

# General Terms and Conditions of Sale of HiTherma AG (Valid as at 01.11.2014)

## § 1 General, scope of application

- (1) These General Terms and Conditions of Sale (GCS) apply to all our business relations with our customers. The GCS only apply if the customer is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- (2) The GCS apply in particular to contracts for the sale and/or delivery of movable property (hereinafter also referred to as "goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). The General Terms and Conditions of Sale, as amended, shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable property with the same customer, without us having to refer to them again in each individual case; in this case, we shall inform the customer immediately of any changes to our GCS.
- (3) Our GCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become an integral part of the contract if and to the extent that the customer's terms and conditions of business refer to terms and conditions of purchase in accordance with the recommendation of the Verband der deutschen Automobilindustrie e.V. (Association of the German Automotive Industry, VDA) for the purchase of production material and spare parts intended for motor vehicles. Our terms and conditions of sale shall, however, take precedence over these provisions in any case. Other general terms and conditions shall only become part of the contract if and insofar as we have expressly agreed to their validity. The requirement of consent shall apply in any case, for example even if we carry out the delivery to the customer without reservation in full knowledge of the customer's general terms and conditions.
- (4) Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GCS. A written contract or our written confirmation is decisive for the content of such agreements.
- (5) Legally relevant declarations and notifications to be made to us by the customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing in order to be effective.
- (6) References to the validity of legal regulations have an explanatory function only. Even without such explanation, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded in these GCS.

## § 2 Conclusion of contract

- (1) Our offers are subject to change and are non-binding. This shall apply even if we have provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – for which we reserve ownership rights and copyrights.
- (2) The order of the goods by the customer is regarded as a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 2 weeks of its receipt by us.
- (3) Acceptance can be declared either in writing or in text form (e.g. by order confirmation) or by delivery of the goods to the customer.

## § 3 Delivery periods

- (1) Delivery dates or delivery periods shall only be binding if they have been individually agreed in writing or expressly stated or confirmed by us in writing. If such dates or delivery periods have been agreed in accordance with the above provisions, the agreed time shall be deemed to have been complied with if the item to be delivered has left the factory with the agreed shipment or if readiness for shipment has been indicated with the agreed collection by the customer.
- (2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of performance), we shall inform the customer of this without delay and at the same time inform the customer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse any consideration already provided by the customer without delay. In particular, the non-availability of the service in this sense shall be deemed to be the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.
- (3) The occurrence of default in delivery on our part shall be determined in accordance with the statutory provisions. In any case, a reminder from the customer is required. In any case, the delivery presupposes the timely and proper fulfilment of the customer's obligations. The defence of non-performance of the contract remains reserved. In the event of a delay in delivery, we shall not be liable for loss of profit and damage resulting from interruption of operations. In cases of slight negligence, damages shall be limited to additional freight costs, retrofitting costs and, after fruitless setting of a grace period or in the event of loss of interest in the delivery, to the additional expenses for covering purchases.
- (4) In the event that the customer provides raw materials or other materials required for the production of the ordered goods, the customer shall be obliged to provide and deliver these at his own risk and expense with a quantity surcharge of 5% in good time and in perfect condition, unless expressly agreed otherwise in writing. If non-compliance with our possible delivery period is due to the late or improper provision of goods by the customer, the delivery period to be observed by us shall be extended in accordance with the delay caused by the customer. In the event that a binding date has been agreed for the provision of the raw materials or materials, we reserve the right, in the event of default, to assert the additional costs incurred as a result, in particular costs due to interruptions in production.
- (5) We reserve the right to deviate from the ordered number of items or the ordered quantities upon delivery to the extent customary in the trade for production-related reasons. A deviation of +/-10 % shall be deemed customary in the trade. Any deviation shall be taken into account proportionately when invoicing the customer in accordance with the excess or shortfall in quantity.
- (6) The rights of the customer in accordance with § 8 GCS and our statutory rights in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

## § 4 Delivery, passing of risk, acceptance, default of acceptance

- (1) Delivery takes place ex warehouse, which is also the place of performance. At the customer's request and expense, the goods shall be shipped to another destination (mail order purchase). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest when the goods are handed over. In the case of sale by delivery to destination, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay shall pass upon delivery of the goods to the freight forwarder, carrier or other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. Default of acceptance by the customer shall be equivalent to delivery or acceptance.
- (3) If the customer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage (in particular compensation for additional expenses, reasonable compensation, termination) in accordance with the statutory provisions.

## § 5 Prices and terms of payment

- (1) Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value-added tax. For payments made within 10 days of the invoice date, we grant a 2% discount on the invoice amount excluding value-added tax. This does not apply to any participation in tool costs (§ 7 (2)).
- (2) In the case of sale by delivery to destination (§ 4 (1)), the customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer. We shall not take back any transport packaging or other packaging in accordance with the packaging ordinance unless we are legally obliged to do so; they shall become the property of the purchaser; pallets shall be excluded from this.
- (3) Our payment claims against the customer are due and payable within 30 days of invoicing and delivery or acceptance of the goods.
- (4) The customer shall be in default upon expiry of the above payment period. The purchase price shall bear interest during the period of default at the statutory default interest rate applicable at the time. We reserve the right to assert further claims for damages caused by default. Our claim against merchants to commercial default interest (§ 353 of the German Commercial Code (HGB)) remains unaffected.
- (5) The customer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the customer's counter rights shall remain unaffected, in particular pursuant to § 8 (6) sentence 2 of these GCS.
- (6) If it becomes apparent after conclusion of the contract that our claim to the purchase price is endangered due to the customer's inability to pay (e.g. by filing for insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of specific goods (custom-made products), we can declare the withdrawal immediately; the statutory regulations regarding the dispensability of setting a deadline remain unaffected.

## § 6 Retention of title

- (1) Until complete payment of all our present and future claims from the purchase agreement and an ongoing business relationship (secured claims), we reserve title to the sold goods.

- (2) The goods subject to retention of title may not be pledged to third parties nor transferred by way of security until the secured claims have been paid in full. The customer must inform us immediately in writing if and to the extent that third parties access the goods belonging to us.

- (3) If the customer acts in breach of contract, in particular if the purchase price due is not paid, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and demand the return of the goods on the basis of retention of title and withdrawal. If the customer does not pay the purchase price due, we may only assert these rights if we have unsuccessfully set the customer a reasonable deadline for payment beforehand or if such setting of a deadline can be dispensed with according to the statutory provisions.

- (4) The customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

- (a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed the manufacturer. If the ownership rights of third parties remain in force in the event of processing, mixing or combination with goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. For the remainder, the same shall apply to the resulting product as to the goods delivered under retention of title.

- (b) The customer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the customer mentioned in paragraph 2 shall also apply with regard to the assigned claims.

- (c) The customer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the customer meets his payment obligations towards us, is not in default of payment, no application has been made for the opening of insolvency proceedings and there is no other defect in his ability to pay. If this is the case, however, we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

- (d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.

## § 7 Moulds / Tools

Insofar as plastic thermoforming tools or other moulds (hereinafter referred to as "tools") required for the manufacture of the required goods are used or manufactured for the customer's order, the following shall apply in addition to the other provisions of these GCS:

- (1) Unless expressly agreed otherwise, the agreed price for tools shall also include the costs for one-time sampling, but not the costs for testing and processing equipment. Costs for further samples, the necessity of which is the responsibility of the customer, shall be borne by the customer.
- (2) In the event that special tools become necessary to carry out the customer's order, we shall remain the owner of the tools even if the customer contributes to the tool costs, irrespective of whether we manufacture these tools ourselves or have them manufactured by third parties. A (proportionate) transfer of ownership to the customer shall only take place if expressly agreed in writing.
- (3) If we are the owners of the tools, we shall only be obliged to replace these tools free of charge for the customer if this is necessary to fulfil a contractually guaranteed output quantity for the customer. Our obligation to store the tools shall lapse 2 years after fulfilment of the last contractually agreed (partial) delivery of the goods.
- (4) If the customer is to become the owner of the tool on the basis of an express agreement, we shall retain title to them until the agreed price has been paid in full. Even after transfer of ownership to the customer, the customer shall not be entitled to demand the return of the tool for the duration of the supply agreements for the fulfilment of which the corresponding tool is required.
- (5) Insofar as we are in possession of tools which are the property of the customer or which have been rented or loaned to us by the customer, our liability with regard to the storage and care of the tools shall be limited to the same care as in our own affairs. Costs for maintenance and insurance are to be borne by the customer. Our obligation to store and maintain the tools shall lapse if, after fulfilment of the delivery contract associated with the tool, the customer does not collect the tool within a reasonable period of time upon our request.

## § 8 Warranty claims of the customer

- (1) The customer's rights in the event of material defects and defects of title (including incorrect and short deliveries, as well as improper assembly or defective assembly instructions) shall be governed by the statutory provisions unless otherwise stipulated below. In all cases, the statutory special provisions shall remain unaffected upon final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB).
- (2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. Product descriptions, drawings, weights and dimensions shall only be deemed to be agreements on the quality of the goods if they are expressly referred to in our acceptance of the offer.
- (3) If the quality has not been agreed, it is to be judged whether a defect is present or not according to the legal provisions. However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
- (4) It is a prerequisite for the customer's claims for defects that he has fulfilled his statutory obligations to examine the goods and give notice of defects. If a defect becomes apparent during the inspection or later, we must be notified of this immediately in writing. The notification shall be deemed immediate if it is made within two weeks, whereby the timely dispatch of the notification shall suffice to comply with the deadline. Irrespective of this obligation to examine and give notice of defects, the customer must notify us in writing of obvious defects (including incorrect and short delivery) within two weeks of delivery; again, the timely dispatch of the notification is sufficient to meet the deadline. If the customer fails to properly inspect the goods and/or to notify us of any defects, our liability for the defect not reported shall be excluded.
- (5) If the delivered item is defective, we can first choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- (6) We shall be entitled to make the subsequent performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.
- (7) The customer must give us the time and opportunity required for the owed subsequent performance, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obliged to install it.
- (8) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (not including dismantling and installation costs) if there is actually a defect. If, however, a customer's demand for the removal of defects turns out to be unjustified, we may demand reimbursement of the resulting costs from the customer.
- (9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the customer has the right to remedy the defect himself and to demand compensation from us for the objectively necessary expenses. We must be informed immediately, if possible in advance, of any such rectification by the customer itself. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- (10) Claims of the purchaser for damages or reimbursement of futile expenses shall only exist in accordance with the provisions of § 9 and are otherwise excluded.

## § 9 Other liability

- (1) Unless otherwise stipulated in these GCS, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- (2) We shall be liable for damages – for whatever legal reason – in the event of intent and gross negligence. In the case of simple negligence, we shall only be liable
  - a) for damages resulting from injury to life, limb or health,
  - b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from paragraph 2 shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the customer under the Product Liability Act.

## § 10 Statute of limitations

- (1) The general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) Otherwise, the statute of limitations shall be governed by the statutory provisions.
- (3) The aforementioned limitation periods under sales law also apply to contractual and non-contractual claims for

damages of the customer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act shall remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to the customer's claims for damages pursuant to § 9.

**§ 11 Choice of law and place of jurisdiction**

(1) These GCS and all legal relationships between us and the customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Villingen-Schwenningen. However, we are also entitled to bring an action at the general place of jurisdiction of the customer.