

# Standard Terms and Conditions

## 1. Standard Conditions of Sale and Delivery

### Section 1 Validity:

The following Standard Terms and Conditions shall apply only for business transactions with business enterprises and businesspeople, legal entities under public law, and public separate estates. All Heliocentris's sales and deliveries shall be governed by the following Standard Conditions of Sale and Delivery. Other terms and conditions – in particular the customer's Standard Conditions of Purchase – shall only have validity by way of exception, and this must be expressly confirmed by Heliocentris.

### Section 2 Conclusion, performance and termination of contracts:

1. A contract shall be deemed to have been concluded, if
  - a) Heliocentris receives a corresponding written order on the basis of its offer,
  - b) Heliocentris sends an acknowledgement of order after receiving a written order, or
  - c) a written contract is signed by both parties to the contract.
2. Illustrations, drawings and details on weights and measurements in our catalog shall not be deemed to be binding. We reserve the right to modify the design and construction of our devices in the interests of further development, as far as such modifications are reasonable considering our interests. In the event of delay in delivery caused by force majeure, e.g. fire, strike or lockout, at our company or one of our suppliers, the delivery period shall be extended accordingly; this shall not give the customer the right to rescind the contract. Should performance of the contract become impossible due to force majeure, both parties to the contract shall be entitled to rescind the contract without further claims for damages. This shall also apply in the event of late delivery to Heliocentris by our suppliers for which we are not responsible.
3. Penalties for delayed performance or nonperformance shall be excluded.
4. In case of a termination of the contract pursuant to §§ 649 or 627 German Civil Code (BGB), Heliocentris shall be entitled to half of the agreed costs, if the work has not yet been commenced. The proof of a substantially lower damage shall be reserved for customer. Heliocentris reserves the right to a higher damage.

### Section 3 Delivery:

- 1) The agreed delivery periods and dates shall be always deemed to be approximate, unless a firm date has been expressly agreed.
- 2) In the event of excusable operational delays (e.g. caused by force majeure) at our company or our suppliers, the delivery period shall be extended accordingly; this shall not give the customer the right to rescind the contract. Penalties for late delivery shall be excluded.
- 3) Heliocentris reserves the right to withhold services, as far as preliminary services of the customer or third parties have not been delivered in accordance with the respective agreement. The customer shall indemnify Heliocentris for resulting damages.
- 4) Part deliveries shall be permissible.
- 5) Orders shall always be shipped ex-works (Incoterm EXW) on the customer's account and at the customer's risk. Heliocentris is free to choose the carrier. Heliocentris shall only be liable for the accidental loss of the goods until they have been readied for the Carrier ex-works. Separate flat charges shall be made for shipping, packing and delivery insurance. Delivery insurances have to be ordered expressly by the buyer.
- 6) Should the parties have agreed on the installation of the goods within the customer's premises the risk of accidental loss shall vest with the customer from the delivery of the goods to the premises of the customer, even if the customer has not yet approved the delivery and the services.

### Section 4 Reservation of ownership:

Heliocentris shall retain ownership of the goods delivered by Heliocentris until all our receivables arising from the business relationship have been paid in full. In the event of the resale of the goods by the customer, if the customer is a businessperson, an extended reservation of ownership shall be deemed to be agreed. The customer shall be entitled to resell the reserved goods in the normal course of business. The customer already assigns now to Heliocentris the customer's receivables from the resale of the reserved goods in the amount of the total final invoice amount agreed with Heliocentris (including value-added tax).

This assignment shall be valid irrespective of whether the reserved goods have or have not been processed before resale. The customer shall remain authorized to collect the receivables after the assignment. Heliocentris's authority to collect the receivables shall remain unaffected by this. Heliocentris will not, however, collect the receivables as long as the customer meets its obligations with the revenue received, is not in default of payment, no application has been filed for the initiation of insolvency proceedings, and there has been no stoppage of payments.

### Section 5 Prices:

1. Heliocentris's prices are quoted net in euros plus the statutory rate of value-added tax.
2. In the case of orders worth less than EUR 75,00 Heliocentris shall charge a EUR 15,00 markup for small-volume purchases. Special terms on minimum order sizes shall apply for marketing partners and resellers. The customer shall bear the costs of monetary transactions.
3. Travel and accommodation costs accrued due to the provision of the services are invoiced separately and based on actual costs, as far as those costs are not included in the agreed remuneration. Travel by car shall be calculated based on a fee of € 0,60 excl. VAT per kilometre. If the services at the premises of the customer exceed six (6) hours, Heliocentris shall be entitled to claim accommodation costs. Such costs shall not exceed 120,00 per night and person, if the services are provided outside of Berlin.
4. If Heliocentris is obliged to modify products pursuant to the customer's request or to provide services outside of Heliocentris' premises, Heliocentris shall be entitled to 50% of the agreed remuneration after execution of the agreement and 40% at delivery of the goods, if the parties have not agreed on different payment terms.

### Section 6 Terms of payment:

1. Heliocentris reserves the right to ask customers for Letter of credit, cash payment or payment by cash on delivery.
2. Its invoices shall be payable with no deduction 30 days after the invoice date in the currency indicated on the invoice. Heliocentris shall grant a 2% cash discount if payment is received within 10 days after the invoice date.
3. Different terms of payment can be agreed for orders worth more than EUR 2,500,00 or for deliveries shipped abroad.
4. If the customer is in arrears with a payment, Heliocentris shall be entitled to charge penal interest in the amount of the maximum legally permissible percentage above the respectively valid base interest rate of the European Central Bank; Heliocentris reserves the right to prove a higher amount of damage. Furthermore, a flat rate shall be charged for issuing reminders. The customer reserves the proof of a significantly lower damage.

### Section 7 Complaints, warranty and liability:

1. Heliocentris shall grant a warranty period on products delivered by Heliocentris of 12 months.
2. Heliocentris agrees with the customer that components that are subject to normal wear and tear as a result of their use by the customer must be designed in such a way that they enable the normal use of the product for a period that is average for such components.
3. The warranty period begins on the day of delivery and only covers damage that occurs in the context of proper use through no fault of the operator.

A warranty for specific features of the fuel cell (including lifetime and performance over time) is not given, as far as no such guarantee has been given in writing.
4. In the case of a purchase agreement Heliocentris shall be liable for defects as required by law for subsequent performance, rescission of contract or reduction of the purchase price, on condition that the following conditions are met:
  - a) The customer shall examine the goods and their packing immediately on delivery according to normal commercial practice. If damage is outwardly recognizable, this shall be recorded by the transport contractor, in order to secure possible claims.
  - b) Evident defects shall be reported to us without delay but at latest within 7 days in writing.
  - c) In the case of a hidden defect, the customer shall file a complaint without delay after discovering the defect. Apart from this, all defects must be reported within the statutory time limits.

5. In the case of the provision of work services, the approval shall be deemed granted, if customer has not rejected the approval in part or in whole and in writing within 14 days after the request for approval.
6. In the case of the provision of work services customer shall only be entitled to claim reduction of the remuneration, recession of contract or execution by substitution after a second remedy by Heliocentris has failed or if remedy is not reasonable considering the circumstances.
7. Heliocentris shall not be liable for damages caused by ignorance of the security advices or the general technical guidelines provided to the customer, including but not limited to the cases of the use of dangerous materials, unless the damage was caused by Heliocentris' acting on intent or gross negligence.
8. In the case of damage caused to the customer's legal assets including its property by a defect in the purchased object, the erroneous delivery of merchandise other than that stipulated, or packing defects, Heliocentris shall be liable as follows:
  - a) insofar as damage could have been avoided if the customer had met its obligation to inspect the delivered goods on receipt, all forms of liability on our part shall be excluded, unless the damage is due to deliberate or grossly negligent conduct on our part.
  - b) insofar as damage has been caused despite the fact that the customer has met its obligation to inspect the delivered goods, Heliocentris shall only be liable for deliberate or grossly negligent breach of contract.

9. In general the liability of Heliocentris is limited to an estimated maximum damage of €2.000.000,00.
10. The aforementioned exclusions or limitations of liability shall not apply to cases of injury to a person's life, body or health resulting from a breach of duty by Heliocentris or in the case of the liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) or as far as an obligation has been breached, which is the basis for the contract, and which breach endangers the purpose of the contract and which breach endangers the customer may under normal circumstances shall not be caused by Heliocentris..
11. Heliocentris shall not be liable for the suitability of the goods for the purposes intended by the customer. To the extent that we advise on use, provide information or make recommendations, etc., we shall be only liable for culpably false advice, information or recommendation if this is given, provided or made in writing.
12. The warranty and liability can be excluded for prototypes.
13. It is strictly forbidden to use products or components bought from Heliocentris in aerospace applications or aerospace models.

### Section 8 Intellectual Property:

1. All underlying technology and/or embedded or delivered software are the sole property of Heliocentris or its licensors. The buyer is not entitled to any use, duplication, modification or reconstruction exceeding the purpose of the contract.
2. If goods are produced pursuant to customer's specifications or if goods are modified pursuant to customer's specifications, Heliocentris shall be entitled to provide the some goods and/or modifications to any third party, unless the goods or the modifications are based upon a registered intellectual property right of the customer. The customer has advised expressly and in writing about such registered intellectual property right. The same shall be applicable for additional materials, drafts and sketches, that are produced during the execution of the contract.

### Section 9 Duty of notification:

Heliocentris AG as a listed company is obligated to publicly announce larger client orders and strategic alliances immediately after the signing of according contracts or receipt of orders. The content of such a publication is to be agreed with the customer. The customer agrees to such a publication.

### Section 10 Place of performance, place of jurisdiction:

Berlin shall be the place of performance for our deliveries and services and for payments by the customer. The place of jurisdiction for merchants, legal entities under public law, and public separate estates shall be the vendor's registered place of business.

German law shall exclusively apply. The application of CISG is hereby excluded. Should any of the above clauses be or become ineffective, the remaining clauses and the agreement as a whole shall remain valid and in force.

-----  
Heliocentris Fuel Cells AG  
Heliocentris Energiesysteme GmbH  
Heliocentris Energy Systems Inc. (Vancouver)  
Rudower Chaussee 29  
12489 Berlin  
Internet: www.Heliocentris.com  
Email: info@Heliocentris.com  
Telefon: +49-(0)30-6392-6325  
Fax.: +49-(0)30-6392-6329  
-----

Valid from August 1<sup>st</sup>, 2009

These Standard Terms and Conditions are a translation of Heliocentris's German-language Standard Terms and Conditions and are provided as a service for our English-speaking customers. Only the German version, however, is authoritative

# Standard Terms and Conditions

## 2. Standard Conditions of Purchase

### §1 Validity

Heliocentris orders and appoints principally on the following purchase conditions. The exceptional validity of other conditions—especially Sales conditions-of the deliverer — has as a prerequisite an explicit written confirmation from Heliocentris. The inclusion of general business conditions of the contract partner for the remaining cases is herewith explicitly opposed. Any further agreements, alterations or supplementary clauses must be done in writing.

### §2 Conclusion of, fulfillment of and withdrawal from the contract

A Contract is considered as concluded, if

- on the basis of an order a corresponding written confirmation has followed, or
- a delivery follows on the basis of an order, or
- a Contract in writing has been signed by both Contract partners.

Depictions, drawings, weight and dimension details are valid as legally binding. If later it is concluded, that only deliveries with deviations in these factors were possible, then Heliocentris can withdraw from the Contract.

In case of delay in delivery for more than one month, which arises because of faults of the deliverer or of one of his subcontractors, Heliocentris is allowed without any further end date fixation to withdraw from the contract.

### §3 Delivery / Transport risk

a) The agreed delivery dates and –timetable are valid as legally binding. The decisive factor for the keeping of the delivery deadlines is the entrance of the ordered goods to the agreed place of delivery.

b) In case there are any delivery delays, the supplier is obliged to provide a compensation for the damage occurred due to these delays.

c) Partial deliveries are permissible only if such deliveries have been explicitly agreed upon.

d) Deliveries occur principally free of charge until the place of the receiver (Incoterm: DDP (place of delivery)), as long as no other conditions of delivery have been agreed upon. Costs of delivery and packaging as well as any further costs have to be considered in the offer of the supplier. If these conditions have not been explicitly indicated, they are thought to be included in the purchase price. The danger of loss or respectively of damage of goods during transportation is borne by the supplier.

### §4 Secrecy

a) The supplier is obliged to treat all commercial and technical details, which become known to him during the business relationship as a business secret.

b) Drawings, models, samples and similar objects may not be handed out or in any other way made accessible to ineligible third parties. The multiplication of such objects is only allowed in the course of the functional necessity of the business and the copy right regulations.

c) Subcontractors to the supplier are to be bound to these obligations accordingly.

d) Suppliers can only advertise their business relationship with Heliocentris only after receiving a written confirmation by Heliocentris.

### §5 Prices

Sales prices of the supplier are to be stated always net in EUR or USD with the addition of the legally valid VAT. Delivery and packaging costs- are to be considered in the offer of the supplier. If deviations of delivery costs occur, Heliocentris reserves itself the right to reduce the amount of the invoice.

### §6 Due dates / Payment / Invoice / Delivery note

a) The payments of Heliocentris to the Contract partners shall be made 30 days after the reception of goods, provided there are no other agreements made. The payment is achieved by money transfer or cheque.

b) If deliveries arrive before a particular set date, the payment shall be directed according to the initially agreed due date of delivery.

c) In case of deliveries of defect goods, Heliocentris is entitled, to retain the payment corresponding to the value of these defect goods until the regular replacement thereof is made.

d) A supplier is not permitted without a written confirmation, to transfer demands on Heliocentris or to let them be collected by third parties. If a supplier transfers his demands towards Heliocentris, in contradiction with Sentence 1, without our approval, then the withdrawal from the contract is legally valid. Heliocentris can however provide at its own choice transfers of demands to third parties with a releasing validity. The additional costs arising from such an activity can Heliocentris calculate as deductibles.

e) Delivery notes and invoices are to be provided always in a 2-ply copy, to the receiver stated in the order note. Invoices and delivery notes must include, apart from the legal requirements, the following data: Supplier number, our order number, our article number, tax number of the supplier, delivery note number (on the invoice).

### §7 Claims for defects, Warranty provision, liability, protection rights

a) Defects must be immediately indicated by Heliocentris to the Supplier, as soon as they are detected in the course of a regular business functioning. The Parties are in agreement that such a defect claim, which is brought forth within 7 days after delivery, must be immediately considered in any case. According to the art and detection possibility of the deficiency, the claim for defects can take place later.

b) For deliveries of defect goods the Supplier has the opportunity to assort and improve the delivered goods, provided this is reasonable for Heliocentris. If the Supplier is not able to carry this out or he does not carry the replacement immediately, Heliocentris can withdraw from the contract and send the goods back to the Supplier at the suppliers own risk. In urgent cases can Heliocentris after a consultation with the Supplier carry out the improvement itself or let it be carried out by third parties. The costs thereof are borne by the Supplier. In case of a repeated delivery of defect goods Heliocentris is entitled, to withdraw from the Contract even for the not executed deliveries.

c) The guarantee runs out 24 months after the end delivery of the end products to the end customer, however at the latest 36 months after delivery to Heliocentris. Claims for retrieval of Heliocentris towards the Supplier due to claims for material defects according to §§ 478 and 479 BGB (German Civil Code) remain unaffected. Heliocentris can validate them accordingly if the end customer is not a consumer, but rather an entrepreneur.

d) For measures of Heliocentris for damage defence (e.g. call-back campaign) due to defect components, the Supplier is liable for these components during the warranty period.

e) The Supplier is liable for claims, which arise by the usage of the delivered objects due to the breach of protection rights and protection right declarations. The Supplier releases Heliocentris and its Customers from all these claims occurring by the breach of such protection rights.

This clause does not apply, provided the Supplier has manufactured the delivered objects under the conditions of drawings, models or any other regulations and had no knowledge of a breach of protection rights.

f) The Supplier represents and warrants that he has obtained all mandatory designations and certificates required to distribute the products within the European Union, including but not limited to the Act on the Security of Equipment and Goods (Geräte- und Produktsicherheitsgesetz) and the Act concerning the Distribution, Return and ecological Disposal of Electro- or Electronical Devices (Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten).

### §8 Force majeure

Force majeure, worker strikes, riots, governmental measures and any other unpredictable, unavoidable and grave events release the Contract partners for the duration of the impairment and in the amount of their influence, from the contract obligations. This applies also, if the events occur, while one Contract partner is in arrears with its obligations. The Contract partners are obliged, within reasonable limits to provide the required information immediately and to adapt their obligations to the altered circumstances in good faith.

### §9 Place of performance, Jurisdiction

Place of performance for deliveries and services is Berlin. The court of jurisdiction for businessmen, legal entities under public law and public – legal special equities is the occasional seat of the Plaintiff.

German legislation is exclusively applied. The application of CISG (UN-Merchant Law) is excluded. Should any of the above clauses be or become ineffective, the remaining clauses and the agreement as a whole shall remain valid and in force..

-----  
Heliocentris Fuel Cells AG  
Heliocentris Energiesysteme GmbH  
Heliocentris Energy Systems Inc. (Vancouver)  
Rudower Chaussee 29  
12489 Berlin  
Internet: www.Heliocentris.com  
Email: info@Heliocentris.com  
Telefon: +49-(0)30-6392-6325  
Fax.: +49-(0)30-6392-6329  
-----

Valid from August<sup>1<sup>st</sup></sup>, 2009

These Standard Terms and Conditions are a translation of Heliocentris's German-language Standard Terms and Conditions and are provided as a service for our English-speaking customers. Only the German version, however, is authoritative