

## Article 1 Field of application and contractual conditions

- 1.1 The following General Terms and Conditions shall apply to contracts (also referred to as order confirmations or agreements) concluded between the Purchaser and HESS Group GmbH, hereinafter referred to as HESS GROUP, including contracts at negotiating stage, as well as to offers, which are submitted by HESS GROUP to the Purchaser.
- 1.2 HESS GROUP explicitly excludes general conditions of purchase and tender documents or any other general conditions of the Purchaser. Any deviations from these General Terms and Conditions on the part of the Purchaser shall only be binding if and insofar as HESS GROUP has expressly agreed to them in writing.

## Article 2 Offers and offer documents

- 2.1 Offers submitted by HESS GROUP are without obligation and undividable.
- 2.2 HESS GROUP retains title and copyright to all the offers and estimates of costs submitted by them, as well as to any drawings, figures, calculations, brochures, catalogues, patterns, tools and other documents and devices. The Purchaser is not allowed to disclose these items without explicit consent from HESS GROUP either as such or in their contents to any third party, to make them public, to use them either himself or by third parties or to reproduce them. At the request of HESS GROUP, the Purchaser has to completely return these items and to destroy any copies he might have taken if they are not needed any longer for proper business procedures or if the negotiations have not resulted in concluding a contract.
- 2.3 Any information provided by HESS GROUP contained in figures, catalogues, brochures, drawings as well as data concerning measurements, weights, capacities, returns and other data provided by HESS GROUP are only binding for HESS GROUP if they have been referenced in the contract as guaranteed characteristics.
- 2.4 Plants supplied by HESS GROUP conform to German standards (DIN-EN) and laws including VDE regulations as well as German accident prevention regulations which are in effect at the time of concluding the contract. Any additional measures deviating due to foreign standards and laws, such as safety precautions have to be indicated by the Purchaser and remunerated additionally to HESS GROUP. If the Purchaser fails to inform HESS GROUP about standards and laws prevailing at the place of destination such as safety precautions, with the consequence of an infringement of standards and laws in effect at the place of destination, and HESS GROUP will be held liable because of such infringement, the Purchaser will indemnify HESS GROUP from these claims; this indemnification also includes the costs for legal prosecution.

## Article 3 Contract

- 3.1 Should the contract be concluded in writing, HESS GROUP shall only be bound after and in so far as HESS GROUP has confirmed the order in writing. The contents of contract are exclusively governed by this order confirmation.
- 3.2 The written order confirmation is the only document which governs the legal relationship between HESS GROUP and the Purchaser according to item 3.1 including these General Terms and Conditions. The order confirmation fully represents all the agreements made between the contracting parties concerning the subject of the contract. Any verbal agreements submitted offers and agreements made before concluding this contract are not legally binding. Verbal agreements made between the Parties will be substituted by the written contract unless they expressly indicate that they continue to be binding respectively.
- 3.3 As excess work or shortage of work are deemed any modifications as to the extent and/or the condition of the performance which was agreed when concluding the contract.

## Article 4 Drawings and Descriptions

- 4.1 Any drawings and descriptions disclosed to the Purchaser shall remain HESS GROUP's property. They may exclusively be used for their business operations and may not be disclosed to third parties without the prior written consent of HESS GROUP. Unless otherwise expressly agreed, HESS GROUP is not obliged to provide detailed drawings.
- 4.2 Any drawings which have to be confirmed in writing by the Purchaser during the execution of the contract shall be confirmed/rejected by him in writing within 10 working days after having been transmitted by HESS GROUP stating the reasons. If no rejection and/or written confirmation is given, the project plans or foundation plans respectively shall be deemed to be approved after a period of 10 days.
- 4.3 Any drawings and descriptions provided by the Purchaser to HESS GROUP shall remain the Purchaser's property. They shall only be used for performing the contract. HESS GROUP is not responsible for any information provided by the Purchaser, such as – but not limited to – information concerning the building site and infrastructure. The Purchaser

is liable for any damage arising for HESS GROUP due to faulty or insufficient information provided by the Purchaser.

- 4.4 Any special knowledge (the know-how) which is developed during the performance of the contract shall also become HESS GROUP's exclusive property such as for example any patent rights, unless otherwise provided in the contract.

## Article 5 Prices

- 5.1 The agreed price shall be the price or rate stated in the contract or on HESS GROUP's order confirmation.
- 5.2 The prices are quoted without VAT and for delivery "ex works" according to the "Incoterm"-conditions which are in effect at the time of concluding the contract unless otherwise provided in the contract and/or the order confirmation. Any customs duties or taxes are not included in the price and have to be paid by the Purchaser.
- 5.3 If the performance requested from HESS GROUP exceeds the contractually agreed scope, this performance has to be compensated by the Purchaser according to HESS GROUP's valid rates.
- 5.4 Contracts which are concluded in currencies other than Euros, the agreed price shall be the equivalent amount in Euros according to the exchange rate at the time of concluding the contract.
- 5.5 Excess work is paid – unless otherwise agreed in writing – at HESS GROUP's rates which are generally in effect at the time of performing excess work and/or the prices which are generally invoiced by HESS GROUP.
- 5.6 Unless otherwise expressly agreed, HESS GROUP's rates shall be adapted once a year. The adapted rates shall be valid as of the effective date of adaption for all the contracts concluded between the Purchaser and HESS GROUP.
- 5.7 In the case that services are provided according to expenditure at a site determined by the Purchaser, the Purchaser has to sign the time sheets completed by HESS GROUP's workers on a regular basis. These time sheets are the basis for the invoice unless otherwise agreed. The time sheets presented by HESS GROUP's workers are deemed to be accepted and signed if the Purchaser has not reacted on the time sheets presented for signature within ten days or if he has not signed them without indicating any reasons in writing.
- 5.8 If any work is delayed for reasons beyond the control of HESS GROUP, the resulting costs such as waiting times and additional travel and accommodation expenses are at the Purchaser's expense. Furthermore, HESS GROUP is entitled to adjust their prices if material prices and wages have changed in the meantime.

## Article 6 Payment

- 6.1 Payment of the contract price shall be due according to the terms and conditions of delivery and payment and/or the payment schedule given in the order confirmation. Unless otherwise stipulated therein, payment shall be due as follows:
  - a) 30 % initial payment within 10 days after having received the order confirmation;
  - b) 30 % after half of the delivery period, not later than 3 months after the date of the order confirmation;
  - c) 35 % at delivery, not later than one month after the notification of the readiness for dispatch;
  - d) 5 % after the transfer of risk, not later than three months after the notification of the readiness for dispatch.
- 6.2 In the case that assembly and commissioning by HESS GROUP is not covered by the contract as a lump sum, these shall be invoiced separately based on HESS GROUP's cost rates. Invoicing will be done on the basis of the performed working hours given in the field service report and on the basis of the charge rates. Travelling expenses will be calculated according to expenditure (actual costs) plus a handling surcharge of 5 %. The invoicing is done once a month.
- 6.3 Any payment has to be transferred without any deduction or offsetting to an account - which is to be determined more precisely by HESS GROUP - immediately upon receipt of the invoice unless a different period has been agreed.
- 6.4 Any costs related to the provision of payment securities shall be paid by the Purchaser.
- 6.5 In the case that any payments – whether by means of documentary letter of credit or not – have to be made against presentation of transport documents, these payments can also be made against presentation of a proof of storage if it is impossible to ship the goods for reasons of force majeure or circumstances beyond the control of HESS GROUP. Any costs arising from such storage are paid by the Purchaser in this case according to article 7.5

- 6.6 If the Purchaser fails to perform on the due date, he shall be in default of payment without any reminder. If the Purchaser is in default, he owes interest for default amounting to 8 percentage points above the corresponding basic rate of interest, as well as the judicial and extra-judicial costs related to the recovery, at least 15 % of the amount for which the Purchaser is in default of payment.
- 6.7 If the Purchaser fails to keep payment deadlines or if there is evidence for any other reason that after concluding the contract our demands for payment are at risk because of a performance shortfall of the Purchaser, we are entitled to refuse the provision of our performance until we have received counter-performance or have been furnished with corresponding security. Any damage occurring as a result of such a delay shall be charged to the Purchaser.

## Article 7 Delivery Period

- 7.1 The delivery period starts after having received the first down-payment and, if agreed, after having provided any possible payment securities for the remaining amounts.
- 7.2 The following preconditions for complying with the contractual delivery periods shall apply:
- all commercial and technical questions have to be clarified between the contracting parties;
  - the Purchaser has fulfilled all his obligations;
  - the provision of information and documents to HESS GROUP which are required from the Purchaser has completely been fulfilled.
- 7.3 In the case that a fixed delivery date has been agreed and the Purchaser does not fulfil the conditions under article 7.2, the delivery date will be deferred correspondingly.
- 7.4 In the case that the first down-payment has not been received by HESS GROUP within the first three months after having issued the order confirmation or after having signed the contract, HESS GROUP shall be entitled to withdraw from the contract and to claim damages in accordance with legal regulations.
- 7.5 If the Purchaser has not fulfilled the required pre-conditions (for example payments or collections) so that a delivery cannot be affected, the parts of the plant have to be stored intermediately. Any related costs will be charged to the Purchaser, at least, however, zero point five (0.5) % of the invoice amount of the delivery and/or - in the case of partial deliveries – of the proportional invoice amount for each month.
- 7.6 The delivery period is based on the working conditions applicable at the time of concluding the contract and on a timely delivery of the materials ordered by HESS GROUP for performing the contract. Should there be any delays without any fault on the part of HESS GROUP caused by changes of the above mentioned working conditions or by the fact that materials ordered for the performance of the contract have not been delivered in time, the delivery period will be prolonged where necessary.
- 7.7 In the case of failure to keep the delivery date for incidents or circumstances beyond the control of HESS GROUP ("Force Majeure"), the delivery period will be reasonably prolonged. Incidents or circumstances beyond the control of HESS GROUP include for example, but are not limited to, industrial action whether lawful or unlawful, fire, explosion, war, whether declared or not, general mobilization, uproar, revolution, confiscation, acts of sabotage, embargoes, requisition, limited energy consumption, insolvency, adverse weather conditions under which working is unacceptable (such as heavy snow, frost or storm), faulty or delayed deliveries or services from sub-suppliers caused by such incidents or circumstances. A reasonable period is at least as long as the period which delays the delivery of the plant caused by the incident. If any of the above incidents or circumstances render delivery impossible, HESS GROUP shall be released from their delivery obligation. In these cases, the Purchaser is not entitled to any claim for damages and/or rights of withdrawal. HESS GROUP is obliged to promptly inform the Purchaser about the occurrence and the end of such incidents in serious cases.
- 7.8 If HESS GROUP is in default and is responsible for this default, and if the Purchaser suffers a loss as a consequence of this default, HESS GROUP shall be obliged to provide compensation for delayed completion as comprehensive and sole indemnification, amounting to 0.2% for each full week of delay but in total not more than 5% of the value of this part of the entire delivery which cannot be used at the agreed time or not according to contract as a result of the delay. Any further claims arising from delay in delivery are exclusively governed according to article 13 of these terms and conditions.
- 7.9 In the case that fixed times and/or a period of time have been agreed for fulfilling assembly and commissioning, articles 7.2 and 7.8 shall be applied to the same extent taking account the conditions stated in article 9.

## Article 8 Despatch and Transfer of Risk

- 8.1 HESS GROUP places the plant at the Purchaser's disposal ex works in unpacked condition for being collected. Any deviating commercial term according to the INCOTERMS 2010 shall be agreed separately and any related costs are to be reimbursed. A mode of transportation as well as a type of packing which is appropriate in the recipient country as well as the loading is to be reimbursed.
- 8.2 When shipping the goods, HESS GROUP takes out insurance for the goods – at the request of the Purchaser – against breakage at the Purchaser's costs under conditions which are usual for HESS GROUP.
- 8.3 The risk transfers to the Purchaser when the delivered goods leave the premises, even if partial deliveries are made or HESS GROUP has assumed other services such as delivery or installation and commissioning.
- 8.4 If an acceptance is required at the time of dispatch, this acceptance has to be affected immediately at the acceptance date, alternatively after HESS GROUP's notification about readiness for acceptance. The Purchaser shall not refuse acceptance due to a minor defect.
- 8.5 If dispatch is delayed or the goods are not dispatched due to circumstances which are beyond HESS GROUP's control, the risk transfers to the Purchaser as from the day of the notification about the readiness for dispatch. HESS GROUP commits to take out those insurances which the Purchaser requests at Purchaser's expense.
- 8.6 HESS GROUP shall only be obliged to dispatch the goods to be delivered after the storage costs have been paid by the Purchaser according to article 7.5.
- 8.7 Partial deliveries are allowed.

## Article 9 Installation and commissioning conditions

- 9.1 Unless otherwise provided in the order confirmation, installation and commissioning are restricted to supervisor installation and commissioning by HESS GROUP based on the following conditions:
- 9.2 Installation
- 9.2.1 During installation all the components which have been delivered by HESS GROUP and are essential for commissioning shall be assembled by HESS GROUP and checked for their operational conditions.
- 9.2.2 Any indications as to the installation period are only estimated values. If there is a binding agreement as to the installation period, it is deemed to be observed if the complete installation of the components has been done by the expiry of this period. The installation has to be affected without interruption. The Purchaser will - at his own expense - support HESS GROUP's staff members in order to ensure a smooth operation. In the case of any waiting times caused by the Purchaser, any incurring expenses including travelling expense shall be at the Purchaser's expense. This applies also in the case that a lump sum price has been agreed. The provisions in this article also apply to articles 9.3 -9.5.
- 9.2.3 Fulfilling the below listed obligations of the Purchaser is a precondition for a proper and consistent installation and commissioning.
- 9.2.3.1 Before starting installation and commissioning HESS GROUP can provide check lists which have to be completed and returned by the Purchaser.
- 9.2.3.2 The Purchaser is obliged to provide building site coordination for sections, which are not part of HESS GROUP's scope of delivery and to nominate a person who is responsible for the building site.
- 9.2.3.3 When the deliveries arrive and/or installation starts, the following shall be placed at disposal by the Purchaser on a permanent basis (including the time of installation, commissioning, training and instruction as well the time until final acceptance) at his own expense and risk:
- Preparation of static calculations;
  - Preparation of all the requested constructional measures (according to recommendations provided by the final drawings made available);
  - Provision of exact, loadable and clean swept foundations according to HESS GROUP's final foundation plan until the start of installation;
  - Disassembly of any existing plant components;
  - Existence of a trafficable access road for unloading and transporting machines and components to the installation site.
  - Provision of suitable and sheltered areas for intermediate storage as well as protection for the components against atmospheric influences.
  - Unloading from the lorry and locating the plant components at the scheduled position according to plan.

- h) Provision of cranes and other hoisting devices (with operator) as well as hoisting and working platforms - details for scope and time shall be provided by HESS GROUP.
  - i) Provision of working platforms, scaffolds and ladders, if required.
  - j) Transfer of HESS GROUP's staff members from/to airport as well as on site between accommodation and building site (possibly by rental car), travelling time is considered to be working time.
  - k) Installation of the plant in a hall protected from wind and rain. The minimum temperature in the hall has to be +5°C.
  - l) Provision of accommodation (mid-range hotel or apartment) for HESS GROUP's staff members according to the following specification: minimum standard 3\* central-European standard, single room with shower/toilet and/or bathroom/toilet including daily cleaning and fresh towels every day, weekly fresh bed linen, continental breakfast.
  - m) Provision of a dry and lockable room for the tools of HESS GROUP's staff members or an area for positioning the 20' tool container with connection for power supply.
  - n) Provision of burglar-proof staff rooms and working rooms with heating and lighting as well as sanitary facilities for HESS GROUP's staff members.
  - o) Provision of support personnel for transporting and installing in numbers and qualifications to meet the requirements. HESS GROUP will specify exact quantities. The support personnel have to follow the instructions given by HESS GROUP's staff members. HESS GROUP assume no liability/reliability for the support personnel. For fitting further unspecified components such as noise insulation, additional support personnel is required. In the case that such personnel does not dispose of the required qualification, HESS GROUP reserves the right to provide appropriate personnel, at additional cost to the Purchaser, to guarantee trouble-free installation and commissioning.
  - p) Provision of safety devices for personal security according to the local regulations unless offered separately. For reasons of liability, commissioning can only be realized with completely installed safety devices.
  - q) Instructing HESS GROUP's staff members regarding existing local safety regulations and notification about a possible infringement of such safety regulations.
  - r) Provision of electricity and water according to the indications given in circuit diagrams and/or foundation drawings. The scope of delivery for HESS GROUP's equipment and services starts at the main switch installed in the control cabinets. Current transformers, current distributors and connection cables have to be provided by the Purchaser with corresponding dimensions and fuse protections. All the power supply lines to the individual components have to be laid in cable ducts. In the case that a different cable laying should be required (i. e. cable trays), this will be charged separately.
  - s) Provision of all components/services beyond HESS GROUP's scope of delivery (products/services provided by third parties). Technical data, services, interfaces for control and all other services for products provided by third parties have to be clarified in detail before starting the installation. The time schedule for delivering and assembling the products provided by third parties as well as for their services has to be coordinated with HESS GROUP.
  - t) Provision of welding devices incl. oxygen as well as other equipment and tools according to a separately transmitted list.
  - u) Provision of a translator with technical understanding if there are no staff members who speak German or English.
  - v) Lighting of the whole plant.
- 9.3 Commissioning and trial run
- 9.3.1 Commissioning and trial run will take place in two stages:
- 9.3.1.1 Without material: only the functionality of the single components and/or the operation of the entire plant will be tested without material. Commissioning with material will follow only after a successful trial run.
- 9.3.1.2 With material: Commissioning and/or trial run are affected by testing the manufacturing process with a standard mould (unless otherwise agreed). This stage requires a sufficient number of operators for the single components. We recommend providing the operators from the beginning of the installation in order to get sufficiently acquainted with the plant.
- 9.3.1.3 In the case that further moulds shall be tested or run-in, any incurring costs will be charged separately to the Purchaser, especially if a lump sum price was agreed.
- 9.3.1.4 The Purchaser has to place the following items at disposal by the start of the testing and commissioning stage without charge:
- a) Compressed air
  - b) Utilities such as hydraulic oil
  - c) Separate telephone line for using a modem for remote maintenance or a high-speed internet connection with a transmission rate of 500 Kbit.
  - d) Forklift for commissioning the plant, for example for transporting packets of blocks, for changing moulds etc.
  - e) Sufficient quantities and qualities of aggregates, binding agents, cement, additives, paints etc. The material quantities have to be determined by means of tests before the trial run and commissioning (i. e. screening plant). The agreed production output can only be reached when using concrete aggregates according to DIN 52100 and concrete according to DIN 1045. HESS GROUP can only provide advice as to concrete mix and concrete quality.
  - f) At least one mould according to HESS GROUP's technical specifications unless separately offered.
  - g) Production pallets (for example steel pallets, boards) in sufficient quantities and qualities in respect to flatness, loading capacity, thickness etc.
  - h) Sufficient quantities of transport pallets (if this is part of the process).
  - i) Requested industrial safety devices for the building site as well as for the products of third parties.
  - j) Conveyor-track crossings unless included in HESS GROUP's scope of delivery.
- 9.4 Training and Instructions
- 9.4.1 Unless otherwise agreed the operators shall be trained and instructed during commissioning and trial production. Training and instructions have to be carried out continuously. Training shall end 2 weeks after the start of production unless otherwise agreed.
- 9.4.2 The scope of delivery basically includes all the aspects to guarantee the following:
- a) the corresponding safety instructions
  - b) continuous operation
  - c) regulation and fault rectification of the delivered components
- 9.4.3 Instructions and training for components which are provided by the Purchaser or supplied by third parties are not included.
- 9.5 Acceptance
- 9.5.1 The Purchaser is obliged to perform acceptance of the plant as soon as he is informed about its completion and as soon as a test run which possibly had been agreed upon has been completed (one-shift trial run). A successful commissioning and/or a successful trial run shall immediately be followed by issuing an acceptance certificate which has to be signed by the Purchaser as well as by an authorized representative of HESS GROUP.
- 9.5.2 If no test run of the plant (trial run) has been agreed in the contract, the plant is deemed to have been accepted if the agreed characteristics can be observed during commissioning.
- 9.5.3 If the agreed performance is not reached during a trial run, HESS GROUP is obliged to remedy the fault at their own expense and is entitled to repeat the trial run. This does not apply if the fault is an insignificant fault that does harm the Purchaser's basic interest or is based on a circumstance beyond HESS GROUP's control. In the case of an insignificant fault, the Purchaser is not entitled to refuse the acceptance.
- 9.5.4 If HESS GROUP has provided notification as to the completion of the plant to the Purchaser and the Purchaser is obliged to perform acceptance, the acceptance is deemed to have been performed after expiry of two weeks from receipt of the notice of completion provided that HESS GROUP has informed the Purchaser about this consequence. That does not affect HESS GROUP's right to set a reasonable deadline according to § 640 par. 1 sentence 3 BGB (German Civil Code) for performing acceptance, after ineffective expiry of which the acceptance will be considered as performed.
- 9.5.5 Acceptance of the single components or reconstructions is performed immediately after installing and commissioning the single components or after having effected reconstructions without any written confirmation.
- 9.5.6 In the case of any faults which have no or only little influence on the intended use, the goods and performances are considered as accepted

regardless of these faults. HESS GROUP will remedy these faults as soon as possible in context of warranty applicable according to article 12.

- 9.5.7 The fact that the Purchaser uses the plant for production purposes is equal to an acceptance.
- 9.5.8 We expressly point out that any performance specifications or other characteristics which are indicated in promotion material do not form part of the order confirmation or contract.
- 9.6 Installation material
- 9.6.1 Any installation tools and devices provided by HESS GROUP shall remain the property of HESS GROUP.
- 9.6.2 The installation material shall be completed by additional material (HESS GROUP will issue detailed lists) which remains the property of HESS GROUP and will be used during installation. This additional material as well as all the other material shall be returned to HESS GROUP after commissioning. The return transport shall be at the expense of HESS GROUP. There is in no way any right of retention.
- 9.6.3 If any tools or equipment provided by HESS GROUP will be damaged at the place of installation or will get lost through no fault of HESS GROUP, the Purchaser is obliged to provide compensation for the resulting damage. This does not apply if the damage is caused by usual wear and tear.
- 9.7 Delayed during performance of services
- 9.7.1 If the commissioning or other performances are delayed for reasons which are beyond the control of HESS GROUP, especially in cases of Force Majeure as well as industrial action, commissioning and other performances will be reasonably deferred, which means a deferral by at least the period by which the completion of the plant and/or the performance of services will be delayed due to such an incident.
- 9.7.2 In the case that installation, commissioning, training and trial run as well as acceptance be interrupted for reasons which are beyond the control of HESS GROUP, all additional costs including travelling expenses will be invoiced to the Purchaser.

## Article 10 Retention of title

- 10.1 HESS GROUP reserves the right of ownership over the supplied goods and/or the plant until receipt of full payment according to the agreement.
- 10.2 HESS GROUP is entitled to take out insurance at the expense of the Purchaser for the supplied goods and/or the plant against damage by theft, breakage, fire, water as well as other damage provided the Purchaser has not verifiably taken out such insurance himself.
- 10.3 The Purchaser is neither allowed to sell the supplied goods and/or the plant until receipt of full payment nor to pledge them or assign them as security. If the goods have been attached, seized or otherwise disposed of by third parties, he has to immediately inform HESS GROUP about that.
- 10.4 In the case of any contract violation by the Purchaser, in particular delayed payment, HESS GROUP shall be entitled to withdraw the goods after having sent a reminder and the Purchaser is obliged to return the goods. Enforcement of the retention of title as well as attachment of the delivered goods by HESS GROUP are not considered as withdrawal from the contract and are without prejudice to HESS GROUP's right to claim damages.
- 10.5 A request for the opening of insolvency proceedings for the assets owned by the Purchaser entitles HESS GROUP to withdraw from the contract and to claim the immediate return of the supplied goods without prejudice to HESS GROUP's right to claim damages.

## Article 11 Use of software

- 11.1 As far as the delivery scope includes software, the Purchaser will be granted the non-exclusive right to use the delivered software including its documentation. It will be provided for being used on the delivered object intended for this purpose. Using this software on more than one system is not allowed.
- 11.2 The Purchaser may only with HESS GROUP's consent reproduce, rework or translate the software or convert it from the object code into the source code. The Purchaser commits himself – especially regarding copyright annotations - to not remove them or modify them without the prior written consent by HESS GROUP.
- 11.3 All other rights to the software and documentations including their copies shall remain with HESS GROUP and/or the software provider. It is not allowed to grant any sub-licenses.

## Article 12 Warranty

HESS GROUP provides warranty for material defects and defects of title in the delivery excluding further claims under reserve of article 13 as follows:

- 12.1 Material defects
- 12.1.1 All those parts have at HESS GROUP's choice either to be rectified or to be exchanged at HESS GROUP's own expense, which provably are defective due to a circumstance which had existed before the transfer of risk. HESS GROUP has to be informed immediately in writing when such defects are detected. Replaced parts shall become HESS GROUP's property.
- 12.1.2 The Purchaser has to allow enough time and occasion - after having consulted HESS GROUP – to carry out all the rectifications and replacement deliveries considered necessary by HESS GROUP; otherwise HESS GROUP shall be exempted from liability for the resulting consequences. Only in urgent cases where there is a risk to operational safety and/or for preventing excessive damage, which would require an immediate notification to HESS GROUP, shall the Purchaser be entitled to remedy the defects on his own or have them remedied by third parties and claim compensation from HESS GROUP for his expenses.
- 12.1.3 As to the costs resulting from rectifications and/or replacement deliveries, HESS GROUP shall bear - if the complaint is found to be justified - the costs for the replacement item including shipment as well as the reasonable costs for dismounting and mounting the parts and furthermore, if this can reasonably be demanded according to the circumstances of the individual case, the costs for the provision of his technicians and assistants, if any. This shall not apply if expenses increase because of a delivery to another place but to the Purchaser's residence or place of business.
- 12.1.4 Under legal regulations the Purchaser has a right to withdraw from the contract if HESS GROUP – in due consideration of exceptions according to law - allows the period - which was reasonably set for rectification or replacement due to a material defect - to expire ineffectively. In the case of an insignificant defect the Purchaser shall only be entitled to reduce the contract price. The right to reduce the contract price shall however be excluded in all other cases.
- 12.1.5 No warranty is assumed in the following particular cases: unsuitable or improper use, incorrect installation and/or commissioning by the Purchaser or Third Parties, usual wear and tear or wear and tear due to operating conditions, incorrect or negligent treatment, improper maintenance, unsuitable equipment, inadequate construction work, unsuitable building ground, chemical, electro-chemical or electric influences - as far as they are not in HESS GROUP's responsibility.
- 12.1.6 For any defects, which are based on an instruction or specification given by the Purchaser or which are the result from the fact that the Purchaser passed on incorrect information to HESS GROUP for example regarding the building site or infrastructure, we will only be liable – according to statutory regulations and these General Terms and Conditions - if we have assumed towards the Purchaser in writing the risk of an occurring defect as a consequence of the instruction or specification. The Purchaser is responsible to HESS GROUP to ensure that instructions or specifications do not lead to any defect of our produced or delivered goods, except where HESS GROUP has assumed in writing the above mentioned risk of occurring defects.
- 12.1.7 In the case of an improper rectification by the Purchaser or a Third Party, HESS GROUP shall not be liable for the resulting consequences. The same applies to any modifications of the delivered object which had not been agreed with HESS GROUP.
- 12.2 Defects of title
- 12.2.1 If the use of the delivered object leads to a violation of industrial property rights or copyrights in the home country, HESS GROUP will at their own expense principally provide the right for the Purchaser to continue the use or modify the delivered object such that the violation of industrial property rights no longer exists.
- 12.2.2 If this is not possible under reasonable economic conditions and in a reasonable way for the Purchaser or within a reasonable period, the Purchaser shall be entitled to withdraw from the contract. These mentioned preconditions also grant the right to HESS GROUP to withdraw from the contract.
- 12.2.3 Moreover HESS GROUP will indemnify the Purchaser from uncontested or assessed legally binding claims from corresponding proprietors.
- 12.2.4 HESS GROUP's obligations mentioned under article 12.2.1 up to and including article 12.2.3 are conclusive under reserve of article 13 in case of a violation of intellectual property rights.
- 12.2.5 The claims shall only exist in the following cases:
  - a) the Purchaser informs HESS GROUP immediately about claimed infringements of intellectual property rights,

- b) the Purchaser supports HESS GROUP reasonably in defending the asserted claims and/or HESS GROUP enables the modifications under article 12.2.1,
  - c) all possible defensive measures remain reserved to HESS GROUP including settlements out of court,
  - d) the delivered object was not manufactured or modified according to the Purchaser's instructions and
  - e) the infringement was not caused by the fact that the Purchaser changed the delivered object without authority or used it in a non-contractual way.
- 12.3 Any claims of the Purchaser resulting from defects shall expire by limitation after one year or after 2,000 operating hours from the time of commissioning without material according to article 9.3.1.1, however at the latest eighteen (18) months after delivery. This does not apply in case of deliberate acts or fraudulent concealment of the defect and in the case of infringing a guarantee of quality assumed by HESS GROUP and in case of using an object for a structure in its usual manner of use causing the defect of the structure. In the case that HESS GROUP remedies a defect, the limitation period for repairs and spare parts shall be three (3) months, however it will last at least until the expiry of the original limitation period for claims for defects of the delivered object. In case of any claims under the product liability law, statutory periods shall apply.

## Article 13 Liability

- 13.1 If the delivered object cannot be used by the Purchaser as agreed by the terms of the contract and this is due to HESS GROUP's fault as a consequence of neglected or faulty performance of suggestions or advice which were given before or after the conclusion of the contract as well as of the infringement of other contractual secondary obligations – especially instructions for operating and maintaining the delivered object, the provisions under article 12 and 13.2 will apply correspondingly excluding further claims of the Purchaser.
- 13.2 HESS GROUP is liable for damage, which is a consequence of deliberate action or gross negligence by HESS GROUP, their legal representatives or executive staff members as well as for personal injury according to legal provisions.
- 13.3 In the case of deliberate action or gross negligence on the part of ordinary assistants and in the case of slight negligence regarding essential contractual obligations which are essential for achieving the purpose of the contract and the Purchaser thus has to rely on the strict performance of these obligations, HESS GROUP shall be liable according to legal provisions limited to such direct damage, which was foreseeable for HESS GROUP in its nature and extent. In such a case HESS GROUP shall not be liable for indirect and/or consequential damage such as, but not limited to operating loss, loss of goodwill, loss of profit, depreciation or deterioration in asset values or damage to third parties as a consequence of failure of delivery, incorrect or delayed delivery and/or malfunctioning, incorrect or delayed functioning of the performance.
- 13.4 HESS GROUP is not liable for any damage to the Purchaser's existing property, as far as the damage has not been caused by negligence and/or deliberate action on the part of HESS GROUP.
- 13.5 Without prejudice to the other provisions under these terms and conditions referring to HESS GROUP's liability, HESS GROUP shall not be liable for indirect and/or consequential damage.
- 13.6 HESS GROUP does not assume any liability for any damage caused by faults or defects in any sense if HESS GROUP has not stipulated a reward (return service) for their service or if any act or omission by the Purchaser, his personnel or third parties consulted by the Purchaser has caused material or physical damage in contradiction to operating instructions, maintenance instructions and other instructions and/or if the objects have been changed in any way without HESS GROUP's explicit consent.
- 14.2 Not only in the case of a suspension but also in the case of a cancellation according to article 14.1 shall HESS GROUP be entitled to demand immediate payment for the basic materials, materials, parts and other goods which have been ordered, processed and produced by HESS GROUP for performing the contract, as well as the working time HESS GROUP has performed directly and indirectly for performing the contract, and this at a reasonably allowable rate. In the case of a cancellation according to article 14.1 the Purchaser shall be obliged after having paid the amount due by virtue of the above full sentence to take the included goods, otherwise HESS GROUP shall be entitled to have these goods stored at expense and risk of the Purchaser or to sell them for account of the Purchaser.
- 14.3 If any of the Purchaser's obligations arising from the contract concluded with HESS GROUP or a related contract are not fulfilled, not fulfilled properly or not in time, or if there is reasonable ground to fear that the Purchaser is or will not be able to fulfill his contractual obligations towards HESS GROUP or in case of insolvency, postponement of payment, close-down, liquidation, partial transfer of ownership – whether as security - of the Purchaser's company, including the transfer of a substantial part of his receivables, HESS GROUP shall be entitled to, without notice of default or legal intervention, either to postpone the performance of each single contract for a maximum of six months or to cancel them completely or in parts, and this without being obliged to any indemnification or warranty and without prejudice to any other rights held by HESS GROUP. During the suspension period HESS GROUP shall be entitled to and at the end of the suspension period HESS GROUP shall be obliged to either choose the performance or the complete or partly cancellation of the suspended contract (contracts).
- 14.4 In the case of a postponement according to article 14.3 the agreed price shall be payable at once deducting any anticipated payments and cost savings on the part of HESS GROUP due to the postponement and HESS GROUP shall be entitled to have the goods – which have been ordered for performing the contract and which are being processed as well as the produced basic materials, materials and other goods - stored at the Purchaser's risk and expense. In the case of a cancellation according to article 14.3 the agreed price – provided no prior postponement has taken place – shall be payable at once deducting any anticipated payments and cost savings on the part of HESS GROUP due to the cancellation and the Purchaser shall be obliged to pay the above mentioned amount and to take the goods included therein, otherwise HESS GROUP shall be entitled to have these goods stored at expense and risk of the Purchaser or to sell them for account of the Purchaser.
- 14.5 The Purchaser is not entitled to claim the cancellation of the contract with retroactive effect.
- 14.6 After a possible cancellation or in the case of a nullity of contract, no matter how it has been caused, these General Terms and Conditions remain valid provided they have independent significance and/or provided they have been agreed to regulate the consequences of a cancellation or nullity, especially such as (but not limited to) the provisions regarding delivery, penalty payment, liability, jurisdiction and applicable law.

## Article 15 Spare parts

- 15.1 These terms and conditions also apply to the supply of spare parts, unless explicitly deviating.
- 15.2 HESS GROUP is entitled to deliver other parts than the parts ordered by the Purchaser, provided that these parts are equivalent to the originally ordered parts at least from the technical point of view.
- 15.3 Installation of the spare parts is not included in the price.
- 15.4 Warranty for spare parts is six (6) months after shipping date ex works.

## Article 16 Period of limitation

- 16.1 Under reserve of article 12.3, all the Purchaser's claims expire by limitation – for whatever legal reason - after twelve (12) months, in case of spare part deliveries after six (6) months. Deliberate or fraudulent acts and claims under the product liability law are subject to statutory periods of limitation. They also apply to structures and goods, which are used for a structure in accordance with their normal purpose of use.

## Article 17 Applicable right and disputes

- 17.1 Any legal relations between HESS GROUP and the Purchaser are exclusively governed by the law of the Federal Republic of Germany, which is the relevant law for legal relations among domestic parties, excluding international private law and UN Convention on Contracts for the International Sale of Goods.
- 17.2 Venue for any direct or indirect obligations arising out of or related to the contract shall be the competent court for HESS GROUP's registered office. HESS GROUP is however entitled to file a suit at the Purchaser's headquarters.

## Article 14 Suspension and cancellation and/or nullity of contract

- 14.1 Should the performance of the contract be prevented by reason of force majeure, including but not limited to fire, explosion, strike, regulatory action, negative travel recommendation, occupation of the works and excessive absence due to illness, or should the performance of the contract cannot reasonably be required from HESS GROUP for reasons which are beyond HESS GROUP's control, HESS GROUP shall be entitled to either suspend the performance of the contract for a maximum of six months without judicial intervention or to cancel the contract as a whole or in parts without being obliged to pay any damages. During the suspension period HESS GROUP shall be entitled to and at the end of the suspension period HESS GROUP shall be obliged to either choose the performance or the complete or partly cancellation of the suspended contract (contracts).