

## I. General

### 1. Name:

All references to the name "Herding" in the following Terms and Conditions refer to the company known as Herding GmbH Filtertechnik.

### 2. Application:

The present Terms and Conditions of Sale, Delivery and Assembly of Herding shall apply exclusively to all legal relationships between the contractual parties. Any Terms and Conditions of Business presented by the other contractual party, in particular Terms and Conditions of Payment and Delivery, or details pertaining to the place of fulfillment and jurisdiction, shall not be valid unless expressly accepted by Herding in writing. Unless otherwise agreed separately, the contract shall be deemed to have been brought about upon written confirmation of order by Supplier.

### 3. Applicable law:

The German text of the contract shall be the exclusive authentic text. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the contractual and the non-contractual relationships of the contractual parties. In any legal proceedings, the procedural laws of the Federal Republic of Germany shall apply exclusively.

### 4. Place of jurisdiction:

The place of jurisdiction for all principal claims, ancillary claims and/or consequential claims shall be Amberg in the Oberpfalz in Germany. This agreement on the place of jurisdiction applies to all reciprocal claims of both contractual parties, in particular with regard to contract establishment, fulfillment, guarantee, rescission, annulment and/or reversal of transaction, and with regard to the assertion of claims concerning unjustified enrichment and for compensation for damages.

### 5. Supplementary agreements:

Any supplementary agreements and amendments to the contract must be made in writing.

### 6. Non-transferability:

Herding's customer shall not be entitled to assign or pledge to any third parties any rights arising out of or in connection with this contract without the express agreement of Herding.

## II. Terms and Conditions of Sale and Delivery

1. In addition to the General Terms and Conditions set out in Section I, the following Terms and Conditions of Sale and Delivery shall also apply to all Herding orders.

2. All offers shall be prepared exclusively on the basis of the documentation provided in writing by Customer and shall be deemed to be non-binding offers without obligation until the order is confirmed by Herding. All technical details provided at the offer stage shall be deemed, without exception, to be non-binding and without obligation until final clarification in the contract.

Herding shall retain all proprietary rights and copyrights to the samples, cost estimates, drawings and similar information, both of a material and immaterial form, including in electronic form; such works shall not be made accessible to third parties. Offers shall not be used for specifications of work and services unless given written approval, and should the order be placed elsewhere, Herding shall be entitled to the reasonable reimbursement of costs incurred for the preparation of the offer/project in accordance with the German Civil Code, hereafter BGB.

3. Customer shall check the descriptions and drawings provided by Herding with regard to the feasibility of the plant and the local installation dimensions. Customer shall inform Herding of any discrepancies immediately – and no later than five days - after receipt of the drawings. If this information is not received by this deadline, Herding shall not be liable for any resultant design faults and Customer shall be liable for all costs for any reworking and/or replacements required.

4. Herding reserves the right to make modifications to take account of new knowledge or any other points of view emerging during the course of handling the project, so long as the original intended purpose of the plant is not restricted in any way.

5. Herding's order confirmation shall be used as the authoritative definition of the scope of delivery. The order confirmation may also include a list of parts and detailed drawings, which shall also be deemed to form part of the order confirmation.

6. Customer shall pay for all costs for any additional equipment required because of local circumstances, or required for the assembly of the plant components, because of retrospective instructions, orders or conditions issued either by authorities or Customer, or required in relation to changes in regulations or legislation, where these arise after conclusion of the contract, or required because relevant local authorities use different versions of generally recognized codes of practice.

Customer shall be liable for all modifications, additions or reworking required as a result a failure to forward to Herding any conditions attached to the approval decision or required as a result of any conditions issued after conclusion of the contract.

7. Where Herding is has a duty to deliver and assemble a working plant, this duty shall only apply to those parts and performances required for the actual working of the plant. Any additional parts, equipment or other performances which contribute to the improvement, extension or optimization of the plant shall not – unless otherwise specifically agreed – be included in the scope of delivery or performance. A working plant also includes the customer-end performances to be fulfilled by Customer, and these shall not be owed by Herding even if they are required for the functioning of performance.

8. Partial performance is permitted and Customer shall take delivery of and accept partial performance. Partial invoices may be issued accordingly.

**9.** The agreed time for delivery shall commence upon receipt of the order confirmation, provided that all technical questions have been clarified and Customer has made available to Herding all required documents, approvals and releases, and any agreed advance payment has been received.

Compliance with the time for delivery specified in the order confirmation shall be subject to Customer duly fulfilling his contractual duties – particularly in respect of agreed advance payment and customer-end performance - in a timely manner. Where any changes are required by Customer after placement of the order or where Customer is in default with regard to the duty to cooperate, the time for delivery shall be extended by the amount of time required to effect the changes or by the amount of delay in fulfillment of performance by Customer, plus 6 working days.

Compliance with the time for delivery shall be subject to Herding's suppliers and sub-contractors fulfilling their duties with regard to proper and timely delivery.

The performance owed by Herding shall be deemed to have been effected in due time where the object of contract was duly shipped from the factory prior to expiry of the term for delivery, or where Customer was informed of Herding's readiness to make shipment within this term. Where shipment or acceptance is postponed at the request of Customer, Customer shall reimburse the costs actually incurred for the storage of the goods, beginning one month after notification of readiness to make shipment. The provisions on delay in the BGB apply.

In all cases of non-compliance with the time for delivery due to force majeure, industrial action or any other event beyond the influence and control of Herding, the latter shall be entitled to receive a corresponding extension of time for delivery. Herding shall notify Customer as soon as possible whenever such events begin and end.

**10.** The following Special Terms and Conditions apply to the assembly and/or supervision and commissioning of the object of delivery.

**11.** Where delivery is of goods only, the risk shall pass to Customer with the dispatch of the delivery items. This shall also apply to partial deliveries or in cases where Herding itself has assumed other costs, e.g. transportation, or delivery and assembly. Dispatch shall be deemed to have been effected upon the object of delivery leaving the factory of Contractor. Customer shall take delivery of all delivery objects even where they have immaterial defects.

Where an acceptance inspection is provided for, this shall govern the time of the passing of risk. It shall be carried out punctually at the time agreed for the acceptance inspection, or upon notification by Herding of readiness for acceptance. Immaterial defects shall not entitle Customer to refuse acceptance.

**12.** Where deliveries include assembly (contracts for work, contracts for delivery of a work), Herding is entitled to hand-over the work (the plant) after completion. Hand-over and acceptance shall be owed even where there are immaterial defects. The plant shall not be used by the operator before it is handed over unless expressly agreed by contract or given written approval by Herding.

Any use of the plant without express approval before hand-over is at the sole risk of Customer. Customer shall be liable, irrespective of fault, for all costs incurred for the remedying of alterations or impairments consequent upon the advanced use of the plant. If the alterations or impairments cannot be completely remedied or can only be remedied at unreasonable cost, Herding may refuse to fulfill any outstanding performances and may demand a proportion of the agreed price corresponding to the performance fulfilled by that time, plus compensation for any actual costs incurred which are not covered by the agreed price.

**13.** Where shipment or delivery is delayed for reasons in the responsibility of Customer, the risk shall pass to Customer on the day the goods are ready for shipment.

**14.** Where shipment or delivery is delayed for reasons in the responsibility of Herding and this results in damage to Customer, the latter is entitled to demand a lump-sum amount in compensation for the delay. Damages shall be limited to 0.5 % per fully completed week of delay – to a maximum of 5 % - based on the price of the portion of the delivery which could not commence operations on time or in accordance with the contract due to such delay.

**15.** The delivery shall only be insured against theft and damage from breakage, transportation, fire or water and any other insurable risks if requested by Customer. Herding is under no obligation to conclude an insurance contract of this type.

**16.** Unless otherwise expressly agreed, the scope of delivery also includes the discharge arrangements and the collecting bins for the separated substances. Operator is responsible for the disposal of these substances. Similarly, Operator is also responsible for any possible requirements relating to the disposal of soiled or contaminated filter media where they are no longer capable of or not intended for regeneration. In this connection, all relevant statutory regulations must be complied with. The above provisions also apply to packaging material included in delivery, which shall also be disposed of by Customer.

**17.** Unless otherwise expressly agreed, payment shall be made without deduction to the account of Herding as follows:

35 % advance payment upon receipt of order confirmation;

35 % upon notification to Customer that the main components are ready for shipment;

and the outstanding amount within one month of the passing of risk. The following provisions also apply to the prices: Prices given by Herding are ex works prices and do not include ancillary costs such as costs for packaging, freight charges and haulage, customs duty, transportation to the point of erection, and unloading costs, plus statutory Value Added Tax and any costs associated with the provisions of Article 15. Any additional packaging required by Customer in order to prevent transpiration damage will not be taken back and shall be paid for additionally.

**18.** Where Customer should delay the originally agreed times of delivery or assembly for orders placed with Herding beyond four months from the time of placement of the order, Herding is entitled to adjust the prices to reflect any increases in the costs of materials and/or in wages and salaries occurring in the mean time.

**19.** Cheques or drafts shall only be deemed to constitute payment when they have been irrevocably credited. Herding is not obliged to accept cheques or drafts as payment.

**20.** Where shipment is postponed at the request of Customer or delayed for reasons in the responsibility of Customer, this shall not release Customer from his payment duties. In case of longer periods of storage, Herding shall be entitled to reimbursement of all storage charges.

**21.** Herding shall be entitled to charge interest on payment in arrears. Any such interest charges shall be charged at the applicable bank rates for overdrafts, and at not less than 8.0 % above the base interest rate of the European Central Bank.

**22.** Customer shall not be entitled to any rights of set-off or retention, unless his counter-claims have become legally effective (*res judicata*) or are uncontested

**23.** All claims of Customer, regardless of legal reason, for damages against Herding or persons employed in fulfilling a duty, in particular in relation to a fault in contract negotiation, delay, impossibility, positive breach of the contract and/or tortious act, and in relation to product liability, shall be excluded unless based on damage caused intentionally or by gross negligence. All claims for compensation for damages and consequential damages resulting from lost production shall be excluded.

**24.** Rights of Customer in case of defects: Herding shall be liable for physical and legal defects, to the exclusion of future claims – subject to the provisions of Article 31 – as follows:

- a) The warranty period shall be 12 months.
- b) Where parts require correction of defects or replacement within the initial warranty period, a new 12 month warranty period shall apply to those parts.
- c) In all cases of parts found to be defective before the passing of risk, Customer shall be entitled to remedial performance, whereby Herding is entitled to choose between correction of defects and replacement delivery. Herding shall be informed of the discovery of any such defects immediately. The costs necessary for the purpose of remedial performance shall be borne by Herding. Replaced parts shall become the property of Herding. Customer shall allow Herding reasonable time, after discussion with Herding, in which to take what it judges to be the necessary measures for the correction of defects and undertaking of replacement deliveries; if reasonable time is not given, Herding shall be discharged from liability for any resultant consequences. Customer shall not be permitted to correct a defect himself or have it caused to be corrected by a third party unless this is urgently required for reasons of operational safety or to prevent unreasonably excessive damage. In all such cases,

Customer shall inform Herding immediately and may demand reimbursement from Herding of the costs incurred.

Of the direct costs necessary for the correction of defects or replacement delivery, Herding shall bear the costs of the replacement part, including costs of delivery – unless the complaint proves to be unjustified. Further costs will not be covered by Herding.

Customer is entitled, under the provisions of the law and subject to the limitations of statutory exceptions, to rescind the contract if Herding has allowed a reasonable extension of time allotted by Customer for the correction of defects or replacement delivery in respect of a physical defect, to pass fruitlessly. In the case of minor defects, Customer is only entitled to a reduction in the contract price. In all other cases the right to a reduction in the contract price is excluded.

All further rights are governed by Article 31. b) of these Terms and Conditions.

d) Herding shall not be held liable for defects or damage arising from the following:

\*Where Customer expressly demands a different or modified version of the plant conception of or article conceived by Herding, or where Herding is not provided with the full and correct process-related details required for the project planning or design of an article, plant or device.

\*Where Customer fails to provide information, or provides incorrect or incomplete information, on all noise limits and immission limits – including the exposure locations and their distances from the sources of noise – with which compliance is required. Customer shall be charged for any additional measures - and associated measurements - specifically requested by Customer for noise reduction purposes.

\*Where dust collecting elements are planned and provided by Customer.

\*Where assembly and/or commissioning is undertaken by Customer.

\*Where any modifications or additions are made by Customer or a third party without prior agreement with or approval from Herding.

\*Where electrical and/or electronic switchboards or control units are provided and installed by Customer or are only installed by Customer, the warranty shall not apply to any of the functions of the extractor and dust removal system which are directly connected to these electrics.

\*In the case of failure to correctly follow and comply with the maintenance and operating instructions and descriptions of functions provided by Herding .

\*In the case of failure to correctly carry out the daily and monthly operation checks specified in the maintenance instructions.

\*In the case of overloading, improper use and improper operation.

\*For any parts which are subject to natural wear and/or corrosion.

\*In the case of orders received by Herding on the basis of performance specifications from an external party, Herding shall only be liable for the performance of its devices to the extent of the specified values. Herding shall not, however, accept liability for the design and

arrangement, and hence the overall functioning of the plant.

\*In the case of modifications or the improper correction of defects by Customer or a third party without the prior written agreement of Herding.

**25. a)** Where the use of the object of delivery should lead to the violation of any industrial property rights or copyrights in Germany, Herding shall, at its own expense, secure the basic right of Customer to continue using the object of delivery, or modify the object of delivery to such an extent – but no more than Customer can reasonably be expected to accept - that the industrial property rights concerned are no longer violated.

Where this should not be possible within a reasonable time or at reasonable expense and effort, Customer is entitled to rescind the contract. If the aforementioned conditions should apply, Herding is also entitled to rescind the contract.

In addition, Herding shall indemnify Customer against any claims made by the owner of the industrial property rights which have become legally effective (*res judicata*) or are uncontested.

b) Subject to the provisions of Article 31. b), the duties of Herding referred to in Article 25. a) shall be deemed to be conclusive for any violations of industrial property rights or copyrights.

They shall only apply provided that:

\*Customer informs Herding immediately of the assertion of any claims deriving from the violation of industrial property rights or copyrights;

\*Customer gives Herding reasonable support in its defence against any such claims asserted and/or permits Herding to carry out the modifications referred to in Article 25. a);

\* Herding is permitted to have recourse to all means of defence, including out of court settlements;

\*the legal defect did not come about as a result of Customer instructions;

\*the violation of rights was not caused by Customer modifying the object of delivery or using it in a manner which was not in conformity with the contract.

**26.** The warranty period commences with delivery, unless agreed otherwise.

**27.** Herding is to be informed immediately in writing of all defects, with a precise description of the complaint. Any additional costs or effort which would not have been incurred if this duty had been fulfilled, shall be borne by Customer. Replaced parts shall become the property of Herding.

Customer shall be liable for any damages caused by defective customer-end performance.

**28.** Retention of ownership: Herding shall retain ownership of the object of delivery until payment of all amounts has been received in full.

Within the framework of Customer's ordinary course of business, Customer is entitled to commingle or connect the object, over which Herding has retention of ownership, with other objects. Where the object of delivery is commingled or connected with other objects, it is agreed that Herding shall acquire co-ownership of the new corporeal object in the proportion of the value of the object of contract to the other commingled or connected objects

at the time of commingling or connecting. Customer shall hold the object in custody for Herding. The same provisions apply to the processing by Customer, within the framework of Customer's normal course of business, of the goods over which Herding has retention of ownership. Within the framework of Customer's ordinary course of business, Customer is entitled to sell the object, over which Herding has retention of ownership or has co-ownership; this shall not apply if Customer is in default on payment or has stopped payment. Customer shall not be entitled to pledge the object or charge the object with a security interest. Customer shall not be entitled to sell the object overseas without the prior written agreement of Herding. Should Customer sell the object over which Herding has retention of ownership, Customer shall assign to Herding any claims accruing to Customer against his purchasers from the sale, with all ancillary rights, securities and retentions of ownership, until all of Herding's claims have been repaid. Herding's is entitled to demand that Customer informs his purchasers of the assignment and provide Herding with all information and documentation required for the purposes of collection.

Where the claims of Customer from the reselling of the object over which Herding has retention of ownership are transferred to a current account, Customer shall assign to Herding his claim to payment from the respective or accepted balance. This shall be of an amount which covers the claims from the reselling of the object over which Herding has retention of ownership. Where Herding is only entitled to co-ownership of the object which has been resold, the aforementioned assignment shall only be of an amount which covers Herding' co-ownership portion of value.

Where any objects over which Herding has retention of ownership or has acquired co-ownership are sold together with other objects for a single overall price, the aforementioned assignment shall only apply to the extent of the amount of the invoice value of the object over which Herding has retention of ownership or the amount of the Herding' co-ownership portion of value. Where Customer receives a cheque or draft for the sale of the object over which Herding has retention of ownership, Customer shall assign the cheque or draft to Herding, until all Herding's claims have been repaid. Customer shall undertake to hold the cheque or draft in good custody for Herding. In all other respects, the provisions of the foregoing paragraph shall apply accordingly (*mutatis mutandis*).

Customer shall inform Herding immediately, by the fastest possible means, of any attachment or other measure taken - or anticipated to be taken - by third parties with regard to the object over which Herding has retention of ownership or any other objects or claims to which Herding has any rights, and shall also resist any such measures. Notification shall be accompanied by all relevant documentation. Customer shall reimburse all costs incurred by Herding in relation to any such cases.

For all deliveries overseas, Customer shall inform Herding of all measures required in the country of import to secure the validity of the aforementioned retention of ownership, or the other rights of Herding referred to there, and Customer shall effect all such measures at his own expense. Where the laws of the country of import do not recognize retention of ownership as a form of security but do permit Herding an entitlement to other rights with regard to the object of delivery, Herding shall be entitled

to exercise those rights. If this does not provide Herding with equivalent security for its claims against Customer, Customer shall be obliged to provide Herding, at Customer's expense, alternative security on the object of delivery or an alternative form of security.

Herding shall be entitled – after a prior reminder - to reclaim the object of delivery where there has been a breach of contract by Customer, in particular where Customer defaults on payment. Customer shall be obliged to hand over the object of delivery in any such case. As a consequence of the retention of ownership, Herding may only demand the return of the object of delivery if Herding rescinds the contract.

Herding shall be entitled to rescind the contract and demand the immediate return of the object of delivery if proceedings for insolvency should be opened.

**29.** Products which can have a harmful impact on the environment require approval under § 4 of the German Law on Pollution Control. Customer shall be responsible for checking whether the product requires approval and, where approval is required, shall submit the application for approval to the applicable authority.

**30.** Customer shall organize – at his expense - any measurements and statics-related calculations, consultants reports, test certificates, and similar, where these are required to provide verification of compliance with any conditions attached to the approval decision notice.

**31.a)** Where Customer cannot use the object of delivery in the way envisaged by the contract because of the incomplete or faulty implementation by Herding of proposals and advice submitted either before or after conclusion of the contract, or because of a breaching of other ancillary contractual duties – in particular, instructions for the operation and maintenance of the object of delivery - the provisions of Articles 24., 25. and 31.b) shall apply mutatis mutandis, to the exclusion of any further claims.

**31. b)** Supplier shall not accept liability for any consequential damage, regardless of reason. This exclusion shall not apply to the following:

- \* in the case of intent;
- \* in the case of gross negligence on the part of the owner/its legal entities or officers;
- \* in the case of culpable injury to life, body or health;
- \* in the case of defects fraudulently concealed by him or defects which he guaranteed the object of delivery would free from;
- \* in the case of defects in the object of delivery for which he is liable under the provisions of the Product Liability Law with regard to personal injury or damage to property in respect of objects of private use.

In the case of the culpable breach of material contractual duties, Supplier shall also be liable for gross negligence on the part of non-officer employees and for slight negligence, in the latter case restricted to typically foreseeable damage only.

Any other claims are excluded.

**32.** All claims by Customer – regardless of reason – shall be subject to a limitation period of 12 months. For all claims for defects arising in relation to Article 31. b), the statutory limitation periods shall apply. They shall also apply to defects in relation to built structures, or in any objects of delivery used - in accordance with their normal use - as built structures, where this normal use is the cause of the defect.

**33.** Where software is included in the scope of delivery, Customer shall be granted the non-exclusive right to use the delivered software solely for his documentation. It shall be supplied for use on the object of delivery for which it is conceived. Use of the software on more than one system shall not be permitted.

Except to the extent permitted by law (§§ 69 a ff. of the Copyright Law [UrhG]), Customer shall not create any copies of the software, or modify or translate it, or convert the object code to the source code. Customer shall not remove any manufacturer's markings – in particular, copyright markings - or change any such markings without the express prior approval of Herding.

Herding or the software supplier shall be entitled to all other rights to the software documentation, including copies. Customer shall not be entitled to sub-license the software.

## III. Terms and Conditions of Assembly

**1.** These Terms and Conditions of Assembly apply in addition to the foregoing Terms and Conditions of Herding in Sections I. and II.

**2.** The times stipulated by Herding for the commencement, duration and completion of assembly are not binding. They shall not start until all technical details required for and of relevance to assembly have been completely clarified.

**3.** Where unforeseen or unforeseeable obstacles to performance arise which are beyond the influence of Herding, e.g. weather-related influence on the course of assembly, operational breakdowns, strikes, lock-outs, etc., or where Customer delays performance of a contractual obligation with regard to cooperation or advance performance on Customer's part, the time shall be extended by the duration of such obstacle to performance.

**4.** Where commencement of assembly is delayed for customer-end reasons, Herding is entitled to demand compensation for any additional costs incurred as a consequence of the delay.

**5.** Unless agreed otherwise, Customer shall make available to the fitters of Herding, free of charge, the following: Foundations, connection and supply of electricity, water supply and disposal (subject to plant system), compressed air which is free of water and oil, etc., scaffolding, lifting equipment, fork trucks, cranes, crane runways, lifts and adequate lighting and heating, all with corresponding operating personnel. In addition, Customer shall also provide all earth works, bricklaying work, joinery work and final coating work, including all

related construction materials, storage facilities and supports required, including the electrical and pneumatic installation work. On request by Contractor, Customer shall also make available, free of charge, qualified technical personnel in sufficient numbers.

Sufficiently large openings shall be available in the building to enable the transportation of individual plant components which are not capable of disassembly, and any obstacles to such transportation shall be removed.

Dry and lockable rooms shall be made available for the storage of tools, delivered parts, machines, work clothes, etc.

Customer shall be liable for the loss of any objects of Herding kept in the safekeeping of Customer. All telephone calls made by fitters in relation to completion of assembly shall be free of charge.

**6.** All delivered goods shall be stored properly and as close to the place of assembly as possible. This place must be easily accessible, have a firm ground surface and be suitable for pre-assembly if this is may be required. High-value equipment shall be protected from the weather. The delivered goods shall be secured by Customer against theft, since the loss of any parts will necessitate the delivery of replacements and an interruption in assembly, with associated costs to Customer.

Unless agreed otherwise, Customer shall be responsible for the unloading of the devices and plants and for transporting them to the place of use.

**7.** Customer shall ensure that his operating and servicing personnel are present for instruction both during the test-run and commissioning. The test-run shall be carried out under the operating conditions which will subsequently prevail, or at least a simulation of such conditions, so that the plant can be suitably adjusted at the same time.

Commissioning and checking the running of the plant may take several days and is included in the assembly works for which remuneration is be owed. Where insufficient time is allowed for this, interruptions to operations may result later, for which Herding shall not be liable.

Where, at no fault of Herding, this work cannot be carried out immediately upon completion of assembly, any costs for sending the fitters back to Customer shall be borne by Customer.

After completion of assembly, the plants erected by Contractor shall be handed over and accepted. Where any machines or plants of another manufacturer are connected to Herding's system and these are not ready for operation - or only partially ready for operation - during the test run, this shall not provide any reason to prevent the handing over and acceptance of Herding's system.

Where there should be any delay in the time of handing over or acceptance which is the responsibility of Customer or is caused by any defects in the electrical switchboard installed or caused to be installed by Customer, all resultant costs incurred shall be borne by Customer. Where Customer fails to cooperate in handing over or commissioning within six days of being requested to do so by Herding, the plant shall be deemed to have been handed over and accepted.

Where the plant is operated before handing over and acceptance - with the express written approval of Contractor (e.g. for agreed test running) - Customer shall have sole responsibility for all maintenance work until the

time of acceptance, since Herding cannot be permanently present during this phase.

Where the plant should be used for the first time without approval from Herding, it shall be deemed to have been handed over and commissioned from the time of first use. The hand over report / commissioning report is to be signed by Customer. Any defects, missing Bagatellteilen or requirements for minor works of making good shall be noted in the report. Faults and inadequacies which are immaterial and easily remedied and which do not have a negative impact on the operation of the plant in respect of quality and work safety shall not provide any justification for the refusal of acceptance. Herding shall agree in writing to remedy any such defects as soon as possible.

**8.** The costs of assembly and any other services shall be taken from the valid, applicable price lists of Herding. Preparatory visits, assembly, measurements, adjustment, commissioning, test-running, instruction of operating personnel, shall all be charged for.

**9.** Working hours and hours of travel, travel allowances, fares paid, freight costs for tools and luggage, bonuses for hazardous, unpleasant or dirty work, etc., shall be documented on work records and submitted to Customer for approval and signing.

The working hours required for assembly work for which there is no charge shall also be confirmed by Customer on the work records. The signature shall be deemed to confirm acceptance of the performance rendered by the fitters and shall apply equally to lump-sum agreements and special agreements. Settlement of payment in accordance with the scale of charges set out in the Appendix shall follow after completion of assembly work, and for large-scale assembly projects, payment shall be due at monthly intervals. Any modifications to the arrangement of the plant made necessary by problems associated with the building or required by Customer (for example, where there is a retrospective change in the place of erection of the machines or plants, necessitating a change in the routing of the piping), shall be charged on the basis of the verified time worked. Compliance with lump-sum prices is subject to the following provisions: Customer shall fulfill his duties with regard to performance in a timely and proper manner. Customer shall ensure that all customer-end conditions for the normal and uninterrupted completion of assembly and commissioning are fulfilled. Where these conditions are not fulfilled or where additions/modifications are required by Customer or are caused to be required by Customer, Herding is entitled to demand reimbursement for all resultant additional costs over and above the lump-sum price.

Customer shall reimburse Herding for any waiting times incurred by the fitters as a result of any delays in assembly caused by Customer or by any other unforeseen event beyond the control of Herding. Any such waiting times shall be charged at the same hourly rate charged for working hours. Where any interruptions to assembly are caused by circumstances related to the building or caused by Customer, all costs for journeys home and then back to Customer, plus the journey times involved, shall be charged separately.

Assembly costs are cash outlays and shall therefore be paid upon receipt of the invoice without any deduction (discount, discount schedule, etc.).

Any complaints about assembly while in progress, the deployment and work of Herding's fitters or the statements of hours and expenses, must be made to Herding immediately. Any complaints received retrospectively shall not be accepted.

Customer shall guarantee that all necessary safety and protection measures shall be taken for Herding's fitters – who bring only the tools required for their tasks with them - during the assembly of the plants. In particular, this means that scaffolding shall be properly erected and lifting equipment and transportation equipment shall be provided in faultless condition. In all cases, all valid, applicable regulations on the prevention of accidents shall be complied with at all times. Customer undertakes to give Herding's fitters careful instruction on the individual regulations applicable at Customer's site.

Where any welding, cutting or similar flame-based work is required in rooms not specifically prepared for the purpose, Operator or his safety officer shall take all measures required to prevent any risk of fire or explosion. In this regard, particular reference is made to § 8, Section 2, VGB 15 of the German UVV regulations on the prevention of accidents, which require the operator to issue written permission for welding.

Operator shall fulfill all his duties in respect of the operation checks required on a daily basis and/or in accordance with the operating and maintenance instructions. The daily operation checks cover all the mechanical drive units, the functioning of the overall plant in terms of delivery of full performance, and the checking of emission levels. All measurement and regulation devices attached to the plants shall also be included in the daily checks.

The pipework system, the dust collecting elements and the cladding shall be inspected at weekly intervals. Particular attention shall be paid to the discharge elements. In order to prevent any possible damage, Herding strongly recommends the use of monitoring and control devices from competent manufacturers. In order to meet the requirements of the German Law on Pollution, a range directives for performance tests and the installation and maintenance of continuously operating emissions measuring devices have been issued. Herding can provide the names of appropriate manufacturers on request.

Customer and Operator shall strictly comply with the operating and maintenance instructions and all documentation and function descriptions of Herding provided by Herding with delivery (see the section on Warranty and Liability). In addition, Herding also refers Customer to German VDI Directive 2264 "Operation and maintenance of separator systems: Separation of solid and liquid air contaminants".

Where, exceptionally, Operator should not possess any copies of Herding's operating and maintenance instructions, he shall request these from HERDING immediately.

Any verbal statements or instructions made by Herding's maintenance service fitters which deviate from the operating and maintenance instructions shall not be attributable to Herding unless expressly confirmed in writing by the management of Herding.