



TERMS AND CONDITIONS OF SALE

1. These terms and conditions of sale of Herotecant Flanges N.V. (hereinafter called the "Seller") shall apply to all offers and acknowledgments of orders of Seller and, except where the parties have otherwise agreed in writing, shall apply to all resulting transactions.

No terms and conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's offer or acknowledgment of orders, nor otherwise expressly agreed in writing by Seller, shall be binding upon Seller and all orders shall be filled solely on the basis of these terms and conditions.

If the Buyer disagrees herewith, he shall inform the Seller thereof within 7 (seven) calendar days after receipt of these terms and conditions of sale.

2. If Seller is delayed or fails to perform due to any cause beyond its control, such as, but not limited to, the unavailability of goods, law or governmental regulation, judgment of a competent court, difficulties with labour, accidents, delays in transportation, acts of God, civil disorder or war or any supplier of the Seller not performing its obligations towards the Seller in due time, Seller shall not be liable and upon notice to Buyer given within a reasonable time after Seller becomes aware of such cause, Seller may, at its option, cancel the order in whole or in part or postpone delivery for such period of time as shall be appropriate in the circumstances. Buyer may, upon receipt of such notice, cancel the order, except with respect to goods, material or products being specially produced for Buyer which Seller determines cannot be sold to others in the ordinary course of Seller's business.

Except in case of fraud or willful neglect, Seller will not be liable for any delay in delivery.

3. Delivery time shall be computed from the date of Seller's acknowledgment of the order and to determine whether the delivery was made in due time, delivery shall be deemed to be completed at the time the goods, material or products has been either delivered to the initial carrier for shipment to Buyer or Buyer has been notified that the goods are ready for shipment or inspection, whichever is earlier. Goods, material or products to be delivered within a specified period may be delivered in such installments as Seller deems appropriate.

If Buyer fails to fulfill its obligations within the time specified or otherwise delays Seller's performance, Seller may extend the time for delivery by such period as Seller deems appropriate under the circumstances or if the delay is substantial, may cancel the order without prejudice to any other right or claim of Seller for damages.

4. Unless otherwise specified by Seller in writing, goods, material or products will be delivered EXW factory Seller. EXW, FOB, ... used in these terms and conditions or any offer or acknowledgement of order will be interpreted in accordance with the Incoterms 1990.



5.A: Seller expressly warrants that the finished product furnished pursuant to the order shall be made from recent manufacture and unused material, unless otherwise specified, will conform with the specifications set forth in the order.

B: In the event failure of the good, material or product results from a defect in material or workmanship within one year from the date the good, material or product is first put in actual use by the Buyer, but in no event later than three years from the date of shipment, Seller will at its option repair or replace such a defective product with a new good, material or product or a good, material or product like or similar to the product ordered, FOB the location of original installation. Seller shall have no liability for any claims for lost profits, labour, expense or any damages (whether direct, indirect or consequential) in connection with the failure, removal and replacement of failed good, material or product.

C: No good, material or product is to be returned without prior written authorization to do so by Seller. Seller will inspect on the premises or authorize return at Seller's expense and Buyer's risk and may request evidence regarding the good, material or product's use, installation, time of installation and service. If Seller upon inspection and analysis finds the good, material or product defective it shall replace or repair the good, material or product as set forth above. In the event of a dispute regarding a claim under this provision, it will be referred to a mutually acceptable metallurgical consulting firm for determination. In the event Buyer and Seller cannot agree upon a mutually acceptable consulting firm within ninety days from the date Seller is first notified of the claim, the matter will be referred to the Erdgenossische Technische Hochschule Zürich (Institut für Baustoffchemie, Werkstoffchemie und Korrosion) which will test the good, material or product and report its findings. The determination of the metallurgical consulting firm shall be binding upon both Seller and Buyer and the cost of the consulting firm shall be shared equally between Buyer and Seller.

Notwithstanding clauses 5 A, B and C, Seller shall not be liable for any defects caused by normal wear and tear; materials or workmanship, made, furnished or specified by Buyer; lack of proper maintenance; any modification or repair not previously authorized by Seller in writing.

D: Any complaints for hidden defects have to be reported to the Seller by means of a registered letter sent within 10 (ten) calendar days after the date of their discovery and in any case within a term of 1 (one) year from the date that the goods, material or products are first put into actual use by the Buyer, but in no event later than 3 years from the date of shipment. After above mentioned term, or in case of untraceable defects, the Seller does not extent any guarantees for hidden defects.

E: Claims for errors in the quantity delivered or for other deviations from the terms of this order shall not be considered unless made know to Seller by registered letter within 8 (eight) calendar days after delivery of the goods, material or products.

F: The warranties set forth above are in lieu of any other warranties expressed or implied including the warranty of merchantability and/or fitness for purpose and it is expressly agreed that the remedies set forth above are the sole and exclusive remedies of the Buyer in either contract or tort and in no event will the Seller be liable for any claims for labour, expenses or damages resulting from or occasioned by delivery or use of the goods, material or products or for indirect, incidental or consequential damages, including but not limited to loss of use or loss of profit.



G: It is expressly understood that any technical advice furnished by Seller with respect to the use of Seller's goods, materials or products or services is given without charge and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk.

6. In the event that goods, material or products are produced in accordance with items or specifications submitted by Buyer, including drawings, models, analysis, description, prescription or other specifications, Buyer shall indemnify and save harmless Seller from any and all costs in connection with any claim for infringement of any patent or any other rights of any third party or parties in the manufacture, sale or use of such goods, material or products or such items or specifications.

7. Unless otherwise specified, an offer by Seller is without obligation and valid for a period of 10 (ten) days. The prices quoted are based on the full quantity offered and do not include the cost of any tests and certificates unless specified in the offer. Acceptance of the offer must be in writing.

Buyer's failure to object within 1 (one) calendar day after receipt of the terms and conditions of the acknowledgment shall be deemed an approval of all the terms and conditions of the acknowledgment and the order shall be filled solely on the basis of such terms and conditions. If Buyer's order was not preceded by Seller's offer, a contract shall be entered into when Seller has sent its written acknowledgment of the order, to which will apply these terms and conditions unless otherwise agreed upon in writing, and the terms and conditions of such acknowledgment alone shall constitute the contract of sale. In case the order of the Buyer was not confirmed by a written acknowledgment from the Seller, acceptance of the order can only be concluded from the execution of the order. The contract for the goods, material or products can be cancelled, terminated or modified only with Seller's prior written consent and then only upon terms and conditions to be agreed upon which shall include protection of Seller against all loss.

8. Unless otherwise specified all invoices shall be paid within thirty days after invoice date. For the purposes of invoicing and billing each shipment shall be treated as separate and independent contract. No cash discounts shall apply unless specifically agreed to by Seller. Overdue amounts shall automatically and without prior notice be subject to interest at the rate of 3% above the official interest rate applied by the Central Bank of Belgium or of the Buyer's country, whichever is the highest, but in any event shall not be less than 8%. In addition, a lump sum damage of 10% of the amounts due, will become due on the first day following the due date of payment, without prejudice to the right of the Seller to claim higher damages. The agreed time of payment must be observed even if a complaint is made. For purposes only of securing the payment of the purchase price, title to the goods, material or products shall remain with Seller until Seller receives the purchase price for the goods, material or products or any amount due to the Seller by the Buyer and all additional charges and additional settlement items. In the event that payment is not made as required, all costs of collection incurred by Seller shall be for Buyer's account.



In case delivered goods, material or products are paid in terms, the non-payment of one term gives the Seller the right to terminate the contract. All the terms paid up till then will remain with the Seller as damages, this notwithstanding the right of the Seller to claim further damages.

In case of payment by means of a cheque or draft, the payment will only be made once the cheque or draft has been honoured.

9. All shipments and deliveries to be made hereunder shall at all times be subject to Seller's approval of Buyer's credit, and if at any time in Seller's judgement there is any doubt as to the Buyer's possibility to pay, Seller may decline to continue production or to make any further shipments hereunder except upon receipt of satisfactory security or cash. If this security or cash is not received, Seller may terminate this order without liability to Buyer.

10. Prices quoted in Seller's quotation or acknowledgment are based upon Seller's cost at the time of quotation or acknowledgment. These costs can, without limitation, be composed of the following elements: raw material, power, wages, transportation, insurance, governmental levies and foreign exchange rates. The above exemplary list does not affect the division of any costs or responsibility for transportation, insurance etc. between Seller and Buyer.

Unless otherwise specified by Seller, Seller reserves the right to adjust quoted prices to reflect changes in Seller's cost occurring prior to the date of delivery. Seller's price does not include T.V.A. which will be added upon invoicing for Buyer's account, where applicable.

All bank costs are borne by the Buyer.

All prices are to be paid in the currency stated in the offer or acknowledgment of order. In case the invoices are payable in a foreign currency, Seller has the right to adjust the amount due in case of depreciation of this foreign currency vis-à-vis the Euro.

11. Except for cases of wrongful intent or fraud, Seller's total liability for any and all damages, claims or courses of action howsoever arising (including but not limited to negligence, strict liability or infringement of intellectual property rights, shall not exceed the amount paid by Buyer for the delivered goods, materials or products.

12. If any clause, subclause or other provision of these terms and conditions is invalid, such provision shall be deemed to be omitted to the extent that it is invalid only without affecting the validity of the remainder of the terms and conditions of sale.

13. All goods, material or products shall comply with the legal rules concerning safety applicable in Belgium at the time of production. Buyer is responsible for any further compliance of the goods, materials or products with any legal rule, including but not limited to rules concerning safety applicable at the place the goods, materials or products are used.



14. Special assignments may be subject to supplementary terms and conditions of sale. In case of contradictions between the general terms and conditions of sale and the supplementary terms and conditions of sale, the latter will prevail. If the supplementary terms and conditions are unclear, they will be interpreted in accordance with these general terms and conditions of sale.

15. In case of differences in the interpretation between the English, Dutch and French version of these terms and conditions of sale, the Dutch version shall prevail.

16. The contract for the goods, material or products to be delivered shall be governed by Belgian law, excluding the rules of Belgian international private law that attribute competence to another court or declare the legal rules of any other country applicable.

The courts of Turnhout are the only competent courts to judge any dispute, without prejudice to the right of the Seller to summon the Buyer before any other competent court.