

Heco International A/S
General Conditions of Tender and Sale – applying from juli 1, 1987

1. General

1. The following general conditions of tender and sale are valid for all tenders and sales agreements unless alterations of one or more of the conditions have been expressly confirmed by Heco International A/S (hereinafter referred to as Heco).

1.2. Conflicting purchasing conditions or other reservations made by a customer are thus not binding on Heco unless expressly accepted by Heco in writing.

2. Tenders and order acknowledgements

2.1. Tenders are submitted subject to the goods being unsold, and become void if they have not been accepted by the customer within 30 days of the date of the tender. Heco confirms accepted tenders by means of order acknowledgements. Possible objections from a customer concerning discrepancies in the order acknowledgement must be in the hands of Heco 8 days at the latest after receipt of the order acknowledgement.

2.2. Orders from customers are only binding on Heco after a written order acknowledgement has been issued and only on the conditions stated in the order acknowledgement.

3. Specifications and prices

3.1. All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectus, circulars, advertisements, illustrated matters and price lists is to be considered approximate. Such information is only binding to the extent stated in the order acknowledgement or in other agreements expressly referring to such information.

3.2. With the reservations made in 3.3 all sales are made at the price valid on the date of Heco tender or the date of the Heco order acknowledgement.

3.3. The price referred to in 3.2 can be increased if, after issuing the tender or the order acknowledgement, but before the invoice date, alterations occur in the currency exchange rate or increases occur in import duties, indirect taxes, excise duties, fees, etc., or in other similar public charges which involve an increase of the costs connected with the manufacturing and producing of the goods. This also applies in cases of extraordinary increases in the prices of raw materials, etc., owing to external events, which could not be foreseen when the agreement was concluded.

3.4. Unless otherwise expressly agreed upon in writing, delivery is made "ex works" in accordance with "Incoterms 1980", but the delivery price is exclusive of packing and packing costs, insurance, handling and forwarding, which will be invoiced at costs.

4. Time of delivery

4.1. Delivery times are stated ex works and start running from receipt of the formal order or, in the case of prepayment, from the receipt of the full amount agreed upon.

4.2. Reservation is also made regarding the times of delivery stated by Heco with respect to delays owing to strikes, lock-outs, war, mobilisation, confiscation, currency restrictions, transport obstacles, restrictions concerning motive power, fire, extensive damage to machinery, faulty castings and forgings, delayed or missing deliveries from sub suppliers in spite of punctual and correct ordering on the part of Heco, or for other reasons beyond Heco's reasonable control.

The time of delivery will be deferred, if necessary, for a period corresponding to the duration of the delay in delivery. Delivery postponed for the reasons referred to here shall, in every respect, be considered as having been effected in due time.

4.3. If a delay in delivery, caused by one or more of the above mentioned circumstances, can be expected to last longer than 3 months, the customer, as well as Heco, shall be entitled to cancel the agreement without paying compensation.

4.4. If the delay is caused by other reasons than stated above the customer is only entitled to cancel the purchase if the delay can be considered essential and if Heco has not effected delivery 30 days at the latest after having received a written demand to this effect.

4.5. In the event that the agreement is cancelled according to 4.3 or 4.4 above, Heco shall repay any payments made by the customer, and the customer shall return any part of the goods already delivered. Beyond this, no claim whatsoever, on account of a delay, can be accepted for compensation for loss of earnings or time, or other losses, irrespective of whether the responsibility for delay lies with Heco.

5. Terms of payment

5.1. Unless otherwise agreed in writing, full payment of the goods supplied by Heco, inclusive of invoiced expenses for freight, handling, insurance and packaging must be effected within 30 calendar days of the date of invoice.

5.2. If the dispatch of goods is postponed at the request of the customer, payment shall, however, be made 30 days at the latest after the customer has been informed that the goods are ready for dispatch.

5.3. If payment is not made when due – see 5.1 and 5.2 – interest will accrue on the overdue payment at 1.5 per cent per each month commenced.

5.4. The customer is not entitled to set-off payment for a consignment against a demand that the customer considers to have against Heco in respect of the consignment concerned or any other consignment.

5.5. In each case where some form of credit is granted, the sale will be considered to have been made with Heco retaining the ownership until full payment has been effected. If the customer does not pay when due, Heco is entitled to take the goods back without a court judgement in accordance with the valid rules of law on this point.

6. Claims, replacements, and responsibility for defective goods

6.1. Claims must be made in writing to Heco 14 days at the latest after the time when the customer discovered or ought to have discovered the defects or shortages concerned. Furthermore, goods delivered in error shall be returned so as to reach Heco within four (4) months of the date of dispatch.

6.2. In the event that parts delivered by Heco prove unusable owing to faulty material or manufacture, Heco undertakes to replace or repair such parts free of charge. Heco's liability is limited to defects occurring within the guarantee period. The guarantee period is 12 months, starting from the date on which the goods in question were taken into use. Heco's liability, however, shall in all circumstances be limited to a period of 18 months as from dispatch of the goods from our works in Hedensted. It is a condition that the parts have been carefully stored and mounted correctly and operated under normal operating conditions.

6.3. Heco's liability is limited to the above and thus does not cover, inter alia: wear damage caused by carelessness or negligence by the customer or by people in the service of the customer, rust, corrosion, deposits owing to water, sand or other impurities, chemical or electrolytic processes, damage caused by unsuitable lubricating or fuel oils or insufficient cooling. Heco's liability does not cover defects resulting from incorrect information supplied by the customer. Heco's liability does not cover defects resulting from materials/design specifications supplied by the customer.

For the customer to be able to claim liability on the part of Heco, he must allow Heco the possibility of inspecting the defects in question.

Heco's liability is limited to defects occurring under the operating conditions agreed to in writing in connection with the conclusion of the order. Heco's liability does not cover incorrect storage/mounting/pressure testing/maintenance.

6.4. The obligation of Heco to repair or replace defective parts pursuant to 6.2 shall be fulfilled by delivery. F.O.B. Danish port of exchanged or repaired parts. The forwarding and returning of the replaced parts are for the customer's account and risk.

If it is not possible to have the repair or replacement of a part carried out in Heco's workshop, Heco is only obliged to replace damaged parts through delivery. F.O.B. Danish port, or to pay repair costs to the same amount as it would have cost Heco to carry out the repairs in Heco's repair shop.

6.5. For purchased parts, which make up the whole or part of Heco's delivery, Heco undertakes liability only to the same extent as Heco's suppliers.

6.6. If the parts supplied by Heco are mounted in an engine for which the customer has also used unoriginal parts (i.e. parts that have been supplied through an unauthorised supplier), Heco does not assume any liability for any damage which may arise.

6.7. Heco is not liable to any further extent than stated above, irrespective of whether possible faults can be imputed to Heco, and Heco is thus not obliged to pay compensation nor liable for any consequential damage or other indirect loss such as loss of profits, unless it can be substantiated that Heco has been guilty of gross misconduct.

6.8. For repaired and reconditioned parts Heco undertakes the same liability as stated in 6.2-6.6 with the exception, however, that repaired and reconditioned parts will not be replaced by new parts.

7. Repair, reconditioning, replacements parts

7.1. For parts which are sent to Heco for repair, reconditioning, assembling, adaptation, or other processes, the forwarding to and from Heco's workshop shall be for the account and risk of the customer. Heco also does not accept any liability for such parts in its workshop including storage and internal transportation – nor for any damage, which may arise, including damage caused by any Heco employee.

7.2. If, in the opinion of Heco, any part referred to in 7.1 is not suitable for repair or reconditioning, it will be scrapped without charge to the customer as Heco's examination costs will be considered to be covered by the scrap value of the part. If the customer desires to have such unsuitable parts returned, this must be previously informed to Heco in writing, and such parts will then be returned for the customer's account and risk, and Heco's expenses for the examination of the parts will be debited to the customer.

8. Liability for injury/damage caused by the product (product liability)

8.1. Heco shall be liable for personal injury only if it is proved that such injury was caused by negligence of Heco or others for whom Heco is responsible.

8.2. Heco shall not be liable for damage to real and personal property, which occurs while the equipment is in the purchaser's possession. Nor shall Heco be liable for damage to products, which are manufactured by the purchaser, or to products in, which such are included. In all other instances, Heco shall be liable for damage to real and personal property on the same conditions as those applying to personal injury, but such liability shall not exceed DKK 1 million.

8.3. Under no circumstances shall Heco be liable for consequential loss, lost earnings or other indirect loss, including loss of time.

8.4. To the extent Heco might incur product liability towards any third party, the customer shall indemnify Heco as far as Heco's liability has been limited by the three preceding paragraphs.

8.5. If the claim for damage as described in this clause 8 is lodged by a third party against one of the parties, the latter shall forthwith inform the other party thereof.

8.6. Heco and the customer shall be obliged to let themselves be summoned to the court examining claims for damages lodged against one of them on the basis of damage allegedly caused by the product. However, the contractual relationship between Heco and the customer shall always be settled by arbitration in accordance with clause 10.

8.7. The above limitations in Heco's liability shall not apply where Heco has been guilty of gross misconduct.

9. Proprietary right and reproduction

9.1. All drawings/technical specifications shall remain the property of Heco, and must not, neither in part nor in full, be copied, reproduced, published or handed over to any third party without the prior consent of Heco.

9.2. Drawings/technical specifications to be used for installing and taking the parts into use shall remain the property of the customer.

10. Law and disputes

10.1. Heco's tenders and every contract with customers including the present General Conditions shall be interpreted according to Danish law.

10.2. If the parties cannot settle a difference of opinion themselves, the dispute shall not be referred to a court of law, but shall be decided by arbitration in accordance with the rules of procedure of The Copenhagen Court of International Arbitration. The arbitration proceedings shall take place in Copenhagen.

10.3. The above will not, however, prevent Heco from choosing, at their discretion, to bring an action against a customer in the ordinary courts of law where the customer is domiciled