

**General Terms and Conditions of Sale of HENKEL CENTRAL EASTERN EUROPE GESELLSCHAFT MBH,  
(hereinafter “Henkel”), concerning its Sonderhoff machine- and machine spare parts’ business  
(version 18.6.2019)**

**1. General:**

- 1.1. All deliveries and services of Henkel are subject to these terms of sale and any other special contractual agreements. Deviating terms and conditions of purchase of the Purchaser shall not become part of the contract as a result of an order acceptance. Changes and/or supplements to these terms and conditions of sale require – without exception – the previous authorization in writing of Henkel. The placing of an order shall be deemed as the acceptance of the conditions of sale.
- 1.2. Unless a different agreement is explicitly concluded, orders are considered as accepted only if Henkel has confirmed the order in writing.
- 1.3. Henkel reserves the right of information, ownership and copyright for patterns, cost estimates, drawings and the like. They shall therefore not be transmitted to third parties.

**2. Price and Payment:**

- 2.1. Unless explicit differing agreement is given, the prices are ex works, including loading in the works but excluding packaging and off-loading costs. The turnover tax of the corresponding legal amount shall also be added to the agreed prices. If no other particular agreement has been concluded, every payment shall be made to Henkel with no deduction, post and charge free, as follows:
  - 50 % with placing of order;
  - 40 % after acceptance of the goods, before delivery;
  - 10 % within 14 days after the final acceptance.

- 2.2. The Purchaser shall bear the payment immediately. As long as Henkel has not received the entire payment that shall be performed by the Purchaser according to clause 2.1. and which concerns the placing of an order or the goods acceptance, Henkel is entitled to retain the whole service.

If the events at the basis of the respective payment obligations according to clause 2.1. exceed more than 14 days, Henkel is entitled to charge interest for delay, corresponding to a value of 9,2 percentage points over the base interest rate of the Austrian National Bank. The payment is subsequently set off against unsecured demands.

- 2.3. The Purchaser shall compensate Henkel for the default interest as well as any costs arising from the appropriate collection or recovery of the claim of Henkel against the Purchaser together with any associated required collection and information charges as well as any possible representation and legal costs.
- 2.4. The Purchaser only has the right to retain payments or to set off counterclaims, if and only insofar as his counterclaims are undisputed or legally recognized. This restriction shall also apply in cases where insolvency proceedings have been instituted against the Purchaser. Henkel shall be immediately notified of Purchaser’s counterclaims in writing.

**3. Period of Delivery and Delay in Delivery:**

- 3.1. Delivery and service deadlines result from agreements of the contracting parties. Compliance therewith on the part of Henkel presupposes that all the commercial and technical matters between the contracting parties have been completely clarified. It also requires that the Purchaser has accomplished all his obligations and duties, e.g. provision of required official certificates, authorizations or remittance of a down-payment. If this is not the case, the delivery period shall be prolonged adequately, to the extent that the Purchaser has not met his obligations and duties.
- 3.2. If the delivery deadline may not be respected because of force majeure, business disputes or for other reasons, that Henkel cannot avoid with adequate diligence (including e.g. strikes, lock-outs, delay, improper and incomplete suppliers’ delivery, breakdowns, traffic blocks, energetic defects, shortage of raw materials, and regulatory measures), the delivery period shall be extended for the duration of the interference and shall include a reasonable start-up period.

Henkel shall inform the Purchaser of the beginning and the end of such circumstances. If impossibility or inability occurs during the delay of the order acceptance or if these circumstances belong – at least predominantly – to the Purchaser’s sphere of responsibility, the latter shall be obligated to fulfil the entire counter-performance.

- 3.3. The delivery period shall be deemed to have been complied with if the delivery item has left the Henkel factory by the end of the aforesaid period or if readiness to supply has been notified. If formal acceptance is necessary, the acceptance deadline shall apply – with the exclusion of authorized acceptance refusals – or alternatively the notification of acceptance readiness. If delivery or acceptance of the item is delayed for reasons attributable to the Purchaser, the latter shall bear the expenses resulting from this delay. Henkel shall be entitled to provide the delivery item in partial deliveries.

**4. Transfer of Risk and Acceptance:**

- 4.1. All the risks shall pass to the Purchaser when the contract goods are transmitted to the Carrier or Haulage Contractor and not later than they have left the factory or the warehouse. All the risks shall pass to the Purchaser also in case of part-deliveries or in case Henkel has assumed other performances such as dispatch costs or delivery and installation.

- 4.2. If dispatch or transmission to the Carrier or Haulage Contractor is delayed or not affected for reasons that are not attributable to Henkel, the risk shall pass to the Purchaser on the date on which dispatch or readiness for acceptance is notified. Henkel undertakes to take out any transport insurances only if the Purchaser requires it explicitly. The Purchaser bears all resulting costs.

## **5. Reservation of Ownership and Insurance:**

- 5.1. Henkel shall retain its ownership of all delivery goods until all Purchasers' payments have been received entirely by Henkel.
- 5.2. Until all Purchasers' payments have been received entirely by Henkel, the Purchaser may not sell, pledge nor assign by way of security the delivery goods unless Henkel provides a previous authorization in writing. If the contract goods are pledged or seized or otherwise possessed by third parties, the Purchaser shall notify Henkel there of immediately in writing.
- 5.3. The Purchaser shall ensure secure and proper storage of the items owned or jointly owned by Henkel and shall ensure them at its own expense against theft, fire, water, breakage, water and any other property damages and shall be obliged to prove the existence of the insurance on request.
- 5.4. In the event of the Purchaser acting in contradiction to contractual obligations, especially in case of late payment, Henkel is authorized to take back the delivery goods after having issued an appropriate reminder and the Purchaser shall be obliged to return the goods, if Henkel does not withdraw from the contract. If the Purchaser violates a fundamental contractual obligation, Henkel is authorized to withdraw from the contract and to demand the return of the goods without having issued an appropriate reminder and without previous notice. Furthermore, a petition for the commencement of bankruptcy proceedings against the Purchaser, the commencement or the commencement refusal of such proceedings in absence of an adequate bankrupt estate shall entitle Henkel to withdraw from the contract without previous notice and/or to demand an immediate return of the delivery goods.
- 5.5. The Purchaser hereby assigns all claims against a customer resulting from a resale of the goods subject to reservation of title to Henkel. Henkel herewith accepts this assignment. In case the customer fails to comply with his payment obligations, Henkel reserves the right to collect the claim against the customer itself.
- 5.6. The treatment and processing of the delivered goods shall be carried out in the name and by order of Henkel at all times. In case the processing is carried out using goods not belonging to Henkel, Henkel shall acquire co-ownership of the resulting new good proportionate to the value of the delivered goods in relation to the value of the other components of the new good. The same applies to the combining or mixing of the goods subject to reservation of title with goods not belonging to Henkel.

## **6. Warranty:**

- 6.1. Henkel shall be informed in writing of any defects according to §§ 377, 378 UGB immediately after delivery, but not later than within one week after delivery/performance, otherwise any warranty claims and claims for damages as well as any other remedies shall be lost. Notification of defects or other assertion of warranty claims shall not entitle the customer to withhold invoiced amounts.
- 6.2. The elimination of defects shall primarily be limited to a claim for supplementary performance, i.e. improvement or replacement whereas Henkel shall be entitled to choose the supplementary performance. Furthermore, Henkel shall be entitled to credit a reasonable price reduction to the Purchaser without the supplementary performance.
- 6.3. After previous consultation the Purchaser shall allow Henkel the necessary time and opportunity to carry out all the rectifications and replacement deliveries which Henkel considers necessary, Henkel shall otherwise be exempt from the warranty liability for consequences resulting thereof. Out of the direct costs incurred as a result of the rectification or replacement delivery Henkel shall only bear the costs for the replacement, including dispatch, insofar as the complaint proves to be justified.
- 6.4. Only in urgent cases that prove to be justified, causing risks to operating security and in order to avert disproportionately large damages – whereby Henkel is to be immediately informed of the aforesaid risks in writing – the Purchaser shall be entitled to rectify defects itself or to have them rectified by third parties and to demand reimbursement of the expenses involved from Henkel.
- 6.5. The Purchaser shall be entitled to cancel the contract only if Henkel fails to comply within a deadline period of at least 4 weeks set for the rectification or replacement of a defect with no response on its part – insofar as the failing proves to be justified – or if the damage is irrecoverable and not just marginal. If the damage is insignificant the Purchaser shall be entitled to reduction of the contract price. The right to reduce the contract price shall be excluded in all other respects.
- 6.6. No warranty shall be assumed by Henkel if delivered goods are damaged or defective or if they are limited in their functionality, because the Purchaser or third parties have used the goods delivered by Henkel improperly or neglectfully or if they have not processed, varied or maintained them accordingly to the rules. In particular, if the technical instructions provided by Henkel are not respected or in cases of normal wear and tear, use of inappropriate equipment, defective construction works, unsuitable building ground, chemical, electrochemical or electric influences – insofar as they are not attributable to Henkel.

If the Purchaser or third parties make improper modifications of the delivery goods and/or without prior consent by Henkel, Henkel shall assume no liability for the consequences arising therefrom.

All the Purchaser's warranty claims are subject to a limitation period that expires at the latest within one year after the day of delivery.

## **7. Liability:**

- 7.1. For all claims resulting from or in context of the services that Henkel shall perform according to the contract, Henkel assumes liability only if the Purchaser proves that Henkel or Henkel auxiliary persons have caused this damage by gross negligence or by willful

misconduct. As far as no liability is applied according to the Product Liability Act, Henkel assumes no liability for consequential claims, for collateral claims, for all financial or benefit losses unless the Purchaser proves that Henkel has caused this damage by willful misconduct. For damages to persons (injury of life, bodies, health) Henkel is liable in any case of fault.

- 7.2. Any Henkel liability shall be limited, except in case of willful misconduct, to typical contractual damages which could have reasonably been foreseen and to the effective damages sustained by the Henkel liability insurance. At present the liability limit amounts to 10 Mio. EURO. Except for damages to persons or willful damages, Henkel shall assume liability for all damages that result in connection with maintenance, service and start-up activities, with the Henkel consulting or with Henkel auxiliary persons. Furthermore, Henkel shall assume liability only to the value amount but not exceeding the agreed payment of these maintenance, service and set-up activities or consulting services.
- 7.3. Any Purchaser's claim for compensation that exceeds the terms according to clause 7. is excluded.
- 7.4. Any Purchaser's claim for damages against Henkel is subject to a limitation period that expires at the latest within one year after the damage notice.

#### **8. Infringement of industrial property rights:**

- 8.1. The Purchaser shall immediately notify in writing Henkel about every in court and out-of-court assertion of industrial property right and copyright violations by third parties which are involved in the use of the delivery item.
- 8.2. If in-court and out-of-court proceedings are started against Henkel on grounds of an infringement of industrial property right (especially of patents, brands, registered designs or utility patents) or an infringement of industrial property right by third parties, the Purchaser shall support Henkel at own expenses in defending the asserted claims and shall provide all relevant information and documentation. The Purchaser shall furthermore carry out the required modifying measures by request of Henkel in order to avoid or eliminate violations of industrial property right or copyright and to enable them at the request of Henkel.
- 8.3. The Purchaser shall hold Henkel harmless in respect of all claims and costs concerning the infringement of industrial property rights and copyrights, if these violations – which are affirmed by the owner of the right or proven to be justified – trace back to the Purchaser's instruction, or if this infringement is caused by the fact that the Purchaser has modified the contract product on its own responsibility or the Purchaser has used the contract product in a non-contractual manner or if the Purchaser is considered to be guilty of this violation.

#### **9. Use of Software:**

- 9.1. If software is included within the scope of delivery, the Purchaser shall be granted a nonexclusive right to use the delivered software, including its documentation with the respective delivery item. Operation of the software on more than one system is prohibited. The Purchaser shall be obliged not to remove the manufacturer's specifications – especially the copyright references – or to change them without the express prior consent of Henkel. All other rights to the software and documentation, including copies, shall remain with Henkel or with the software supplier. Granting sub-licenses is not permitted.

#### **10. Governing law, place of jurisdiction, use of data:**

- 10.1. For any disputes arising from or in connection with legal transactions or any other legal relations, which are based on these general terms of sale, Handelsgericht Wien (Commercial Court, Vienna) shall be the agreed place of jurisdiction. However, Henkel shall be entitled to file suit at the place of business of the Purchaser. Such legal transactions or other legal relations shall be subject to Austrian law, excluding the rules of conflict of laws of the Austrian International Private Law and CISG.
- 10.2. Henkel shall be entitled to electronically store and process any data on and from the contractual partner in connection with the business relationship for the purpose of the implementation of the contract, considering the provisions of the data protection act.