

UniAir

UniBraz

UniCompact

UniGasket

UniSystem

UniTwist

UniWeld

UNEX Terms and Conditions – Sale and Delivery:

1. Preamble

1.1 All offers, sales and deliveries by UNEX Heatexchanger Engineering GmbH (UNEX) shall be exclusively governed by these Sale and Delivery Terms and Conditions in the then current version, also if not explicitly referred to. This shall also apply to any subsequent orders. The placing of an order shall in any case imply full acceptance of these Terms and Conditions.

1.2 Any deviating terms and conditions or modifications of these Terms and Conditions shall only be valid if made in writing. Oral declarations or declarations made by telephone shall only become valid if confirmed by UNEX in writing. Any deviating terms and conditions of the Purchaser shall not become part of the contract, unless explicitly agreed to by UNEX in writing.

1.3 For assembly projects, the Terms of Assembly of the Austrian Association for the Machine-Building and Steel Construction Industry shall apply complementarily.

2. Conclusion of Contract

2.1 The offers made by UNEX shall solely constitute an invitation to the Purchaser to place a certain order. A binding contract is only concluded if and when UNEX sends a written order confirmation after receipt of the order and the Purchaser does not verifiably object to such order confirmation within 10 days.

2.2 In addition, UNEX reserves the right to carry out an order only after a positive assessment of creditworthiness and/or in case of insufficient creditworthiness, only after receipt of full prepayment. In case the Purchaser does not effect such prepayment in a timely manner, UNEX shall be entitled to rescind the contract.

2.3 Any amendments to or modifications of the contract shall only be valid if confirmed by UNEX in writing.

2.4 In the event that import and/or export licenses or foreign-currency permits or similar authorizations are required for the performance of the contract, the party responsible for obtaining such documents shall undertake every reasonable effort to obtain the necessary licenses and permits in due time.

3. Drawings and Documents

3.1 The data on weights, measures, content, prices, performance and the like contained in catalogues, brochures, letters, advertisements, pictures and price lists shall only be definitive if the offer and/or the order confirmation explicitly refers to them.

3.2 Drawings, designs, cost estimates and other technical data and documents, which may also be part of the offer, as well as samples, catalogues, brochures, pictures and the like shall always remain the intellectual property of UNEX. Any use, copying, reproduction, dissemination and transfer to third parties thereof may only be affected with the express written approval of UNEX.

4. Packaging

4.1 Unless agreed otherwise

a) the listed prices shall be without packaging;

b) the goods are packaged according to normal trade practices in order to avoid damage to the goods on their way to their agreed destination under normal transport conditions, at the Purchaser's expense and packaging materials will only be taken back if so agreed.

5. Passage of Risk

5.1 Unless agreed otherwise, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).

5.2 Furthermore, the INCOTERMS shall apply in the version valid on the date the contract is concluded.

6. Period of Delivery

6.1 UNEX shall endeavor to comply with the stated periods of delivery. Unless agreed otherwise, the period of delivery shall begin at the latest of the following dates:

a) the date of the order confirmation;

b) the date on which the Purchaser has complied with all technical, commercial and financial preconditions for which the Purchaser is responsible under the contract;

c) the date on which UNEX has received a prepayment that is due before delivery of the goods and/or a payment guarantee has been issued or otherwise provided.

6.2 UNEX shall be entitled to make partial or advance deliveries.

6.3 Should delivery be delayed due to circumstances on the part of UNEX, a reasonable period of grace shall be granted.

6.4 If a delay in delivery is caused by UNEX, the Purchaser may either demand performance of the contract or withdraw from the contract after granting a reasonable period of grace.

6.5 If the period of grace pursuant to Article 6.4. is not complied with due to the fault of UNEX, the Purchaser may withdraw from the contract with regard to all goods not yet delivered by giving written notice. The same shall apply to goods already delivered that, however, cannot be reasonably used without the undelivered goods. The Purchaser shall in this case be entitled to a refund of the payments made for the undelivered goods or the goods that cannot be used. The Purchaser shall return all delivered goods and unusable goods to UNEX.

6.6 If the Purchaser does not accept the goods supplied according to the contract at the contractually agreed place of delivery or at the contractually agreed time, and if such delay is not due to an act or omission of UNEX, UNEX shall be entitled to demand either performance of the contract or withdraw from the contract after granting a period of grace.

In the event that the goods have been segregated, UNEX shall be entitled to store the goods at the expense and risk of the Purchaser. UNEX shall in addition be entitled to a reimbursement of all justified expenses that it has incurred in connection with the performance of the contract and which are not covered by the payments received.

6.7 Any other claims by the Purchaser against UNEX on account of a delay by UNEX other than those listed in Article 6 shall be excluded.

7. Acceptance Test

7.1 Should the Purchaser desire an acceptance test, the conducting of such test shall be explicitly agreed with UNEX in writing upon conclusion of the contract. Unless agreed otherwise, the acceptance test shall be conducted at the place of manufacture or at another location to be indicated by UNEX, respectively, and during the normal working hours of UNEX. In this context, the general practice of the industry sector in question shall govern the acceptance test.

7.2 Following the acceptance test, an acceptance protocol shall be drawn up. If the acceptance test has demonstrated that the delivery item has been manufactured according to contract and operates properly, this shall be confirmed by both parties. Should the Purchaser or its authorized representative not be present during the acceptance test, in spite of being informed thereof in a timely manner by UNEX, the acceptance protocol shall be signed by UNEX alone. UNEX shall in any event send the Purchaser a copy of the acceptance protocol, the correctness of which the Purchaser cannot contest, not even in the case that the Purchaser or its authorized representative was unable to sign the acceptance protocol for lack of attending the acceptance test.

7.3 The Purchaser may demand a repetition of the acceptance test only in cases of serious defects.

7.4 The costs of the acceptance test shall be borne by the Purchaser.

8. Prices

8.1 Unless agreed otherwise, the prices shall be ex works of UNEX, without loading.

8.2 The prices shall be based on the costs at the time of price quotation, unless agreed otherwise. In the event that the costs change during the period until delivery, such changes shall be to the benefit or expense of the Purchaser, respectively.

9. Terms of Payment

9.1 All payments shall be made according to the agreed conditions of payment. Unless specific terms of payment have been agreed upon, one third of the total price shall be due and payable upon receipt of the order confirmation, one third after half of the delivery period has elapsed and the rest upon delivery. Irrespective of the foregoing, the value-added tax (VAT) included in the invoice shall in any event be payable within 30 days of the date of invoicing, at the latest.

9.2 The Purchaser shall not be entitled to offset any claims by UNEX with its own counter-claims, unless the counter-claim of the Purchaser has been accepted by UNEX in writing or determined by a court of law. A right to withhold payments or other right of retention is excluded.

9.3 Should the Purchaser default or be in delay with any agreed payment or any other performance, UNEX shall be entitled to either insist on the performance of the contract and

a) postpone the performance of its own obligations until the Purchaser has paid the payment in arrears and/or performed its other obligations,

b) claim a reasonable extension of the period of delivery,

c) call for payment of the entire remaining purchase price,

d) charge default interest, as of the due date, in the amount of 8 (eight) percent above the prevailing discount rate of the Austrian National Bank, unless the Purchaser can rightfully claim a reason for relief under Article 14;

or declare its withdrawal from the contract upon granting of a reasonable period of grace.

9.4 In any event, the Purchaser shall reimburse UNEX for the dunning costs and collection expenses incurred, which shall constitute further damages caused by delay.

9.5 If the Purchaser has not made the payment due or provided any other performance within the period of grace pursuant to Article 9.3., UNEX shall be entitled to withdraw from the contract by giving written notice. The Purchaser shall, upon request by UNEX, return all delivered goods to UNEX and compensate UNEX for any loss in value of the goods incurred as well as reimburse UNEX for all justified expenses incurred in connection with the performance of the contract. With regard to goods not yet delivered, UNEX shall be entitled to deliver to the Purchaser the completed or partially completed goods and to demand payment of the corresponding *pro rata* part of the purchase price.

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9.6 The contracting parties mutually agree that the rights and obligations set forth in the contract shall not be affected by the introduction of the Euro. Payment obligations, in particular the established money values, shall be deemed to have been agreed in Euro as soon as the Euro has become the only acceptable means of payment. In all events, the conversion shall be made on the basis of the officially established exchange rates. It is mutually agreed that the changeover to the Euro shall neither create a right to terminate, rescind or contest the contract nor any claim for damages or modification of the contract.

10. Retention of Title

10.1 Until complete fulfillment of all financial obligations of the Purchaser, UNEX retains title and reserves the ownership in the objects sold. UNEX shall be entitled to document its ownership on the exterior of the delivered item. The Purchaser shall comply with all necessary formal requirements to safeguard the retention of title. In case of an attachment or other recourse, the Purchaser shall be obligated to claim the ownership of UNEX and to inform UNEX without delay.

10.2 The Purchaser herewith assigns all claims against third parties resulting from a resale or further processing of the goods to UNEX until complete fulfillment of all claims of UNEX. Should the goods be processed in the course of a works order in a manner that a third party acquires title, the Purchaser assigns its claims for the corresponding *pro rata* part of the compensation to UNEX in accordance with the foregoing provisions.

11. Warranty

11.1 For all goods produced by UNEX (excluding parts subject to regular wear and tear) the warranty period shall be one year. This warranty period shall not be extended even in cases of justified complaints. Any warranty shall be forfeited if the delivered goods are not assembled properly by the Purchaser or a third party and/or if the goods are not maintained and/or used properly; warranty claims shall further be forfeited if repairs or modifications are carried out by the Purchaser himself or any person instructed by the Purchaser. Normal wear and tear as well as any damages resulting from improper handling shall in any event be excluded from the warranty.

11.2 Any warranty by UNEX shall be limited to the stated product specifications (e.g., quality, compliance with norms and the like) and to such characteristics as can be demanded from the product in the course of its proper use and dedicated purpose. Any special quality standards demanded by the Purchaser must be confirmed by UNEX in writing.

11.3 The Purchaser alone is responsible for the proper and adequate use of the goods as well as their installation, unless the latter is performed by UNEX or a company instructed by UNEX. Any claims relating to incorrect handling, improper use and/or storage and the like by the Purchaser or third parties are excluded.

11.4 The Purchaser shall be obligated to thoroughly inspect the delivered items for any defects and shall notify UNEX in writing of any defects detected without delay, however not later than eight days after receipt of the goods or, in case of hidden defects, not later than eight days after their discovery. Should any defects be discovered in the course of installation of the delivered items, the installation shall be suspended immediately and the Purchaser shall inform UNEX hereof without delay.

11.5 The legal presumption pursuant to Section 924 of the Austrian Civil Code (ABGB) is excluded. In case of actually existing defects, UNEX may, at its own choice,

- repair the defective item on site;
- have the defective item or the defective part shipped back for repair;
- replace the defective part(s); or
- replace the defective goods.

11.6 In the event that UNEX arranges for the defective goods or parts to be shipped back for repair or replacement, the Purchaser shall bear the costs and risk of the transport, unless otherwise agreed. The reshipment of the repaired or replaced goods or parts to the Purchaser shall be at the Purchaser's cost and risk, unless otherwise agreed.

11.7 The defective goods or parts replaced in accordance with this Article shall be at UNEX' disposal.

11.8 For those parts of the goods that UNEX has obtained from subcontractors prescribed by the Purchaser, the warranty of UNEX shall apply only to the extent of its own warranty claims against the subcontractor. If UNEX produces items based on design data, drawings or models of the Purchaser, the liability of UNEX shall not extend to the correctness and accuracy of the design, but only as to whether the execution corresponds to the Purchaser's instructions. In such cases, the Purchaser shall indemnify and hold UNEX harmless for any violation of proprietary rights.

UNEX does not assume any warranty or liability for any rebuilding or modification of old or third-party items as well as for any delivery of second-hand goods.

11.9 In case of any delivery of goods into foreign countries, possible deviations of the goods from the country-specific requirements and regulations need to be taken into account, whereas the Purchaser shall have sole and full responsibility for such compliance. Any instructions by the manufacturer shall be taken into account in any event.

11.9 As of the beginning of the warranty period, UNEX does not assume any liability extending beyond the scope of the warranty defined in the present Article.

12. Liability

12.1 Claims for damages of the Purchaser on account of any violations of contract caused by UNEX or its agents shall be limited to cases of gross negligence and intent. The burden of proof for proving gross negligence or intent shall be on the Purchaser. Any liability for indirect or consequential damages shall be excluded.

12.2 The object of purchase provides only for that level of safety that may be expected on the basis of registration regulations, operating instructions, instructions by UNEX on the proper handling of the object of purchase – in particular with regard to any required inspections – and any other instructions given.

12.3 The total liability for all damages shall be limited to an amount of 5 % (five percent) of the order amount, however not more than EUR 72,000.-- .

12.4 All claims for damages due to defects in deliveries and/or performance of services must – unless the defect is explicitly acknowledged by UNEX – be filed in court within one year after noticing the defect, otherwise all claims shall be forfeited.

13. Consequential Damages

13.1 Notwithstanding any other provisions in these Terms and Conditions, the liability of UNEX vis-à-vis the Purchaser for any standstill in production, loss of profit, loss of use, contractual losses or any other economic or indirect damage, in particular claims for contractual penalties by third parties, shall be excluded.

14. Grounds for Relief

14.1 The parties shall be released from the timely fulfillment of contractual obligations, in whole or in part, if they are prevented from fulfilling their contractual obligations by events of Force Majeure. Events of Force Majeure shall be solely such events that are unforeseeable and unavoidable for the parties and do not result from the respective party's domain. Strikes and industrial disputes shall be considered events of Force Majeure.

The Purchaser affected by an event of Force Majeure may, however, only claim the existence of Force Majeure if the Purchaser notifies UNEX without delay, however not later than within five calendar days, of the beginning and anticipated end of the obstruction by sending, by registered mail, a statement confirmed by the appropriate government authority or chamber of commerce of the country of delivery detailing the reasons, the anticipated effects and the duration of the delay.

In the event of Force Majeure, the parties shall undertake every effort to eliminate or mitigate the difficulties and foreseeable damages, and shall continuously keep the other party informed. Deadlines and dates that cannot be observed on account of a Force Majeure event shall be extended, at most, by the duration of the effects of the Force Majeure event or by a period to be determined among the parties by mutual consent. Should the Force Majeure event prevail for a period of more than four weeks, UNEX and the Purchaser shall seek a solution for handling the technicalities of its effects by means of negotiation. If a solution cannot be reached by mutual consent, UNEX shall be entitled to withdraw from the contract in whole or in part.

15. Data Protection

15.1 UNEX shall have the right to store, to transfer, to process and to delete person-related data of the Purchaser within the framework of the business relationship.

15.2 The parties shall be obligated to maintain strictly confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.

16. Place of Jurisdiction, Applicable Law, Place of Performance

16.1 For all disputes directly or indirectly arising from the contract, the District Court Eisenstadt, Austria, shall have exclusive jurisdiction. UNEX shall, however, also be entitled to resort to the court of law having jurisdiction over the Purchaser.

16.2 The parties may also agree to resort to an arbitral tribunal.

16.3 Place of performance for all deliveries and payments is the registered seat of UNEX.

16.4 Contracts shall be exclusively governed by Austrian law, excluding its conflicts of law rules as well as excluding the UN Convention on Contracts for the International Sale of Goods.

16.5 Should any provisions of these Terms and Conditions be or become invalid or ineffective, this shall not affect the validity and effectiveness of the remaining provisions and of the contracts concluded thereunder. The invalid or ineffective provision shall be replaced by a valid and effective provision that comes as closely as possible to the provision to be replaced.

16.6 These Sale and Delivery Terms and Conditions are drafted in German, with the English translation for convenience only. All terms used herein shall have the meaning commonly attributed to them under Austrian law. In case of any inconsistencies or ambiguities, the German version shall prevail.

16.7 The languages of jurisdiction are German or English.