

General Terms and Conditions of Sale and Delivery for Service

Preamble:

Hertwich Engineering GmbH (hereafter "Hertwich"), a company of the SMS group, is active worldwide in the design, supply, construction and commissioning of machinery and equipment for the aluminium industry, foremost aluminium casthouses.

I. General

All supplies and performances (including prospective ones) are based on these General Terms and Conditions, complemented by any separate signed contractual agreements. Any other terms and conditions, regardless of whether contradicting or supplementary, do not become part of the contract even if Hertwich does not expressly contradict them.

II. Quotation and conclusion of contract

The documents, such as illustrations, drawings, weights, and dimensions specified are only approximately relevant unless they have been expressly deemed as binding.

The right of ownership and copyright in respect of any intellectual property rights, cost estimates, drawings and other documents/information shall remain with Hertwich; these may not be used or made available to third parties without its express approval. The same shall apply to other technical details which are obtained from Hertwich's equipment or which Hertwich reveals to the customer in the quotation, in other correspondence or during negotiations.

All quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for Hertwich only in case of its written acceptance.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with Hertwich's written confirmation.

Hertwich shall be entitled to execute any contract in cooperation with subcontractors without the Buyer's approval.

III. Price, payment, security

The prices shall in the absence of a special agreement be valid FCA (Weng, 4952, Austria) Incoterm, including loading. Should there be an increase in the cost factors (including but not limited to prices of materials, operating materials, wages or freight) decisive for the pricing, Hertwich is entitled to adapt the price accordingly.

Unless otherwise agreed the following payment terms are valid:

50% of the equipment price as down payment upon receipt of order confirmation

50% of the equipment price upon notification of readiness for delivery

Services shall be paid as per actual time spent and according to the agreed rate.

When reimbursable expenses are defined in the respective offer (e.g. travel expenses, accommodation, visa, etc.), these shall be reimbursed together with the final invoice for services.

Payments must be made within a period of 14 days from date of invoice without deductions.

The Buyer is under no circumstances entitled to exercise a right of retention, not even if he has objections to the equipment. If payment of any sum payable is delayed, Hertwich shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be calculated at an annual rate of 6% above the rate of the main refinancing facility of the European Central Bank (ECB), without excluding further claims for damages in the event of delay on the part of the Buyer. After unsuccessful elapse of a reasonable grace period, Hertwich is entitled to terminate the contract and receive from Buyer the contract price minus expenditures saved.

Hertwich is entitled to request additional payment security from the Buyer at all times for its demands, insofar as sufficient security has not been provided or is no longer available.

All bank guarantees will be issued on the respective net-amount of the contract value notwithstanding any gross advance payment invoicing

IV. Duties, Taxes, etc.

Contractual prices are payable net without any deductions.

The contract price does not include any customs duties, local taxes, import duties, fees, levies, or other charges which may be brought on by authorities in the Buyer's country or any transit country. In case such taxes and dues are incurred, including source tax / withholding tax, they shall be borne and paid by the Buyer.

V. Delivery

The agreed delivery clauses shall be interpreted in line with the INCOTERMS 2020.

Should there not be any specific delivery clause, the subject of delivery shall be delivered FCA (Weng, 4952, Austria) Incoterm. Cost for packing will be paid by Buyer.

Partial deliveries are permitted, unless otherwise agreed.

The delivery period is defined by the individual agreement between both parties and is conditional to the clarification of all commercial and technical details, failing which, the delivery period shall be extended accordingly.

The delivery period commences with Hertwich's order acknowledgement, but its commencement shall be conditional to the receipt of the documents and approvals that ought to be provided by the Buyer (if applicable), as well as the receipt of the agreed down payment and payment securities (if applicable).

The delivery dates are deemed to have been met if the delivery item has left Hertwich's premises or a notification of readiness for shipment has been submitted within the delivery period.

Buyer must accept delivery of the equipment in case of defects, notwithstanding the rights under Section IX. A special examination for acceptance can be demanded by both parties only on the basis of an agreement in this respect. Buyer shall bear the costs of such examination.

If shipment is delayed because of circumstances attributable to the Buyer, Hertwich has the right to store the delivery item or have it stored by any other party at Buyer's expense and risk. The due date of the purchase price shall not be affected by the delay in shipment. Hertwich has the right to set the Buyer a grace period by acceptance and, in the event of unsuccessful expiry of said grace period to terminate the contract to use the delivery item for other purposes. The Buyer must reimburse to Hertwich any damage hereby incurred.

VI. Software

To the extent being comprised in our equipment, the ownership and intellectual property rights in software shall at all times remain vested in Hertwich. Hertwich shall grant to the Buyer a perpetual, non-exclusive, non-transferable and royalty free licence to use the software for the operation, repair and maintenance of the devices part of the scope of supply. Any further use shall be restricted.

Hertwich does not provide the Buyer with the source code. The Buyer shall neither have the right to reconstruct the source code nor to recompile the software nor to modify or reproduce the latter and the pertaining documentation. In no event shall the Buyer be entitled to remove references to the producer or creator of the software without Hertwich's prior written consent.

Hertwich's warranty for defects in software shall be limited to reproducible defects. Such warranty starts with making use of the software and remains in force for six (6) months. Buyer shall notify Hertwich about any defect ascertained without undue delay in writing. Hertwich shall be obliged to remedy such defects at its discretion either by repair or replacement of defective software.

Any damages resulting from misuse, wrong handling or through other circumstances beyond Hertwich's control shall be excluded from Hertwich's warranty.

VII. Insurance

At the Buyer's request, Hertwich can insure the delivery at Buyer's expense against damage caused by breakage, transport, fire and water.

VIII. Passage of risk and reservation of ownership

The risk shall pass to the Buyer at the latest with placing the parts at the Buyer's disposal inclusive partial shipments or other services, e.g., the shipment costs or transportation and erection/assembly.

The ownership of the delivery items shall pass to the Buyer only after receipt of all payments arising from the contract.

From the time of delivery to the transfer of ownership, Buyer must insure the delivery items against any infringement up to the full value. Buyer shall inform Hertwich immediately in case of seizure or any other infringement of its rights by third parties.

Insofar as the validity of the reservation of ownership is linked to formalities or other preconditions or is legally not possible outside the Republic of Austria, the Buyer shall ensure that a corresponding security is granted to Hertwich.

IX. Liability for defects

Hertwich warrants that the equipment is free of defects or bad workmanship.

Duration of warranty period is 12 months from delivery or 24 months from ordering, whichever ends earlier. The statutory period of limitations for claims of the Buyer due to defects and their consequences terminates at the same time as the warranty period stipulated above.

In case of defects Hertwich shall, at its discretion, either rectify such defect or repair, replace, or re-deliver the defective part of the equipment within an appropriate period of time. Of the direct expenses incurred by the rectification and/or substitute delivery, Hertwich shall bear – insofar as the objection proves to be justified – the costs of the replacement item, including shipment.

Hertwich shall not be liable, and the warranties stipulated in this Clause shall not apply, in case of:

- Faulty erection or commissioning by Buyer or third parties
- Improper handling/storage after delivery, incorrect or negligent operation or improper maintenance, unsuitable operation materials, substitute materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences insofar as these are not attributable to Hertwich, etc.
- Non-compliance with or improper implementation of Hertwich's recommendations during technical assistance
- For software: non reproducible defects
- Any alterations made by the Buyer or third parties without the written consent of Hertwich
- Normal wear and tear
- For Buyer's parts or parts not supplied, modified and/or repaired by Hertwich, and/or for parts which have been damaged through malfunction caused by foregoing

Any defects must be reported without undue delay of first occurrence but in any case, within 1 month of said occurrence or the rights for remedies shall expire.

Any further rights and/or remedies regarding defects of the delivered equipment of the Buyer shall be expressly excluded.

X. Liability

Hertwich's liability for indirect or consequential damages such as, but not limited to shutdown costs, loss of interest, or other indirect costs and any resulting claims for damages, as well as loss of production, loss of use, loss of information and data, loss of profit (regardless of they being deemed as direct or indirect damages) shall be expressly excluded irrespective of the legal basis of the claim.

Hertwich's overall aggregate total liability and responsibility arising out of or in connection with the contract, for any reason whatsoever, as well as for damage compensation including, but not limited to liquidated damages, warranty, non-performance and/or mal-performance, delay, indemnification, repayment, termination of the contract, and for all other claims based on the contractual relationship or under applicable law, shall be limited to an overall amount equal to 20% (twenty per cent) of the contract price.

This exclusion of liability does not apply to bodily injuries, illegal intent, or gross negligence.

The above is also valid for auxiliary personnel.

XI. Force Majeure

In case a party is affected by circumstances of Force Majeure, which shall include but not be limited to acts of God, governmental or administrative acts or omission, war (regardless of whether declared or not), warlike circumstances, mobilisation, riot, piracy, embargo, strike, lock-out, fire and flood, pandemic or epidemic, operating malfunctions or delays in the supply of essential raw and construction materials, either party shall be entitled to withhold further execution of its contractual obligations.

If the execution of the contract is delayed for more than four (4) months due to Force Majeure and the parties have not agreed on a new basis to continue the execution of the contract after said period, either party shall be entitled, if Force Majeure persists, to terminate the contract in writing. Hertwich's right to claim payment of the contract price and expenses for equipment provided until the beginning of Force Majeure shall survive such termination.

XII. Right of rescission

Hertwich is entitled to rescind from the contract in full or in part if it subsequently turns out that execution is impossible. A partial rescission is only possible if the Buyer agrees to it.

Buyer is not entitled to claim damages on account of such a rescission. Hertwich shall inform the Buyer hereof immediately after finding out about the implications of the event if an extension of the delivery period had initially been agreed upon with the Buyer. The right of rescission is also possible in this case.

XIII. Confidentiality

The parties undertake to keep secret any information which is made available to them in conjunction with the contractual relationship or within the scope of the business relationship and which is described as confidential or can be identified as a business or operating secret because of other circumstances and not to record or use them in any way unless appropriate for attaining the contractual purpose.

Buyer shall use any information and Know How received from Hertwich (whether in the form of technical drawings and documentation, or instructions given by the Hertwich's personnel, or conforming the equipment purchased under the contract) only for the operation at the Site of the single plant or equipment that is subject of the contractual relationship.

The Buyer is not allowed to use any information or intellectual property of Hertwich to monitor, investigate, dismantle, or test the products or objects of Hertwich (reverse engineering).

The Buyer shall be liable that the use of Buyer's information, data, documentation, know-how, etc. by Hertwich does not infringe any third parties' intellectual property rights and shall indemnify Hertwich for any related infringement.

XIV. Applicable Law

These terms and conditions and any contracts concluded hereunder shall be governed as follow: (a) in case that Buyer is located in Austria, by the substantive laws of Austria; (b) in case that Buyer is located outside of Austria, by the substantive laws of Switzerland. In both cases, under exclusion of conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any and all disputes arising out of or in connection with these terms and conditions and any contracts concluded hereunder shall be finally and exclusively settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules without recourse to the ordinary courts of law. Place of arbitration shall be Vienna, Austria. The language of the arbitration proceedings shall be English.

XV. Termination

Without prejudice to any other clause contained herein, the contractual relationship may be terminated for convenience by Hertwich.

XVI. Export Control

This quotation is issued subject to assessment for clearance by the Austrian Federal Ministry of Economy in terms of export to your country of the quoted scope of supply (export control).

The Buyer warrants that the supplied goods will not be (re-)exported to or for the use in Russia. If the Buyer (re-)exports the supplied goods to or for the use in Russia, Hertwich has the right to terminate the contract with immediate effect and will notify the competent authorities of the respective breach.

XVII. Miscellaneous

All of Hertwich's obligations and the Buyer's rights are stipulated exhaustively in these General Terms and Conditions; all claims for damages, price reduction, and cancellation of the contract or withdrawal from the contract that have not been expressly mentioned are excluded;

any additional application of rights and duties according to the applicable law shall be excluded.

In case any of the provisions of this contract is or becomes ineffective, invalid, or unenforceable, this shall not affect the validity or enforceability of the remaining provisions of this contract. The ineffective, invalid, or unenforceable provision shall be replaced by a legally valid and enforceable provision which is as close as possible to the will and intended purpose of the invalid and / or unenforceable provision and / or the will and intended purpose of the parties. The same shall apply respectively in case of omissions and/or ambiguities / discrepancies.

IN THE EVENT THAT INDIVIDUAL TERMS BECOME INEFFECTIVE BY COMPELLING LAW, ALL OTHER TERMS HEREIN SHALL REMAIN BINDING