

HEICLOUD TERMS OF USE

LAST UPDATED: March 2021

Welcome to “**HeiCloud**”, the web platform of Gebr. Heinemann SE & Co. KG (hereinafter “**Gebr. Heinemann**”) offering various features (as defined hereinafter and amended from time to time) to Gebr. Heinemann’s business partner (hereinafter “**Client**” and together with Gebr. Heinemann the “**Parties**”) and its personnel.

Client and Gebr. Heinemann agreed on the supply of certain goods (hereinafter the “**Products**”) by Gebr. Heinemann to Client. Accordingly, Client and Gebr. Heinemann entered into a supply agreement (hereinafter “**Supply Agreement**” and the Parties communication regarding or relating to the Supply Agreement the “**Business Relationship**”).

Client has appointed you as authorized person to access and use HeiCloud.

Please carefully read the following terms and conditions of use (together the “**Terms of Use**”) governing your use of HeiCloud, including your registration, access, browsing and/or use of any (current and future) features.

1. Application of Terms

BY USING HeiCloud, YOU SIGNIFY YOUR UNDERSTANDING AND AGREEMENT TO COMPLY WITH THE TERMS OF USE AS FOLLOWS:

- 1.1 Your registration, access and use of HeiCloud is subject to these legally binding Terms of Use and constitutes your agreement to be bound by and to act in accordance with these Terms of Use.
- 1.2 Gebr. Heinemann may update and add further provisions to these Terms of Use (i) to reflect changes in the Content, such as evolving new or removing outdated features, (ii) for legal regulatory, or security reasons or (iii) to prevent abuse or harm. Gebr. Heinemann will notify you of changes to these Terms of Use. This updated Terms of Use become binding subject to the conditions mentioned in Section 1.1.
 - 1.2.1 Gebr. Heinemann offers the modified Terms of Uses as well as informs you that the changes are deemed to be accepted if you do not object in accordance with the following provision.
 - 1.2.2 You do not object to the changes within 6 weeks from receipt of this information by email sent to the address referred to under Section 12 or any other address named by Gebr. Heinemann.

In the event of an accurate objection, the amended Terms of Use will not come into force. Termination rights (see Section 9) remain unaffected.

2. Registration on HeiCloud

- 2.1 You are enabled to register a personal account on HeiCloud by an invitation email containing an initial link to HeiCloud to register by creating a password. By registration, you accept these Terms of Use. If you join HeiCloud as Administrator please note the additional terms for Administrators according to Section 7.
- 2.2 As long as you are registered on HeiCloud, Gebr. Heinemann will store personal data required to run your profile, such as first and last name, e-mail address and password. For information about data protection, please see Gebr. Heinemann's data protection statement at <https://b2b.gebr-heinemann.com/en/public/data-protection-statement>.
- 2.3 Following registration, you are authorized to use HeiCloud, however, this authorization is personal and non-transferable. You are responsible for maintaining a secure password and keeping it confidential, undertaking all reasonable measures to prevent an abuse of your personal access to HeiCloud. In case of loss of your password or any recognized abuse of your HeiCloud account, you are obliged to inform Gebr. Heinemann Support without undue delay.

3. HeiCloud, Content

- 3.1 HeiCloud is Gebr. Heinemann's business-to-business web platform. HeiCloud is supposed to serve as information and communication platform through which information, materials and documents can be made available, whereby some features will only be made available in future and subject to further assessment by Gebr. Heinemann.
- 3.2 To use HeiCloud, Members are required to register a profile and login with personal access data in accordance with Section 2.
- 3.3 Gebr. Heinemann provides two different types of profiles for HeiCloud:
- a) **"User Profile"**, a profile which grants its user (hereinafter **"User"**) access to Content on HeiCloud as determined by an Administrator (e.g. access to Assortment and Order History with regard to all or only certain Customer(s)).
 - b) **"Administrator Profile"**, a profile which grants a User (hereinafter **"Administrator"**), Users and Administrators are jointly referred to as **"Member"**) access to the entire Content on HeiCloud provided to Client. The Administrator is able to create, disable and delete User Profiles as well as create further Administrator Profiles.
- 3.4 On HeiCloud, Members may be enabled by Gebr. Heinemann, now and in future, at Gebr. Heinemann's sole discretion, to use the features on HeiCloud (hereinafter each and together the **"Content"**), each shown, as the case may be, for Client's whole business under the Supply Agreement or divided by Client's respective shop, branch and/or affiliate (hereinafter each and together **"Customer(s)"**). Content comprises:
- a) **"Assortment"**: non-binding overview of current assortment (offer, new listing and delisting), including price and product information
- Every Member has the possibility to download price and product Information in the Excel or a comparable standard format.

- b) **“Order”**: features that enable User to (i) download the latest Order Template, (ii) to place new orders for Products via HeiCloud on behalf of Client and (iii) to access Client’s Order History. In detail:
- (i) **“Order Template”**: latest order form in Excel format provided to Members by Gebr. Heinemann on HeiCloud for download or in other ways.
 - (ii) **“Place New Order”**: possibility to place order for Products on behalf and account of Client and/or Customer by
 - filling in all product and delivery information required by Order Template. All quantity specifications indicated on the Order Template need to be based on packaging units (e.g. pieces) specified for Customer, a request for a shipping date can be given by the Customer. Acceptance of the requested shipping date must be confirmed by Gebr. Heinemann and is not binding until confirmation of Gebr. Heinemann. Should no shipping date be requested, Gebr. Heinemann will enter the order with the date of order and will load it on the next possible departure;
 - uploading a completed Order Template to HeiCloud; and
 - completing the order process by clicking the “Place Order” button. Only by clicking the “Place Order” button Member places a legally binding order for Products on behalf of Client and/or Customer via HeiCloud (hereinafter **“Online Order”**). At any time before clicking the “Place Order” button Member can delete an uploaded Order Template by clicking the recycle bin icon and re-upload a modified or new Order Template as well as cancel the order process by choosing the “Cancel” button.

Uploaded Order Templates will be automatically reduced by positions that are described incorrect and/or incomplete (**“Incomplete Data”**). Incomplete Data are not part of the Online Order. If and as far as this is the case an automatic error message is generated.
 - (iii) **“Order History”**: non-binding information on the status of Customers’ latest orders (e.g. order date; order number, total value)
- c) **“Service Request”**: feature to enable User to get in contact with Gebr. Heinemann, including but not limited to following topics and depending on the following status overview :
- (i) **“Delivery time”**: possibility to place requests regarding loading appointments, pick-up appointments or questions regarding ordered goods.
 - (ii) **“Change requests”**: User can place requests regarding existing order, e.g. addition orders, re-orders or cancellation.
 - (iii) **“Additional order information”**: feature to place additional information, e.g. priorities to a placed order.
 - (iv) **“HeiCloud support”**: topic is selected for questions in terms of functionalities, technical requirements or problems related to HeiCloud.

- (v) The status “**new**“ indicates that a new service request has been placed by a User. Status “**in process**” indicates as soon as the first steps are taken to solve the request by Gebr. Heinemann. “**Action requires**” indicates, that Gebr. Heinemann requires additional information from User to proceed with the solution of request. The request changes to the status “**solution provided**” when a solution for the request has been provided by Gebr. Heinemann. Status “**closed**” indicates that when a solution has been provided and no further feedback has been received from User. The service request is either closed manually by Gebr. Heinemann or automatically by the system after a period of 30 days.

d) “**Future Content**”: Gebr. Heinemann’s may release more or other features and services as Content on HeiCloud, subject to further development of HeiCloud at its sole discretion.

3.5 Any use of HeiCloud takes place at your own risk. Content, particularly product and price Information, serves exclusively as general information and has no contractual value.

3.6 Gebr. Heinemann takes reasonable steps to ensure the accuracy of the Content. However, Gebr. Heinemann takes no responsibility for errors or omissions in the Content and does not guarantee the accuracy, completeness or timeliness of Content provided on HeiCloud. Content provided on HeiCloud is subject to change at any time without notice.

4. **Additional Provisions for Online Order via HeiCloud**

4.1 Every Member can access every Online Order at any time via Order History.

4.2 Immediately after receipt of an Online Order, Gebr. Heinemann will confirm the receipt of this Online Order by an automated message listing the Products successfully ordered which merely documents that Gebr. Heinemann has received the Online Order and is for information purposes only (“**Electronic Receipt**”). The Electronic Receipt is shown in the Order History.

4.3 Unless otherwise agreed between the Parties Online Orders are performed solely in English.

4.4 Online Orders are subject to Gebr. Heinemann’s General Terms and Conditions of Sale unless otherwise agreed between the Parties. Gebr. Heinemann’s General Sales Conditions can be reviewed and downloaded – always in their then current form – at any time via HeiCloud. Gebr. Heinemann’s annual report as well as corporate responsibility report can be accessed via www.gebr-heinemann.de.

5. **Availability**

Members shall not have an enforceable claim to use HeiCloud. Gebr. Heinemann is constantly changing and improving features on HeiCloud. Maintenance work, updates or technical failures and errors may result in HeiCloud being temporarily or permanently unavailable. Gebr. Heinemann also reserves the right to close HeiCloud at any time at its own discretion. In this case any communication shall take place via communication channels known from the Business Relationship. In case you have problems to reach HeiCloud please contact Gebr. Heinemann’s support (Section 12).

6. Use of HeiCloud

With your registration or access to HeiCloud you agree to

- 6.1 use HeiCloud (and the Content) only for Client's (internal) purposes in connection with the Business Relationship.
- 6.2 keep Content strictly confidential, except for information provided on HeiCloud that
 - a) is or becomes in the public domain or generally available at the time Client was provided with such information on HeiCloud (except by reason of any breach of these Terms of Use);
 - b) was already legitimately in the possession of Client at the date of your registration to HeiCloud is entered into; or
 - c) you are required by mandatory law or an enforceable decision of any court, arbitration or governmental authority to disclose. In this case please inform Gebr. Heinemann without undue delay of type and scope of the disclosure,whereby confidentially obligations under the Supply Agreement remain unaffected.
- 6.3 refrain from granting access to HeiCloud or disclose Content to any third party, that is not authorized to access HeiCloud.
- 6.4 disclose Content only to persons within Client who are in charge of the respective Customer(s).
- 6.5 notify Gebr. Heinemann without undue delay after becoming aware of an actual or imminent unauthorized use of HeiCloud or an actual or imminent unauthorized disclosure of Content as well as take all reasonable measures in order to prevent or terminate any such use or any such disclosure, if necessary with assistance of Gebr. Heinemann.

7. Additional Provisions for Administrators

- 7.1 Each Administrator can create further Administrator Profiles as well as User Profiles (hereinafter together "**Profiles**"). Each Administrator undertakes to monitor and manage the User Profiles created by it.
- 7.2 When creating, monitoring and managing Profiles, each Administrator undertakes to protect Gebr. Heinemann's interests by applying the reasonable and appropriate diligence, particularly but not limited to the following measures:
 - 7.2.1 At the time of appointment of another Administrator or User, the Administrator undertakes to carefully verify the other Administrator's or Users affiliation with Client, their abilities to use HeiCloud (including sufficient English skills) as well as assignment to the respective Customer(s) as well as trustworthiness regarding the use of HeiCloud.
 - 7.2.2 When setting up a new Profile, the Administrator may only send an invitation to the new Administrator's or new User's business email address of Client or its Affiliates. Contact data may not be replaced by private email addresses on all Profiles.

- 7.2.3 When setting up a new User Profile, the Administrator undertakes to apply due diligence to ensure that only the required competencies are assigned to the new User. The Administrator undertakes to repeat this check continuously repeated for existing profiles, changes shall be implemented immediately.
- 7.2.4 A User Profile is to be deleted if a User asks an Administrator to do so, is no longer employed with the Client or no longer fulfils the requirements for an appointment, in particular if these Terms of Use are violated.
- 7.3 Administrator Profiles can only be deleted by Profile Deleting pursuant to Section 9.1 and provided that Client disposes of or names a remaining Administrator. If you are the last Administrator and wish to delete your Administrator Profile please contact Gebr. Heinemann Support.

8. Liability

- 8.1 Gebr. Heinemann shall be liable according to the provisions of applicable law in case of damage claims which are based on intent or gross negligence of Gebr. Heinemann (including intent or gross negligence of agents or assistants in performance of Gebr. Heinemann). For ordinary negligence Gebr. Heinemann shall also be liable according to the provisions of applicable law in case of breach of fundamental contract obligations (meaning such obligations which have to be fulfilled in order to enable a proper execution of the Agreement and in which the contractual partner regularly trusts and may trust in). With exception of cases of intent the liability of Gebr. Heinemann shall be limited to the typically predictable damage.
- 8.2 The liability of Gebr. Heinemann for culpable damage to life, body or health as well as liability under the Product Liability Act or in case of willful deceit or a guarantee of Gebr. Heinemann for the quality of the Goods shall remain unaffected.
- 8.3 Any liability not expressly provided for in this Section 8 shall be disclaimed.

9. Termination

- 9.1 Unless otherwise stated in these Terms of Use, an Administrator may delete another Administrator's or a User Profile and thereby end the other Administrator's or User's use of HeiCloud at any time („**Profile Deleting**“).
- 9.2 Every User may at any time ask Gebr. Heinemann to delete its profile (see contact information in Section 12).
- 9.3 Gebr. Heinemann may delete your Profile or end your use of HeiCloud by good cause. A good cause shall be given, particularly but not limited to, if:
- 9.3.1 You objected to an amendment of the Terms of Use according to Section 1.2 and Gebr. Heinemann has a legitimate interest not to continue operation under the former Terms of Use.
- 9.3.2 These Terms of Use have been breached by either you or the Administrator creating your Profile;
- 9.3.3 Gebr. Heinemann decides at its sole discretion to close HeiCloud;
- 9.3.4 Gebr. Heinemann or Client have terminated the Supply Agreement or the Business Relationship has ended in other ways.

10. Governing Law; Jurisdiction

- 10.1 These Terms of Use shall be governed by, and construed in accordance with, and any dispute arising out of, or in connection with this Terms of Use, shall be settled in accordance with, German law (excluding its principles on conflicts of laws that might result in the application of the laws of a jurisdiction other than the German jurisdiction), to the extent permitted by law.
- 10.2 Exclusive Jurisdiction shall be with the competent courts in Hamburg, to the extent permitted by law.

11. No Waiver

The failure on the part of Gebr. Heinemann to enforce any part of these Terms of Use shall not constitute a waiver of any of Gebr. Heinemann's rights hereunder for past or future actions.

12. Gebr. Heinemann Support

If you have any queries or need to give notice in accordance with your use of HeiCloud and/or these Terms of Use, please contact our Gebr. Heinemann support at: support@b2b.gebr-heinemann.com

Gebr. Heinemann is entitled to update this contact information any time.

13. Miscellaneous

- 13.1 Contract language is English.
- 13.2 If one or more provisions of these Terms of Use are or become void or unenforceable or prohibited by applicable law, or if these Terms of Use contain a gap, this shall not affect the validity of the rest of these Terms of Use.
