

General Terms and Conditions of Sale of HiTherma AG (Valid from 23 March 2021)

§ 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 to 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 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 materials 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 customer's general terms and conditions.

(4) Individual agreements made with the customer in individual cases (including side-by-side 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 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 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 upon 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) We shall not be liable for impossibility of delivery or for delays in delivery or other impediments to performance as well as damages insofar as these are caused by force majeure or other events unforeseeable at the time of the conclusion of the contract (e.g. pandemics, operational disturbances, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, shortage of manpower, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory action or lack of, incorrect or untimely delivery by suppliers) for which we are not responsible.

(3) Furthermore, we shall not be liable for impossibility of delivery or for delays in delivery or other performance impediments and damages insofar as these are caused by the corona pandemic and its direct and indirect consequences (e.g. illness, suspected cases, quarantine measures or similar concerning ourselves or third parties involved in the provision of services) for which we are not responsible.

(4) We will notify the customer of the commencement and termination of such restrictions as soon as possible.

(5) Insofar as such events in accordance with § 3 (2) and (3) make delivery or performance significantly more difficult or impossible for us and the impediment is not only temporary, we are entitled to withdraw from the contract. In the event of temporary impediments, the delivery or service deadlines are extended, or the delivery or service dates are postponed by the period of the impediment plus the period of the impediment plus a reasonable start-up period.

(6) The occurrence of default in delivery on our part shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the customer is required. In any case, the delivery presupposes the timely and proper fulfillment of the customer's obligations. The objection of non-fulfillment of the contract remains reserved.

(7) 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 the failure to meet our possible delivery deadline is due to the customer's untimely or improper service, the delivery time to be met by us will be extended in accordance with the delay caused by the customer. In the event that a binding date for the supply of raw materials or materials has been agreed upon, we reserve the right to invoke the resulting additional costs, in particular costs due to production interruptions, in the event of a delay.

(8) At the time of delivery, we reserve the right to deviate from the ordered number of pieces or the ordered quantities in the usual commercial amount. A deviation of +/- 10% is considered commercially acceptable. Any deviation will be taken into account proportionately when invoicing the customer in accordance with the excess of shortfall in quantity.

(9) If we are in default with a delivery or service or if a delivery or service is impossible for us, for whatever reason, our liability is limited to damages in accordance with § 9 of these GCS.

§ 4 Delivery, Transfer of Risk, Delay in 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 (shipment purchase). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping 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, the carrier or the person or institution otherwise designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. The handover or acceptance is the same if the customer is in default of acceptance.

(3) If the customer is in default of acceptance, fails to cooperate or our delivery is delayed for other reasons for which the customer is responsible, we are 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 current prices at the time of the conclusion of the contract are valid, ex-store, plus statutory value-added tax.

(2) Our payment claims against the customer are due and payable within 30 days from the date of invoice and delivery or acceptance of the goods. For payments within 10 days from the invoice date, we grant 2% cash discount to the invoice amount excluding VAT.

Our payment terms for tools according to § 7, in particular deep drawing tools, are 50% deposit upon order receipt / 50% after approval, but not later than 14 days after sampling each time without deductions.

(3) However, even in the context of an ongoing business relationship, we are entitled at any time to carry out a delivery in whole or in part only against prepayment. We declare a corresponding reservation at the latest with the order confirmation.

(4) In the case of dispatch (§ 4 para. 1), the customer bears the transport costs ex warehouse and the costs of a transport insurance which may be requested by the customer. Any duties, fees, taxes and other public charges shall be borne by the customer. We do not take back transport packaging and all other packaging in accordance with the Packaging Ordinance, insofar as we are not legally obliged to do so. They become property of the buyer; pallets are excluded from this.

(5) The customer is in default with the expiration of the preceding payment period. The purchase price is to be paid interest during the delay at the respectively applicable legal interest rate. We reserve the right to assert further claims for delay. Our claim to the commercial maturity interest (§ 353 HGB) remains unaffected by merchants.

(6) The customer is entitled to rights of set-off or retention only insofar as his claim is legally established or undisputed. In the event of defects in the delivery, the counter-rights of the customer remain unaffected in particular pursuant to § 8, section 6, sentence 2 of these GCS.

(7) If after conclusion of the contract it becomes apparent that our claim to the purchase price is endangered by a lack of the customer's ability to perform (e.g. by requesting the opening of insolvency proceedings), we are entitled to refuse performance in accordance with the legal regulations and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts concerning the production of unreasonable items (individual products), we can immediately declare the rescission; the statutory provisions on the dispensability of the deadline shall remain unaffected.

§ 6 Reservation of title

(1) Until the full payment of all our present and future claims arising from the purchase contract and a current business relationship (secured claims), we retain ownership of the goods sold.

(2) The goods subject to retention of title may neither be pledged to a third party nor be used as a safeguard before the payment of the secured claims is completed. The customer must notify us in writing without delay if and insofar as access by third parties to the goods belonging to us takes place.

(3) In the event of non-contractual behaviour of the customer, in particular in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with statutory provisions and to demand recovery of the goods on the basis of the retention of title and the withdrawal. If the customer does not pay the due purchase price, we can only assert

these rights if we have previously set a reasonable deadline for payment to the customer without success or if such a deadline is not required according to legal regulations.

(4) The customer is authorized to resell and / or process the goods subject to retention of title in the normal course of business. In this case, the following regulations shall apply in addition.

(a) The reservation of proprietary rights shall extend to the full value of the products resulting from the processing, mixing or combination of our products, whereby we shall be deemed manufacturer. If, in the case of processing, mixing or connection with goods of third parties, their proprietary rights exist, we acquire co-ownership in the ratio of the invoice values of the processed, mixed or related goods. The same applies to the resulting product as to the goods delivered under retention of title.

(b) The customer shall assign the claims arising from the resale of the goods or the product to third parties as a whole or to the extent of our possible co-ownership share pursuant to the preceding paragraph for security. We accept the assignment. The obligations of the customer specified in paragraph 2 shall also apply in respect of the assigned claims.

(c) The customer remains authorised to collect the receivable alongside us.

We undertake not to collect the receivables as long as the customer complies with our payment obligations, is not in default with payment, that no application for the opening of insolvency proceedings is filed and that no other lack of his capacity exists. However, if this is the case, we can demand that the customer notify us of the assigned claims and their debtors, make all necessary information for collection, hand over the related documents and notify the debtors (third parties) of the assignment.

(d) If the realisable value of the collateral exceeds our receivables by more than 10%, we will release collateral of our choice at the customer's request.

§ 7 Forms and tools

As far as thermoforming tools or other forms (hereinafter referred to as "tools") that are necessary for the production of the required goods are used or manufactured for the customer's order, unless otherwise agreed between the parties, the following shall apply in addition to the other provisions of these Terms:

(1) The customer pays the agreed price for the tools according to § 5 (2). This price includes the cost of singular sampling, but does not include the cost of testing and processing equipment. Costs for further sampling, the necessity of which fall within the responsibility of the customer, shall be borne by the customer.

(2) Ownership of the tools shall not pass to the customer who accepts the transfer until full payment of the total invoice price has been made. The transfer of ownership (constituent of ownership) of the transferred tools is replaced by the fact that we keep the tools after completion. Even after the transfer of ownership to the customer, the customer shall not be entitled to demand the delivery of the corresponding tool for the duration of the delivery agreements, for the fulfillment of which the corresponding tool is required.

(3) Insofar as we are in possession of tools that are owned by the customer or that have been leased or loaned to us by the customer, our liability for the storage and maintenance of the tools is limited to the care taken in our own affairs. Costs for maintenance and insurance are borne by the customer. Our obligation to store and maintain the tools will be void if the customer does not collect the tool upon request by us within a reasonable deadline after the fulfillment of the delivery contract with the tool.

§ 8 Deficiency claims by the customer

(1) The rights of the customer in the event of material and legal defects (including incorrect and short deliveries as well as improper assembly or defective assembly instructions) shall be subject to the legal regulations, unless otherwise specified below. In all cases, the statutory special regulations for final delivery of the goods to a consumer remain unaffected (supplier recourse according to §§ 478, 479 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the purchaser or another entrepreneur, e.g. by incorporation into another product.

(2) The basis of our defect liability is, above all, the agreement regarding the quality of the goods. As an agreement on the quality of the goods, product descriptions, drawings, weight and dimensions are only valid if expressly referred to in our acceptance of the offer.

(3) Insofar as the nature has not been agreed upon, the statutory provisions shall determine whether a defect exists or not. However, we do not assume any liability for any public statements made by the manufacturer or other third parties (for example advertising announcements).

(4) In principle, we are not liable for defects that the customer knows at the time of conclusion of the contract or does not know through gross negligence (§ 442 BGB). Furthermore, the customer's claims for defects presuppose that he has complied with his statutory obligations of investigation and complaint (§§ 377, 381 HGB). In the case of goods intended for incorporation or further processing, an examination shall in any case be carried out immediately before processing. If a defect emerges during the delivery, during the inspection or at any later time, we shall be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 8 working days from delivery and defects that cannot be detected during the inspection within the same period from discovery. If the customer fails to properly investigate and/or report defects, our liability for the defect not reported in time or not properly according to the statutory regulations is excluded.

(5) If the delivered item is defective, we can first choose whether to provide additional performance by removing the defect (rectification) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance under the legal requirements shall remain unaffected.

(6) We are entitled to make the supplementary performance due dependent on the customer paying the purchase price due. However, the customer is entitled to withhold a proportionate part of the purchase price that is reasonable in relation to the defect.

(7) The customer shall give us the necessary time and opportunity for the subsequent performance, in particular to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the customer has to return the defective goods according to the legal regulations. The supplementary performance does not include the disassembly of the defective item or the reinstallation, if we were originally not obliged to install.

(8) The expenses required for the purpose of the inspection and subsequent performance, in particular transport, travel, labour and material costs as well as, if applicable, removal and installation costs) shall be borne or reimbursed in accordance with the statutory regulations if a defect actually exists. Otherwise, we may require the customer to reimburse the costs (especially inspection and transport costs) incurred as a result of the unjustified request for rectification of defects, unless the lack of defects was not apparent to the customer.

(9) In urgent cases, e.g. in the event of a threat to operational safety or to prevent disproportionate damage, the customer has the right to rectify the defect himself and to demand from us reimbursement of the expenses objectively necessary for this purpose. We shall be informed of such self-assessment without delay, if possible in advance. The right of self-assessment does not exist if we are entitled to refuse a corresponding subsequent performance in accordance with the statutory regulations.

(10) Claims of the buyer for damages or replacement of futile expenses only exist in accordance with § 9 and are otherwise excluded.

§ 9 Other Liability

(1) Unless otherwise specified in these General Terms and Conditions, including the following provisions, we shall be liable in the case of a breach of contractual and non-contractual obligations in accordance with the relevant legal regulations.

(2) We are liable for damages – regardless of the legal grounds – in the context of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. due diligence in our own affairs; negligent breach of duty),

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the breach of an essential contractual obligation (obligation the fulfillment of which makes the proper execution of the contract possible in the first place and on which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from sentence 2 also apply to third parties as well as in the event of breaches of duty by persons (also on their behalf), for whose fault we are liable according to statutory regulations. They do not apply insofar as a defect has been fraudulently concealed or a warranty has been assumed for the quality of the goods and for claims of the customer under the Product Liability Act.

(4) Due to a breach of duty which does not consist in a defect, the customer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the legal requirements and legal consequences apply.

§ 10 Limitation of time

(1) The general limitation period for claims arising from material and legal defects shall be one year from delivery. If an acceptance has been agreed, the limitation period begins with the acceptance.

(2) In addition, the statute of limitations shall be governed by the legal regulations.

(3) The above limitation periods of the purchase right also apply to contractual and non-contractual claims for damages of the customer which are based on a defect of the goods, unless the application of the regular legal statute of limitations (§§ 195, 199 BGB) would lead to a shorter statutory limitation in individual cases. The statute of limitations of the Product Liability Act shall remain unaffected in any case. Otherwise, for claims for damages of the customer according to § 9 section 2 sentence 1 and sentence 2(a) only the statutory limitation periods apply.

§ 11 Choice of law and jurisdiction

(1) These General Terms and Conditions and all legal relations between us and the Customer shall be governed by the law of the Federal Republic of Germany excluding uniform international law, in particular the UN Sales Law.

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