

General Terms and Conditions of Sale and Delivery - HARGASSNER Group

Version 11/2021

1. General

- 1.1. These general delivery and sale conditions apply for all business relationships (especially for order contracts, delivery contracts, work contracts, installations contracts, etc.) between all companies of the HARGASSNER Group (hereinafter referred to as "HARGASSNER") and customers. By ordering products or services from Hargassner, the customer expressly agrees. In all respects, the version of our General Terms and Conditions effective at the time the respective contract or agreement is concluded shall apply. By awarding a Contract to HARGASSNER, the customer shall be deemed to have accepted these General Terms and Conditions. Changes and amendments of these General Terms and Conditions, even on knowledge, do not become an integral part of the contract unless their validity is expressly consented to by HARGASSNER in writing. In the event that deviating agreements are reached with the contracting party, then these agreements shall always have priority over the corresponding regulation within the scope of these General Terms and Conditions. HARGASSNER contracts exclusively on the basis of these General Terms of Sale and Delivery.
- 1.2. Diverging agreements require a written confirmation of both parties.
- 1.3. If individual provisions of these General Terms and Conditions become completely or partially invalid and/or unenforceable, this shall not affect the validity and/or enforceability of any other provisions or parts thereof.
- 1.4. These terms and conditions will be valid for business with consumers only as far, as they are in compliance with imperative stipulations of consumer protection laws. If the customer is a consumer within the meaning of the KSchG, he is obligated to notify the customer without delay, otherwise he is liable for resulting damages.

2. Quotations, Prices

- 2.1. All prices quoted by HARGASSNER in quotations and price lists are non-binding and net prices without VAT, unless expressly stated that the statutory VAT is included. The VAT is calculated separately according to the legal regulations applicable on the day of delivery or service. HARGASSNER reserves the right to make technical and other modifications as far as is reasonably practicable.
- 2.2. If a customer's order does not contain any price information, HARGASSNER's price lists are valid for this order, which apply at the day of receipt of the order.
- 2.3. Quotations shall be prepared to the best of our expertise but are always non-binding; however, HARGASSNER cannot assume any liability for its accuracy. Unless arranged otherwise, changes in the assignment or in additional assignments may be invoiced at appropriate prices; Estimates & Quotes are free of charge.
- 2.4. If the delivery - without HARGASSNER's responsibility for a delay in delivery - takes place after the agreed delivery date, HARGASSNER shall be entitled to increase the agreed prices accordingly. This price adjustment takes place taking into account the change in collectively contractual wage costs or other costs necessary for the provision of services, such as those for materials, energy, transports, external work financing etc. between the agreed and the actual delivery date.
- 2.5. Export deliveries are strictly charged in Euro and are also to be paid in Euro. In cases where payment is expressly agreed in a different currency, invoicing will be on the basis of the exchange rate valid on the date of order confirmation by HARGASSNER. For this calculation, only the Austrian banks' currency conversion is relevant.

3. Order acceptance, order basis

- 3.1. A contract shall only be formed as a result of written confirmation of the order, the delivery of goods or the transfer of an invoice from HARGASSNER. The customer is obliged to provide comprehensive and correct data and details required for the production and installation of the goods (General measurements, boiler room details, fuel storage room details, chimney details, etc.)
- 3.2. Any additional costs due to deviations from the actual circumstances compared to the data and details provided by the customer as well as additional costs due to the delayed transfer of this information shall be borne by the customer. Changes to the order after acceptance are only possible by mutual consent and in writing.
- 3.3. If, at the time of the order, the delivery goods have not yet been established in all its details (in particular technical execution and delivery date), a provisional confirmation of order is given. In this case, the order is accepted tentatively - according to the details disclosed in the order.
- 3.4. To comply with the desired delivery dates, the customer is obligated to fully complete the order at least 21 days before the desired pick up date (announcing accessory details, heating and fuel storage details, etc.) After the announcement of all details, a final order confirmation will be issued, by which the contract content will be fixed, unless the customer makes an immediate objection in writing. If this happens, the delivery contract remains valid in accordance with the received order data. In the event of an order change - after order confirmation - the prices shall be adjusted to a previous issued quotation.

4. Transport, Delivery

- 4.1. The place of fulfilment for delivery and payment is the registered office of HARGASSNER Ges mBH, in 4952 Weng im Innkreis, Anton Hargassner Straße 1, Austria.
- 4.2. If a delivery supply has been agreed between HARGASSNER and the customer, this shall be at the Customer's expense and risk, unless other written agreements have been made. Unless otherwise agreed in writing, the risk of price transfer shall be transferred to the customer upon dispatch of the goods, in the event of a default of acceptance by the customer with the readiness to dispatch by HARGASSNER.
- 4.3. If an agreed delivery date is not observed for any reason, HARGASSNER or its authorized forwarding agent must agree with the customer a reasonable period of grace. Liability of HARGASSNER for exceeding delivery times is excluded.
- 4.4. If acceptance of the delivered goods by the customer is delayed, whether culpably or otherwise, HARGASSNER has the right to charge the usual costs for storage, delivery and processing. The obligation of the customer to pay the purchase price shall not be affected. Furthermore, HARGASSNER has the right to withdraw from the delivery contract, upon which the customer has to pay the difference between the agreed price and the expectable revenue from realisation of the deliverable goods.
- 4.5. If collection is agreed on, the customer has to accept the goods within 14 days from the date of notification from HARGASSNER. The goods are deemed to be delivered after the 14 day period, regardless of whether the goods have actually been picked up.
- 4.6. If delivery is agreed on, the goods are deemed to be delivered:
 - 4.6.1. by signing the delivery note; if HARGASSNER executes the delivery;
 - 4.6.2. by handing over the goods to a haulage company.
- 4.7. The purchaser must check, immediately on receipt, that the goods are complete and that they have not been damaged in any way during transportation. Claims of defects must be asserted within 5 working days in writing to HARGASSNER.
- 4.8. Packaging material, such as cardboard boxes, plastic packaging and pallets etc., of HARGASSNER products have to be disposed by the customer.

- 4.9. If the transport is organised by HARGASSNER, HARGASSNER shall be in charge whether a company-owned truck or an external transport company is instructed with the transport. The choice of a suitable forwarding agent is made by HARGASSNER - without liability for the cheapest and fastest transport. The stated delivery times shall always be deemed as not binding, unless otherwise expressly agreed upon in writing.
- 4.10. The agreed delivery period will essentially commence with the date of order confirmation. If HARGASSNER is at that time (Date of order confirmation) not in possession of the documentation required for production such as especially actual room measurements, lead time starts at the date of receipt by HARGASSNER of the last document required. Customers have the obligation to provide such documentation in a timely manner. Delivery dates (lead times) will be extended by delays not caused by HARGASSNER. In case a down payment is to be made by the customer, the lead-time will not be counted before the day of its receipt by VOGLAUER. In case an advance payment is to be made by the customer, the lead-time will not be counted before the day of its receipt.

5. Payment

- 5.1. Payments must be made according to payment conditions on the invoice. If no written agreement on the payment conditions exists between the parties, all payments of invoice amounts shall be due immediately upon receipt of the invoice and shall be made without deductions. Checks and bills of exchange will be accepted subject to their eligibility for discount only under a separate agreement and only on account of performance.
- 5.2. In case of delayed payment, interest for delay above the then current base-lending rate of the Austrian National Bank will be charged. In the event of the payment deadlines being exceeded, all of the statutory default consequences occur without special warning. Set-off by the customer is ruled out except with receivables accepted in writing by HARGASSNER or ascertained in a legally binding manner.
- 5.3. In all events, the customer shall refund dunning charges and collection costs.
- 5.4. Payments made by the principal and received by the contractor first of all pay off interest on interest, then interest and secondary expenses, followed by costs incurred prior to legal action, then costs for legal advice attorneys and collection agencies, and finally the amount due, beginning with the oldest debt.
- 5.5. The customer shall not be entitled to withhold payments on account of warranty claims or other counterclaims or to set them off against counterclaims unless these counterclaims are uncontested or have been legally established. Assignment to third parties of accounts receivable by the Customer from HARGASSNER as well as transfer of rights and duties under the purchase contract concluded shall not be permitted without prior written approval by HARGASSNER.
- 5.6. All bank charges, fees and taxes are at the expense of the customer.
- 5.7. Payments and money transfers first count as paid after redemption or appearance in the HARGASSNER account.
- 5.8. The periods granted for payment will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards HARGASSNER or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or if the cover given by a credit insurer is reduced on grounds for which HARGASSNER is not responsible. Furthermore HARGASSNER reserves the right to resign from the contract without extending the deadline in this case.

6. Returned goods

- 6.1. The return of already delivered, not defective goods (Returned goods) takes place in exceptional cases by agreement in perfect condition. The customer will have to bear the costs and risks for the return shipment. Any damage to the goods by the customer or freight carrier shall terminate the acceptance of returned goods.
- 6.2. The original invoice (copy) or the delivery note shall be enclosed with the returned goods and is only a redemption offer to accept the returned goods from the customer. If HARGASSNER declares the returned goods to be impeccable, HARGASSNER will issue a credit note which also applies to HARGASSNER's acceptance of the redemption offer. If the goods are not in impeccable condition or out of date, HARGASSNER reserves the right to refuse the acceptance offer, or to grant only a partial amount as a credit note.
- 6.3. HARGASSNER reserves the right to charge an appropriate manipulation fee for the redemption.
- 6.4. A credit note can only be issued if the original invoice (copy) or the delivery note is enclosed.
- 6.5. The acceptance of single components out of set articles (eg. parts of flue pipe sets, boilers, custom-made articles, etc.) is not possible.
- 6.6. Goods, which had been delivered more than 6 months ago, are not accepted for return.
- 6.7. To HARGASSNER returned goods, which are not in impeccable condition, or which are not in the product range any more (not accepted for return) may be disposed by HARGASSNER.

7. Withdrawal from contract and delay

- 7.1. If one party fails to fulfil contractual obligations, the other party has the right to withdraw from the contract after a expiry of a 4 weeks extension period. The right to withdraw from the contract can be declared for only part(s) of the goods to be delivered. In such cases, HARGASSNER has the obligation to deliver the part of the shipment which is not affected by the withdrawal and the customer has the obligation to make payment for that part.
- 7.2. If the customer withdraws from a contract without being entitled to do so, HARGASSNER has the choice between the fulfillment of the contract or a cancellation with the right to charge a lump sum of 20% of the total amount of the contract. Any additional claims, particularly those for compensation, are excluded in any case.
- 7.3. If HARGASSNER withdraws from a contract for reasons for which the customer is answerable without necessarily being culpable, the customer has the obligation to cover the costs of preparatory efforts by HARGASSNER (material purchased, special services, labour expenditure, etc.). HARGASSNER has the choice between the right to charge a lump sum of 25 % of the total amount of the contract without provision of specific evidence for individual efforts. Custom designs already produced by HARGASSNER must be paid for in full minus assembly and shipment costs.
- 7.4. Events of force majeure affecting HARGASSNER constitute the right for HARGASSNER to suspend deliveries for the duration of the hampering circumstances plus the right to fully or partially withdraw from the contract. Events of force majeure are, among other things: All effects of the forces of nature such as earthquake, lightning, frost, storm, flood, diseases, epidemics, pandemics; furthermore, war, legal action, enactments by local authorities, such as, in particular, plant closures ordered by the authorities, even if only partially detention, transport disruption, export, import or transit bans, international payment restrictions, raw material shortage and power loss; furthermore, operational disruptions such as explosion, fire, strike, sabotage and all other events which could not be prevented other than by unreasonably high costs or means not economically justifiable.

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7.5. For other important reasons, HARGASSNER is entitled to withdraw from the contract (if not fulfilled from both parties) - in particular the initiation of bankruptcy proceedings on the assets of a contractual partner or dismissal of a bankruptcy petition for lack of cost-covering assets and with initiation of judicial composition proceedings.

8. Retention of title

- 8.1. All deliveries are subject to retention of title. The goods delivered remain the sole property of HARGASSNER until fulfillment of all obligations of the customer, specifically also pre-deliveries.
- 8.2. In case of connection or mingling of reserved HARGASSNER property with other goods, HARGASSNER will gain joint ownership in the resulting goods proportionally to the value of the reserved property with respect to the value of the other goods at the time of connection or mingling.
- 8.3. In case of sale of the resulting matter, the customer will cede the aliquot sales price in the sense of the stipulation above to HARGASSNER.
- 8.4. The customer has the right to sell goods delivered under this reservation of property rights only if they are dedicated goods for resale or after the reservation of property rights has expired or HARGASSNER expressly authorizes such sale. In case of resale of goods, the customer will cede all claims resulting from such sale to HARGASSNER. The customer has the obligation to make such cession recognizable by corresponding entries in his or her books and to disclose to HARGASSNER upon request the names of the debtors as well as to precisely specify the ceased receivables. The cession will be accepted by HARGASSNER. Any dues or taxes related to such cession are to be carried by the customer, who will indemnify HARGASSNER of claims resulting therefrom. HARGASSNER retains the right to disclose the cession and to realise the receivables ceased directly.
- 8.5. The customer has the obligation to sufficiently cover the reserved goods by insurance against common risks such as elementary events and to provide proof of such cover to HARGASSNER upon request. The customer hereby ceases given insurance claims to HARGASSNER. The customer also has the obligation to store the goods according to instructions given by HARGASSNER and to the state of the art. The customer has the obligation to tend to the goods during the reservation of property rights.
- 8.6. The customer will immediately notify HARGASSNER of access to the goods under reservation of HARGASSNER property rights by third parties (execution or listing for execution, other court orders or enactments). The customer will support and assist HARGASSNER in legal attempts to protect HARGASSNER's rights to the property and carry all associated costs if the customer has inflicted the threat to reserved HARGASSNER property.
- 8.7. Objects subject to retention of title may be withdrawn or dismantled by HARGASSNER without this being regarded as a withdrawal from the contract.

9. Notice of defect

- 9.1. The customer is obliged to immediately check the goods on delivery for defects or damages and on short quantities. Incomplete or wrong shipments as well as complaints for recognisable defects will be directed to HARGASSNER in writing immediately upon receipt of the goods, non-recognisable defects immediately upon their discovery. The notification must indicate clearly the kind and extent of the alleged defect. If defects or errors are not notified on time, the shipment shall be deemed approved and asserting of warranty claims shall be excluded.

10. Legal Warranty

- 10.1. The warranty begins with the date of invoice.
- 10.2. The commissioning of the boiler must be performed by a HARGASSNER technician or a professional with Hargassner Commissioning Certificate for the adequate product series. If this does not occur, the warranty claim is invalidated.
- 10.3. HARGASSNER is only liable for those parts of the goods that have obtained from subcontractors within the scope of warranty claims that Hargassner owes to the subcontractors.
- 10.4. In case of another defect, even the product is installed correctly according to the installation manual and used according to the operation manual - HARGASSNER provides warranty.
- 10.5. Proper documents for the product specification and correct operation are operation manual, installation manual and/or operation conditions on-site and also maintenance and service manual as well as legal conditions.
- 10.6. HARGASSNER shall be released from this obligation if the damage has not been communicated in writing to HARGASSNER by a certified HARGASSNER service partner within 5 days after the defect has been identified.
- 10.7. HARGASSNER warrants the delivered goods, provided that they are used according to the intended purpose (maximum 2,500 full load hours per year) and are not agreed otherwise separately. Towards users the legal provisions shall apply. Exceptions to this are damages caused by force majeure, improper transport or storage, operating errors, missing energy, water deficiencies, etc.
- 10.8. From the warranty excluded are parts which are subject to natural wear, such as sealings, suspension baffles, refractory, grates, stuffing boxes, etc. as well as operating materials. Normal, natural wear and tear of fire-resistant linings that do not cause any malfunctions, such as low surface or edge removal, cracking, etc. preclude any claim of warranty.
- 10.9. In case of warranty - HARGASSNER will perform one of the following steps: (on its own expense)
 - 10.9.1. repair the goods,
 - 10.9.2. exchange the goods,
 - 10.9.3. or take back the goods and reimburse.
- 10.10. HARGASSNER reserves the right to choose the respective warranty. If HARGASSNER fails to meet warranty obligations within reasonable time, customer has the right to a reasonable price reduction or to withdraw from the contract. Activities started by HARGASSNER due to unjustified notifications of defect are considered purchase orders, and customers have the obligation to pay for the services rendered thereunder. A claim for compensation for installation and dismantling costs is expressly excluded, insofar as permissible. However, the customer shall in any event notify HARGASSNER in good time prior to any attempt at improvement, if any, intended by himself, in order to check the appropriateness of the warranty remedy and to obtain HARGASSNER's written consent thereto, otherwise he shall lose all claims arising therefrom.
- 10.11. Warranty is provided for replacements and improvements to the same extent as for the original delivery item, however with a time limit until the end of the warranty period of the original delivery item. Replacement parts return into the property of HARGASSNER and shall be sent back - free of charge.
- 10.12. The warranty claims expire if replacement or replacement work has not been carried out by HARGASSNER Customer Service or through a certified and authorized HARGASSNER service partner.
- 10.13. HARGASSNER accepts no liability for consequential damages.

11. Voluntary Warranty

- 11.1. The voluntary warranty granted by HARGASSNER is a special extended and voluntary service by HARGASSNER - there is no legal claim for it.
- 11.2. The commissioning of the boiler must be performed by a HARGASSNER technician or a professional with Hargassner Commissioning Certificate for the adequate product series. If this does not occur, the voluntary warranty claim is invalidated.
- 11.3. The voluntary warranty claims expire if replacement or replacement work has not been carried out by HARGASSNER Customer Service or through a certified and authorized HARGASSNER service partner.
- 11.4. The detailed voluntary warranty conditions are set out in the respective current warranty conditions (which are included with the goods).

12. Intellectual Property

- 12.1. Drawings, drafts, technical documents, leaflets, pictures, trade marks, price information are the intellectual property of HARGASSNER and must not be copied or disclosed to third parties without prior written consent by HARGASSNER. This also includes publication in the world wide web.

13. Exclusions from liability

- 13.1. HARGASSNER can be held liable for damages outside of the applicability of the product liability law only in cases of intent or gross negligence. Gross negligence or intent must be proved by the customer. Liability for slight negligence is foreclosed, as is compensation for consequential damage and financial loss, failure to realise savings or profit, losses from interest and damages from third party claims against the customer Claims are in any event limited to a 18-month period from damage and liable party. Any liability claim which goes beyond this scope, regardless of the legal reason, is precluded.
- 13.2. Within the applicability of the product liability law, HARGASSNER will be liable for personal damage and for material damage suffered by customers. HARGASSNER will not be liable for material damage suffered by companies. Regress by the customer as defined in § 933b ABGB (Austrian General Law) is excluded. Claims are in any event limited to a three-year period after delivery.
- 13.3. The parties to a contract also mutually renounce all claims for any damages covered by an insurance held by the damaged party. This renunciation will not extend to damages inflicted by intent or gross negligence or if the insurer would be exempt from indemnification as a consequence of such renunciation.

14. Court of jurisdiction

- 14.1. All disputes arising directly or indirectly from contracts will be regulated at the appropriate court of HARGASSNER Ges mbH in 4952 Weng im Innkreis in Austria. HARGASSNER can, however, also call another court responsible for the customer.
- 14.2. The contract is subject to Austrian law upon exclusion of the UN Sales Convention.
- 14.3. The place of performance for deliveries and payments shall be HARGASSNER Ges mbH in 4952 Weng im Innkreis, even if delivery occurs elsewhere as agreed.

15. Data Privacy Assent

- 15.1. The customer expressly agrees that collection, processing and use of personal data provided by the customer be used by HARGASSNER for marketing purposes by installation of a customer data base and related activities. This assent specifically includes information transfer for purposes of advertising by fax, letter, email or any other method. This assent can be withdrawn by customers at all times with immediate effect for the future.

16. Final Provisions

- 16.1. In case one or more of the stipulations herein or in a contract become invalid in full or in part, validity of the remaining stipulations will remain untouched. Fully or partly invalid stipulations will be considered replaced by provisions whose economical success approximates closest the original stipulation(s).
- 16.2. All changes or amendments of contracts between HARGASSNER and customers must be in writing, including the agreement to waive this stipulation. All declarations by HARGASSNER will only be legally binding if they are issued in writing by staff of the HARGASSNER principal office in Weng, Austria.
- 16.3. This document is just an English translation of the German "Allgemeine Geschäftsbedingungen" and should support to understand the general terms and conditions. In any case – only the German document is legally valid.