

General Terms and Conditions of Sale and Delivery of the HARGASSNER Group

Publication date: 11/2024

1. General information

- The following General Terms and Conditions of Sale and Delivery apply for all business relations and contracts relating to purchasing, planning, delivery, assembly and commissioning (in particular to quotations, purchase contracts, delivery contracts, contracts for work, assembly contracts, other services, etc.) concluded between all companies of the HARGASSNER Group (hereinafter referred to as HARGASSNER), which in addition to HARGASSNER Ges mbH includes all subsidiaries and affiliated companies, in particular GILLES Energie- und Umwelttechnik GmbH and Co KG, and the customer and to which the customer expressly agrees on placing its order. The version valid at the time of conclusion of the contract shall apply. By placing an order with HARGASSNER, the customer recognises this version as binding for the customer. Deviating, conflicting or supplementary contractual terms and conditions shall not become part of the contract, even if known, unless HARGASSNER expressly agrees to their validity in writing. If agreements or conditions deviating from these General Terms and Conditions of Sale and Delivery are made in the contract, the contractual provisions shall take precedence. HARGASSNER contracts exclusively on the basis of these General Terms and Conditions of Sale and Delivery.
- These GTC also apply to partial services that are provided in the scope of a main contract. In particular, they shall apply to any planning, delivery, assembly or commissioning agreed as part of an overall system, even if provided as an independent service.
- Deviating special agreements or conditions require our express mutual written consent. Such individual provisions shall not affect the validity of the remaining provisions of these GTC.
- We reserve the right to amend these GTC at any time. Such amendments will be communicated to the customer in an appropriate manner and shall apply to all future contracts concluded from the time of notification, unless the customer objects to the validity of the amended GTC in writing within 14 days.
- Should individual provisions of these terms of business become invalid, ineffective or void, the validity of the remaining provisions shall remain unaffected.
- These General Terms and Conditions of Sale and Delivery shall only apply to business transactions with consumers to the extent that they do not violate the mandatory provisions of the Consumer Protection Act. In such a case, the respective statutory provision shall replace the invalid clause. If the customer is a consumer within the meaning of the Austrian Consumer Protection Act (KSchG), then the customer is obliged to inform us immediately, otherwise the customer will be liable for any resulting damages.

2. Quotations, prices

- All prices quoted by HARGASSNER in quotations and price lists are subject to change and net prices in euros without value added tax, unless expressly stated that statutory value added tax is included. Value added tax will be charged separately in line with the legal requirements in effect on the day of delivery or provision of service. HARGASSNER reserves the right to make technical and other changes within reasonable limits.
- The agreed prices for requested deliveries according to Incoterms 2020 EXW or FCA "place of dispatch" are net fixed prices including transport packaging. For transactions requested for quotation with Incoterms 2020 CPT, CIF, DAT or DAP "place of receipt", the transport costs must be included in addition to the net fixed prices including transport packaging.
- If a customer's order does not contain any price information, the HARGASSNER price lists applicable on the date of receipt of the order shall apply to this order.
- Cost estimates are prepared to the best of our knowledge, but are non-binding and no guarantee is given for their accuracy. Changes to the order or additional orders may be invoiced at reasonable prices; cost estimates are provided free of charge.
- If delivery is made after the agreed delivery date – without HARGASSNER being culpably responsible for a delay in delivery – HARGASSNER shall be entitled to increase the agreed prices accordingly. This price adjustment shall take into account the change in the wage costs agreed through collective bargaining or other costs necessary for providing services, such as the costs for materials, energy, transportation, financing of third party work, etc., between the agreed and the actual delivery date.
- Export deliveries are always invoiced in euros and must also be paid in euros. If a different currency is expressly agreed, invoicing shall be based on the exchange rate to the euro on the day of order confirmation by HARGASSNER. Only the price calculation of the Austrian banks is relevant for this calculation.
- Obvious errors shall entitle us to cancel the contract or to make reasonable changes to the agreed prices at any time at our discretion.

3. Acceptance of order, basis of order

- Whenever an order is placed with HARGASSNER, a contract shall only be concluded by written confirmation of order, or by delivery of goods/installation, or by HARGASSNER sending the invoice, or by conclusion of a separate contract signed by both contracting parties. When placing the order, the customer is obliged to completely and correctly provide or disclose all documentation and details necessary for the production and commissioning of the goods (disclosure of details of accessories, heating and storage space planning, etc.).
- Until an order is accepted (by means of order confirmation/contract) or rejected by us, the customer is bound to its order for 10 working days. Withdrawal from the order within this period is only possible with our written consent.
- Any additional costs due to deviations of the actual conditions from the documentation or plans provided by the customer as well as additional costs due to delays in providing the documents shall be borne by the customer. Changes to the order after acceptance are only possible by mutual agreement and in writing.
- If the delivery item has not yet been determined in all its details (in particular the technical design and delivery date) at the time of the order, a provisional confirmation of order will be issued. In this case, the order is deemed to have been provisionally accepted – in accordance with the details specified in the order.
- The customer is obliged to provide details of the order (disclosure of details of accessories, heating and storage space planning, etc.) at least 21 days before the desired delivery date such that the delivery deadlines can be met. Once the details have been communicated, a final order confirmation will be issued; this shall make the content of the contract binding unless the customer immediately in writing without delay. In case of an objection, the delivery contract shall remain valid in any case in accordance with the order data received. In the event of a change to an order after provisional confirmation of order, the prices shall be adjusted to reflect a previous cost estimate if this exists.
- The customer is obliged to cooperate in the providing of services and must in particular fulfil its advance performance obligations in a timely and complete manner. We are not obliged to communicate the deadlines for the fulfilment of the customer's performance and cooperation obligations to the customer. The customer shall compensate us for all costs and other financial disadvantages caused by the customer's failure to fulfil its performance and cooperation obligations on time and/or in full.
- The customer must obtain or arrange for permits, approvals from or notifications to authorities, offices or other third parties required for the goods/installation at its own expense.
- We are permitted to make changes to the service rendered in particular and in any case if the changed service is equivalent to the originally agreed service in terms of quality and quantity, or if changes are necessary due to local and/or structural conditions and/or official and/or technical requirements.
- We reserve the right to check the customer's creditworthiness before accepting an order. If the customer is not creditworthy, we may withdraw from the contract without any claims being asserted against us.
- After our acceptance of the order, changes or cancellations are only possible with our express written consent. In the event of cancellation, the customer is obliged to pay the costs incurred up to that point as well as a reasonable cancellation fee of 20% of the order value, without prejudice to our right to claim further damages.

4. Shipment, delivery

- The place of fulfillment for delivery and payment is the company headquarters of HARGASSNER Ges mbH Anton Hargassner Str. 1 in 4952 Weng im Innkreis, Austria.
- If the customer is obliged to provide advance services (e.g., effecting payments, obtaining official approvals, erecting buildings, installing equipment, laying cables, providing planning documents, etc.), the delivery and assembly lead times and deadlines shall be extended by the period by which the customer is late in providing these advance services.
- If several delivery and assembly lead times and deadlines are specified, the earlier deadlines are only approximate guidelines from which no legal consequences can be derived. The specified deadlines are only binding if expressly confirmed in writing.
- If the customer requests a change to the goods, whether technical, commercial or in terms of deadlines, any delivery lead times and deadlines that may have been agreed as binding shall no longer apply. In this case, we are entitled to unilaterally announce new delivery and assembly lead times and deadlines.
- If delivery has been agreed between HARGASSNER and the customer, this shall be at the customer's expense and risk, unless otherwise agreed in writing. Unless otherwise agreed in writing, the price risk shall transfer to the customer upon shipment of the goods or, if the customer is in default of acceptance, upon readiness for shipment on the part of HARGASSNER.
- Should an agreed delivery date not be met for whatever reason, HARGASSNER or its authorised forwarding agent shall agree a reasonable grace period with the customer. Any liability on the part of HARGASSNER for exceeding delivery lead times is excluded.
- If the customer – even though no fault of its own – is in default with acceptance of the deliverable or refuses to accept delivery, HARGASSNER shall be entitled to demand the customary local costs for storage, delivery and processing overheads. This shall not affect the customer's obligation to pay the purchase price. In addition, HARGASSNER shall be entitled to withdraw from the delivery contract and the customer shall pay the difference between the agreed price and the expected proceeds from the realisation of the delivery item.
- If collection has been agreed, the customer shall pick up the goods within 14 days of shipment readiness notification by HARGASSNER. The goods are deemed to have been delivered after the 14-day period, irrespective of whether the goods have actually been collected.
- If delivery has been agreed, the goods shall be deemed to have been delivered:
 - upon delivery of the goods by HARGASSNER with signature of the counterfoil;
 - on handover of the goods to a transportation company by HARGASSNER.
- The customer must inspect all deliveries without delay. Complaints must reach HARGASSNER in writing within 5 days.

- If HARGASSNER organises the delivery, HARGASSNER shall choose whether to use its own heavy goods vehicles or a freight carrier. HARGASSNER shall also select the freight carrier at its best discretion, without assuming any liability for the cheapest and fastest transportation. Specified delivery times are always non-binding unless otherwise expressly agreed in writing.
- The agreed delivery and assembly lead times and deadlines shall always commence on the date of the confirmation of order, unless agreed to the contrary in individual cases. If the documents required for production are not available to HARGASSNER at this point in time (at the start of the lead time), the delivery lead time shall commence on the day on which the last document required for production is received by HARGASSNER. The customer is obliged to ensure that these documents are delivered in good time. Delivery deadlines (delivery lead times) shall be extended by the periods of delay in delivery for which HARGASSNER is not responsible. If the customer is obliged to make a down payment, the delivery lead time shall not commence before the day on which the down payment is received.
- The dates and deadlines stated in the confirmation of order/contract are agreed to the best of our knowledge and assuming normal conditions. In the event of incidents such as, and in particular, the lack of means of transport, operational disruptions, strikes, confiscations, delay in delivery by a subcontractor, delay in transport or delay in the delivery of raw materials and components, unforeseen or foreseeable difficulties with border clearance and import or export customs clearance, pandemic/epidemic (force majeure), the delivery and assembly lead times and deadlines shall be extended in each case in the sense of item 4.14 without this entitling the customer to withdraw from the contract or to assert claims of any kind whatsoever.
- If assembly has begun and weather conditions or other reasons beyond HARGASSNER's sphere of influence prevent further assembly and completion of the system, the delivery and assembly lead times and deadlines shall be extended by the duration of the hindrance, plus a reasonable period for the resumption of work, plus a potential postponement due to unfavourable seasonal conditions.

5. Payment

- Payments shall be effected in accordance with the terms of payment stated in the invoice. If there is no written agreement on terms of payment between the contracting parties, payments of the invoice amounts are due without deduction immediately upon receipt of the invoice. Bills of exchange or cheques will only be accepted on the basis of a special written agreement and only as payments on account.
 - All prices are quoted ex works in euros plus statutory VAT. Additional costs, in particular for packaging, transportation, insurance, fees, taxes, duties, customs duties, etc., will be charged for separately. All domestic and foreign ancillary costs incurred in connection with the delivery shall be borne by the customer.
 - The place of fulfillment for payment is the company headquarters of HARGASSNER Ges mbH Anton Hargassner Str. 1 in 4952 Weng im Innkreis, Austria.
 - If the customer is in default of payment, the statutory default interest for businesses (Section 456 UGB (Austrian Corporation Code)) shall become due. The consequences of default shall come into effect even without HARGASSNER previously issuing a reminder or setting a grace period. In this case, HARGASSNER shall be entitled to make the further fulfilment of the contract dependent on advance payment, or bank security of the agreed price, or to withdraw from the contract altogether. Agreed delivery and assembly deadlines and/or dates shall become invalid if the customer is in default of payment.
 - Offsetting by the customer is excluded, except for claims recognised by HARGASSNER in writing or legally established.
 - Costs incurred for reminders, collection and debt collection shall be reimbursed by the customer.
 - Incoming payments shall first be offset against compound interest, interest and ancillary charges, and pre-litigation costs, such as the costs of legal counsel and collection agency, and shall only then be offset against the outstanding amount, starting with the oldest debt.
 - The customer is not entitled to withhold payments due to warranty claims or alleged defects or other counterclaims not recognised by HARGASSNER in writing. The assignment of claims of the customer against HARGASSNER to third parties, and the transfer of rights and obligations arising from the concluded contract, are not permitted without the prior written consent of HARGASSNER.
 - Bank charges shall be borne by the customer and are due for payment immediately.
 - Payments shall only have debt-discharging effect upon receipt or when credited to our account.
 - The opening of insolvency proceedings against the customer's assets, the discovery of circumstances which jeopardise or complicate the collection of our claims, or which raise doubt concerning the customer's solvency, or the receipt of information about the customer's financial and/or income situation which is unfavourable in HARGASSNER's opinion, shall entitle HARGASSNER, without prejudice to other rights, to demand appropriate securities or to withdraw from the contract without setting a grace period and to demand immediate payment of all claims, even if bills of exchange or cheques have been accepted or the right to pay in instalments has been granted.
 - The customer shall not be entitled to set off claims of HARGASSNER arising from or in connection with this contract against claims of the customer against HARGASSNER or HARGASSNER's affiliated companies or to exercise rights of retention in this respect.
- ## 6. Returned goods
- Goods that have already been delivered but are not defective (returned goods) may be taken back in exceptional cases by agreement if the goods are in impeccable condition. The return shipment must be made at the customer's own expense and risk. Any damage to the goods by the customer or carrier will always rule out the option of returning the goods.
 - A copy of the original invoice or the delivery bill must be enclosed with the returned goods; this merely constitutes an offer from the customer to accept the returned goods. If the returned goods are found to be without complaint after quality control by HARGASSNER, a credit note shall be issued for this; at the same time, the credit note shall be deemed equivalent to acceptance of the return offer by HARGASSNER. If the goods are not in perfect condition or are outdated, HARGASSNER reserves the right to reject the offer or to reimburse only a partial amount in the form of a credit note.
 - HARGASSNER reserves the right to charge a reasonable handling fee for the return.
 - A credit note can only be issued if a copy of the original invoice or the delivery note is enclosed with the return shipment.
 - Returning of individual components from article sets (parts of flue pipe sets, etc.), boilers and custom-made products is not possible.
 - Items delivered more than 6 months ago will not be taken back.
 - HARGASSNER may dispose of goods returned to us which are not in perfect condition, or which are no longer part of the HARGASSNER delivery program and which we therefore cannot take back.

7. Withdrawal and default

- If the customer does not fulfil the contract or is in default, HARGASSNER shall be entitled to withdraw from the contract after setting a grace period of 2 weeks. The right to withdraw from the contract can also be declared with regard to a part of the deliverable. In such a case, HARGASSNER shall be obliged to deliver the part of the deliverable not affected by the withdrawal and the customer shall be obliged to effect payment for this part.
- The occurrence of a delay in delivery and/or assembly shall in any case require the written agreement of binding delivery and assembly lead times and deadlines, a written reminder setting a reasonable grace period of at least 4 weeks by the customer and the fruitless expiry of this grace period.
- If the customer demonstrably suffers damage due to a delay in delivery for which HARGASSNER is grossly responsible, and this must be proven by the customer, the customer shall be entitled to compensation for the damage in the maximum amount of 5% of the deliverable. Claims going beyond this are ruled out.
- In the event of default within the meaning of section 7.2, the customer must declare in writing by registered letter within 10 working days of our request that it is withdrawing from the contract. Otherwise, the customer shall not be entitled to withdraw from the contract or to claim damages of any kind.
- The risk of accidental loss or deterioration of the system delivered by HARGASSNER shall transfer to the customer at the latest upon receipt and/or acceptance (legal fiction) as per Section 9, that is,
- If the customer withdraws from the contract without being entitled to do so or requests the rescission of the contract, then HARGASSNER shall be entitled to choose between insisting on fulfilment of the contract or agreeing to the rescission of the contract, in which case, a contractual penalty of 20% of the gross invoice amount shall be deemed agreed. Any further claims for damages shall remain unaffected by this.
- If HARGASSNER exercises its right of withdrawal for reasons for which the customer is responsible, even if the customer is not at fault, the customer shall reimburse HARGASSNER for any advance services rendered by HARGASSNER in the course of performance of the contract (procurement of materials, special services, labour costs, etc.). HARGASSNER shall have the option to charge a lump sum of 25% of the gross order value for the preliminary services without having to provide specific evidence of individual services. Custom-made products already produced by HARGASSNER shall be fully remunerated less assembly and delivery costs.
- In cases of force majeure, HARGASSNER shall be released from the obligation to deliver for the duration of the hindrance and its after-effects and shall be entitled to withdraw from the contract. Force majeure events include, in particular, all effects of natural forces such as earthquakes, lightning, frost, storms, floods, epidemics, pandemics; furthermore, war, legislation, official interventions, such as in particular officially ordered plant closures, including partial closures, confiscation, transport disruptions, export, import and transit bans, international payment restrictions, shortages of raw materials and energy as well as operational disruptions such as explosions, fire, strikes, sabotage, and all other events that could only be prevented at disproportionate cost or by economically unreasonable means.
- In the event of other important reasons, such as - in particular - the opening of insolvency proceedings or rejection for lack of assets, qualified default of payment by the customer, etc., HARGASSNER shall be entitled to withdraw from the contract, unless it has been fulfilled in full by both parties.

8. Retention of title

- All deliveries are subject to retention of title. The delivered goods shall remain the property of HARGASSNER until all liabilities and obligations of the customer towards HARGASSNER, including those from previous deliveries, have been fulfilled in full.

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- 8.2. If goods which have not yet been transferred to the customer's ownership are combined with another object such that a new object is created, HARGASSNER shall acquire co-ownership of this object to the extent of the value of the claim that HARGASSNER has against the customer.
- 8.3. Should the customer use the goods subject to retention of title to fulfil a contract for work and services or a contract for work and materials, the claim arising from the contract for work and services or contract for work and materials shall be assigned to HARGASSNER in advance to the same extent.
- 8.4. The customer may only resell the goods delivered under retention of title if these goods are designated merchandise, or if the retention of title has expired due to payment, or if HARGASSNER expressly agrees. If the goods are resold, the customer shall assign to HARGASSNER the claims arising from the sale of the goods subject to retention of title. The customer shall be obliged to indicate the assignment by making a note in its books and, at HARGASSNER's request, to disclose the names of the purchase price debtors and to specify the assigned claims in exact figures. HARGASSNER will accept the assignment. The customer shall bear any fees or taxes arising in the context of the assignment and shall indemnify and hold HARGASSNER harmless in this respect. HARGASSNER is entitled at any time to disclose the assignment and to collect the assigned claims itself.
- 8.5. The customer is obliged to keep the goods subject to retention of title sufficiently insured against the usual risks such as natural hazards and to demonstrate this insurance to HARGASSNER upon request. The customer hereby assigns any insurance claims to HARGASSNER. Furthermore, the customer is obliged to store the goods in accordance with HARGASSNER's instructions and the state of the art. The customer is obliged to treat the goods with care for the duration of the retention of title.
- 8.6. Until the agreed remuneration has been paid in full, the customer is not entitled to resell, pledge or otherwise transfer the system to third parties. If goods which have not yet become the property of the customer are nevertheless seized or otherwise claimed by third parties, the customer shall immediately notify HARGASSNER of this in writing and shall assist HARGASSNER in asserting its rights and bear the associated costs, provided that the customer is responsible for jeopardising HARGASSNER's retention of title.
- 8.7. HARGASSNER may take back or dismantle objects to which HARGASSNER retains title without this being deemed a withdrawal from the contract.
- 9. Delivery and completion notification, (partial) acceptance of the system**
- 9.1. Once HARGASSNER has notified the customer of readiness for delivery, the customer is obliged to confirm the fulfilment of its advance performance obligation – if any – in writing within 3 working days.
- 9.2. Following notification of readiness for delivery, if the start of assembly is delayed for reasons beyond HARGASSNER's control, HARGASSNER shall be entitled to set the customer a one-off deadline of 5 working days for acceptance of its performance (start of assembly) and, if this deadline expires without result, to withdraw from the contract or to adhere to it and claim damages for the delay.
- 9.3. The completion of the system shall be communicated to the customer by means of a notice of completion. After completion of the system, a trial run shall be carried out, provided this has been agreed in the individual contract; all essential operational and functional properties of the system are tested during the trial run. The trial run shall be deemed to be free from complaint if the system is operational and functional and there are no significant functional defects.
- 9.4. After concluding the trial run (if agreed) or after completion of the system, HARGASSNER shall inform the customer that the system is ready for acceptance. If the customer fails to accept within a period of 2 weeks after receipt of the notification of readiness for acceptance without the customer having notified us in writing that it is prevented from carrying out the acceptance for objectively justified reasons, the system shall be deemed to have been accepted (= fictitious acceptance).
- 9.5. The system shall also be deemed to have been accepted without defects as soon as the customer autonomously puts it into use, including partial use (= fictitious acceptance).
- 9.6. In all other cases, acceptance shall be effected by means of a written acceptance report signed by both parties. If the customer refuses to sign the acceptance report, it shall be sent to him by email/fax/letter. The content of the communicated acceptance report shall be deemed to have been confirmed and accepted by the customer if the customer does not notify us in writing and in a verifiable manner within 5 working days of all reasons for not signing the acceptance report.
- 9.7. Minor defects which do not significantly impair the functionality of the system do not entitle the customer to refuse acceptance.
- 9.8. Where subfunctions of the system can be used independently and are ready for acceptance, the customer is obliged to accept such subfunctions. The present GTC shall apply mutatis mutandis for partial services, in particular partial assembly and partial completion.
- 10. Notice of defects**
- 10.1. The customer must inspect the delivered goods immediately for defects. The customer must notify HARGASSNER in writing of incomplete or defective deliveries and of complaints relating to visible defects immediately after receipt/acceptance/fictitious acceptance of the goods. The customer must notify HARGASSNER of non-visible defects and faults immediately after their discovery, and in the case of defects capable of detection upon immediate inspection of the system, within 5 working days from (fictitious) acceptance at the latest.
- 10.2. The nature and extent of the alleged defect must be clearly identifiable from the complaint. If defects and faults are not notified in good time, the delivery shall be deemed to have been approved and the assertion of warranty, error and compensation claims (including compensation claims for consequential damages) shall be ruled out.
- 11. Warranty**
- 11.1. The warranty period begins with (fictitious) acceptance of the goods in accordance with section 9, or with delivery ex works or with shipment, if this is carried out by us and no acceptance has been agreed. Statutory provisions apply to consumers.
- 11.2. The installation must be carried out by a Hargassner Technical Service organisation or a technician possessing a Hargassner commissioning certificate for the product in question. If this requirement is not complied with, claims against warranty claim are void.
- 11.3. For those parts of the goods purchased from subcontractors, HARGASSNER shall only be liable within the scope of the warranty to which HARGASSNER itself is entitled against the subcontractor.
- 11.4. If the goods have defects despite appropriate and technically correct installation/assembly and use, which are in compliance with the performance specification of the product, then HARGASSNER shall provide a warranty, however, only to the customer and not to a third party.
- 11.5. HARGASSNER only provides a warranty for the properties of the system expressly confirmed in writing. Deviations which do not essentially impair the intended use of the system are not defects.
- 11.6. The operating manual (operating and installation instructions) and/or operating conditions for the deliverable, the maintenance and service schedules, and the legal framework conditions to be complied with are elements of the performance specification which are essential for correct operation of the deliverable.
- 11.7. HARGASSNER shall be released from this obligation to provide warranty if the damage is not reported to HARGASSNER in writing by a certified HARGASSNER service partner within 5 days of the defect being discovered and before any repair work is started.
- 11.8. HARGASSNER shall only provide warranty if the customer proves that the defect was present at the time of handover and if HARGASSNER is notified of the defect in writing without delay, but at the latest within 5 days of discovery of the defect including a precise description of the defect and before any repair work is commenced; this also assumes that the prescribed maintenance work has been carried out in a compliant manner and on time. The nature and extent of the alleged defect must be clearly identifiable from the notification.
- 11.9. Where goods achieve the warranted properties, the service provision is free of complaint. The warranted properties of the goods are exclusively such properties as were expressly agreed in writing as "warranted properties" between HARGASSNER and the customer.
- 11.10. HARGASSNER provides a warranty for the delivered goods for a period of one year from the date of delivery and/or acceptance (legal fiction), provided that the goods are used for their intended purpose and unless otherwise agreed in individual contracts. The legal warranty provisions apply for consumers. This does not apply to damage caused by force majeure, non-compliant transportation or storage, operator error, lack of energy, lack of water, etc. The elimination of any defects shall not extend the warranty period or any guarantee periods agreed in writing.
- 11.11. The warranty obligation shall only apply to defects that impair usability and that occur despite compliance with the intended operating, maintenance and installation instructions for the system and its software. Parts subject to natural wear and tear, such as seals, mounting plates, refractory bricks, grates, packing glands, etc., and operating materials are not covered by the warranty. Normal, natural wear of fire-proof linings that does not cause a malfunction, such as minor surface and edge erosion, cracking, etc., are ruled out from claims under warranty. Warranty claims are also ruled out for defects caused by unsuitable or unintended use, overuse, incorrect or negligent handling, unauthorised use or modification of the delivered software, use of untrained personnel, force majeure, etc., and for damage or defects attributable to old or third-party items (e.g., existing wiring or preparatory work).
- 11.12. If the customer provides old or third-party stock (in particular systems, cables, preparatory work, etc.) or data or information about it, claims against HARGASSNER for warranty/liability relating to this old or third-party stock and associated data/information shall be ruled out. The old or third-party stock must be provided by the customer in a safe and technically impeccable condition; the customer alone is liable for this.
- 11.13. In the event of a warranty claim, HARGASSNER shall, at its own expense and at its own discretion, either:
- 11.13.1. improve the goods,
- 11.13.2. effect a replacement delivery (exchange),
- 11.13.3. or take back the goods and refund the purchase price.
- 11.14. HARGASSNER reserves the right to choose the respective warranty remedy. If HARGASSNER fails to fulfil its warranty obligation within a reasonable period of time, the customer shall be entitled to a reasonable price reduction or to withdraw from the contract. Any activity carried out by HARGASSNER due to unjustified complaints shall be deemed to be an order of the deliverables of which the customer must pay for. Claims for compensation for installation and removal costs, business interruptions, loss of production or loss of profit are expressly ruled out to the extent permitted by law. However, the customer shall in any case notify HARGASSNER in good time before any attempt at improvement intended by itself in order to determine the appropriateness of the warranty remedy and to obtain HARGASSNER's written consent for this, otherwise the customer shall void all claims arising from this.
- 11.15. The same warranty period applies to spare parts and repairs supplied free of charge as for the original deliverable, but limited in terms of time until the end of the warranty period for the original deliverable. Replacement parts shall become the property of HARGASSNER and shall be sent to HARGASSNER free of charge.
- 11.16. Warranty claims shall be voided if repair or replacement work is not carried out by HARGASSNER customer service or a certified or authorised HARGASSNER service partner.
- 11.17. HARGASSNER accepts no liability for consequential damage.
- 11.18. Claims and entitlements arising from the warranty and/or guarantee must be asserted by the customer in court within 6 months of becoming aware of them, otherwise they shall be precluded.
- 12. Guarantee**
- 12.1. The guarantee provided by HARGASSNER is a voluntary service on the part of HARGASSNER – there is therefore no basis for legal claims.
- 12.2. The installation must be carried out by a Hargassner Technical Service organisation or a technician possessing a Hargassner commissioning certificate for the product in question. If this requirement is not complied with, the guarantee is void.
- 12.3. Claims under guarantee shall be voided if repair or replacement work is not carried out by HARGASSNER customer service or a certified or authorised HARGASSNER service partner.
- 12.4. The detailed guarantee conditions can be found in the current guarantee conditions, which are published separately (enclosed with the goods).
- 13. Intellectual property**
- 13.1. Plans, sketches, technical documentation, brochures, illustrations, price information, etc., are the intellectual property of HARGASSNER and may not be reproduced or made accessible to third parties without the written consent of HARGASSNER. This also includes publication on the internet.
- 14. Damages, liability**
- 14.1. HARGASSNER shall only be liable for claims for damages outside the scope of application of the Product Liability Act insofar as these were caused intentionally or through gross negligence on the part of HARGASSNER. The existence of gross negligence must be proven by the customer. Liability for slight negligence is excluded, as is compensation for consequential damages and financial loss, unrealised savings, loss of profit, business interruption, loss of production or other indirect damage, loss of interest and damage arising from third-party claims against the customer, as well as consulting errors or incorrect information provided that these were not caused by gross negligence, damage caused by incorrect operation or unauthorised modifications to the system by the customer or third parties.
- 14.2. Claims for compensation expire 12 months after knowledge of the damage and the damaging party. Any further claims, irrespective of title, are excluded to the extent permitted by law.
- 14.3. Within the scope of application of the Product Liability Act, HARGASSNER shall be liable for injury to persons and damage to property suffered by a consumer. HARGASSNER shall not be liable for damage to property suffered by an entrepreneur. Additionally, recourse on the part of the customer in accordance with Section 933b Austrian Civil Code (ABGB) and Section 12 Product Liability Act is ruled out. In any case, claims for damages shall lapse no later than three years after delivery.
- 14.4. Claims for damages for losses covered by the injured party's insurance are excluded by mutual agreement. This waiver shall not apply to damage caused intentionally or by gross negligence or insofar as the insurer would be released from liability as a result of such a waiver.
- 14.5. In the event that the agreed limitations of liability prove to be wholly or partially legally invalid, HARGASSNER's liability shall in any case be limited to the extent permitted by law.
- 14.6. HARGASSNER's liability shall be ruled out in all cases of force majeure. Force majeure shall be understood to mean unforeseeable events of an extraordinary nature which are beyond the control of the contracting parties. Force majeure includes, but is not limited to, natural disasters such as earthquakes, floods, hurricanes, avalanches, lightning, forest fires, extreme weather conditions, volcanic eruptions; health and pandemic cases, such as epidemics, pandemics, quarantines, government-imposed measures such as lockdowns or business closures; political and social events, such as wars, armed conflicts, acts of terrorism, revolutions, embargoes, blockades, strikes, uprisings; official measures, such as confiscations, import or export bans, changes to the legal framework that have a significant impact on the fulfilment of the contract; technological and economic disruptions, such as IT system failures, cyberattacks, supply chain disruptions, raw material shortages, transportation barriers
- If the fulfilment of the contract becomes impossible or unreasonably difficult in whole or in part due to a force majeure event, the affected contractual parties shall be released from their obligations for the duration of the hindrance and a reasonable subsequent period. Obligations to pay shall remain unaffected by this, except where payment itself is impaired by the force majeure event. The affected party must immediately inform the other party in writing of the occurrence and the expected duration and impact of the event. If the hindrance lasts for longer than 60 days, either party is entitled to withdraw from the contract without any obligation to pay compensation. Services already rendered shall be remunerated appropriately. Alternatively, the parties may agree on an appropriate adjustment to the contract.
- Liability for damages or disadvantages caused directly or indirectly by force majeure is ruled out. This also applies to delays or to the non-fulfilment of obligations caused by subcontractors or suppliers who are themselves affected by force majeure.
- 15. Place of jurisdiction, applicable law, place of performance**
- 15.1. The place of jurisdiction for all disputes arising directly or indirectly from the contract is the Austrian court with local and subject-matter jurisdiction for the registered office of HARGASSNER Ges mBh in 4952 Weng im Innkreis, Austria. However, HARGASSNER may also appeal to another court with jurisdiction for the customer.
- 15.2. The contract shall be governed by Austrian law excluding its conflict of law rules and excluding the UN Convention on Contracts for the International Sale of Goods.
- 15.3. The place of fulfilment for delivery and payment is the company headquarters of HARGASSNER Ges mBh in 4952 Weng im Innkreis, Austria, even if the handover takes place at a different location as agreed.
- 16. Data protection agreement**
- 16.1. The customer expressly agrees that HARGASSNER may collect, process and use the personal data already provided, or provided in the future, by the customer for marketing purposes, by setting up a customer file and in other ways. This consent specifically includes the transmission of information for the purpose of advertising by fax, letter, e-mail or any other method of transmission. HARGASSNER is entitled to transmit the data to third parties commissioned by HARGASSNER to carry out the order, to the extent that this is necessary to fulfil the customer's order. Beyond this, customer data will be treated confidentially and not passed on to third parties. The customer can revoke this consent at any time with effect for the future.
- 16.2. Personal data will only be stored for as long as necessary in order to fulfil the aforementioned purposes, or where legal retention periods exist.
- 16.3. Customers have the right to information, rectification, deletion, limitation of processing, data portability and objection in accordance with the GDPR. Requests relating to this can be addressed to us. Complaints can be filed with the Austrian Data Protection Authority.
- 16.4. Where data processing is based on consent, this consent can be revoked at any time with effect for the future.
- 16.5. We reserve the right to adapt this data protection policy if necessary, e.g., in the event of changes to legal requirements.
- 17. Final provisions**
- 17.1. Should individual provisions of the contract or of these terms and conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be deemed replaced by a provision whose economic effect comes as close as possible to that of the invalid provision.
- 17.2. All amendments and supplements to contracts between HARGASSNER and the customer must be made in writing; this shall also apply to any waiver of the written form requirement. All statements by HARGASSNER shall only be legally effective if they are issued in writing by the responsible employee.