periods shall also apply.

### 13 Compensation by the Customer

If the equipment or tools provided by the Contractor are damaged or lost on the assembly site through no fault of the Contractor, the Customer shall be obliged to compensate for such damage. Damage due to normal wear and tear shall not be taken into account.

### 14 Applicable Law, Place of Jurisdiction

- 14.1 All legal relationships between the Contractor and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany.
- 14.2 The place of jurisdiction shall be the court having jurisdiction for the registered office of the installation company. The installation company shall, however, be entitled to bring an action at the Customer's principal place of business.

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