

General Terms and Conditions of Sale and Delivery of DELTATHERM HIRMER GmbH for Deliveries and Services (as of April 2020)

§ 1 Scope of application

1. These Terms and Conditions apply to all present and future business relations with companies.
2. Deviating, conflicting or supplementary general terms and conditions, even if known, shall not become part of the contract unless their validity is expressly acknowledged in writing.

§ 2 Conclusion of contract

1. Our offers are subject to change without notice. Prior sale shall remain reserved.
2. We reserve the right to make technical changes as well as changes in shape, colour and weight, within the scope of what is reasonable. Illustrations, drawings, weights and dimensions are only approximate unless they are expressly designated in writing as binding.
3. We reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. They may not be made accessible to third parties. Ownership shall pass to the customer upon full payment of the goods delivered.
4. By ordering goods, the customer bindingly declares that he wishes to purchase the ordered goods. We are entitled to accept the contractual offer contained in the order within 2 weeks after receipt. Acceptance must be made in writing.
5. The conclusion of the contract is subject to the correct and timely delivery by our suppliers. The foregoing shall only apply in the event that we are not responsible for the non-delivery.
6. Subsidiary agreements, contract amendments or contract supplements require our written confirmation in order to be legally effective.

§ 3 Prices

1. The prices do not include value added tax ex warehouse and do not include packaging, transport and insurance.
2. The amount of remuneration for the performance of repair services shall be determined by the repair cost price list valid at the time.
3. For goods and services delivered or rendered later than four months after conclusion of the contract, we have the right to increase or decrease prices if costs have changed due to collective wage agreements, changes in freight, shipping and ancillary shipping costs and material prices.

§ 4 Delivery / Transfer of risk

1. Delivery dates and deadlines are not binding. They shall be deemed to have been complied with if the delivery item has left our works by the time the deadlines have expired or we have notified that the item is ready for dispatch.
2. Our obligation to deliver shall be suspended as long as the customer is in arrears with an obligation.
3. We shall be entitled to render partial services, which we may invoice separately in each case.
4. Shipment shall be at the risk and for the account of the customer. Mode of dispatch and dispatch route are chosen by us after consultation with the customer.
5. The risk of accidental loss and deterioration of the goods shall pass to the customer upon hand-over to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. This also applies to partial deliveries.
6. If dispatch is delayed due to circumstances for which we are not responsible, the risk shall pass to the customer on the day on which the goods are ready for dispatch.
7. The handing over is equal if the customer is in default of acceptance.

§ 5 Terms of payment

1. Unless otherwise agreed the following terms of payment shall apply to our deliveries and services:
 - Delivery of machinery and equipment: 1/3 upon conclusion of the contract (order confirmation), 1/3 upon notification of readiness for shipment, 1/3 upon delivery. Invoice amounts are to be paid within 30 days of the invoice date without deduction.
 - Delivery of spare parts: 100% upon notification of readiness for shipment.
 - Other services, in particular assembly and repair services: 100% after performance of the service.
 - For first-time customers or customers without a customer number: prepayment or cash on delivery.
2. Invoice amounts are payable and due immediately net without deduction.
3. If the payment date is exceeded, default in payment shall occur without a reminder. During the period of default, the invoice amount shall bear interest at 9 percentage points above the base interest rate, subject to the assertion of further damages caused by default. In addition, a flat fee of 40.00 Euro will be charged for the reminder.
4. The acceptance of cheques shall be accepted as payment on a provisional basis only. The costs of discounting and collection shall be borne by the customer.
5. If the customer is in arrears with a payment for more than 10 days or if there is a significant deterioration in his financial circumstances, our claims from all existing contracts with the customer shall become due for payment immediately. We may demand advance payment or the provision of security for goods that have not been delivered. Goods already delivered shall be surrendered upon our request.

§ 6 Retention of title

1. We reserve title to all goods delivered by us until payment of the purchase price and settlement of all claims existing from the business relationship and any claims still arising in connection with the object of purchase; the placing of any claim on current account or the striking of a balance and recognition of such balance shall not annul the reservation of title.
2. If the customer acts in breach of contract, in particular in the event of default in payment, we shall be entitled to take back the goods subject to retention of title after withdrawal from the contract and the customer shall be obliged to surrender the goods. The seizure of the goods constitutes a withdrawal from the contract.
3. The customer is obliged to treat the goods with care. If maintenance and inspection work is required, the customer must carry this out at his own expense.
4. If the reserved goods are sold by the customer, alone or together with goods not belonging to us, the customer hereby assigns to us the claims arising from the resale in the amount of the value of the reserved goods with all ancillary rights. We accept the assignment. The value of the reserved goods shall be the invoice amount plus a security surcharge of 10%, which, however, shall not be taken into account if it is opposed by the rights of third parties. If the resold goods subject to retention of title are co-owned by us, the assignment of the claim shall extend to the amount corresponding to our share value in the co-ownership. The same applies to the extended retention of title. The advance assignment also extends to the balance claim.
5. The customer shall only be entitled and authorised to resell, utilise or install the goods in the normal and proper course of business and subject to the proviso that the claims actually pass to us within the meaning of these provisions. The customer is not entitled to dispose of the reserved goods in any other way, in particular by pledging them or assigning them as security.
6. We authorise the customer, subject to revocation, to collect the assigned claim. We shall not exercise our authority to collect receivables for as long as the customer complies with his payment obligations, including those owed to third parties. At our request, the customer shall name the debtors of the assigned claim and notify them of the assignment. We are authorised

to notify the debtors of the assignment ourselves.

7. The customer must inform us immediately of any compulsory execution measures by third parties against the reserved goods or the assigned claims, and hand over the documents required in order to object against such execution or distress.
8. The right to resell, use or install the goods subject to retention of title and the authorisation to collect the assigned claim shall expire upon cessation of payments, application for or opening of insolvency proceedings or execution of out-of-court settlement proceedings with the creditors concerning the settlement of debts. The same applies to a cheque being returned unpaid.
9. We are entitled to insure our goods delivered under retention of title against theft, fire, water and other damage at the customer's expense, unless the customer has demonstrably taken out appropriate insurance himself.
10. If the security we are entitled to due to the pre-assignment is higher than the value of our secured claims by more than 20% we are obliged to retransfer or release the claims at our discretion. Upon settlement of all claims arising from the business relationship, ownership of the reserved goods and the assigned claims shall pass to the customer.

§ 7 Warranty

1. We shall initially provide warranty for defects in the goods at our discretion by rectification or replacement delivery.
2. If the subsequent performance fails, the customer may in principle demand a reduction of the remuneration (abatement) or rescission of the contract (withdrawal) at his discretion. In the event of only a minor breach of contract, in particular in the event of only minor defects, the customer shall not be entitled to withdraw from the contract. The costs for removal and installation are not included in the subsequent performance and shall be reimbursed by the customer according to the respective valid service rates.
3. Obvious defects or defects which can be determined within the scope of Section 377 HGB (German Commercial Code) must be reported to us in writing within a period of 6 days; otherwise the assertion of warranty claims is excluded. Timely dispatch shall be sufficient to meet the deadline. The customer shall bear the full burden of proof for all claim prerequisites, in particular for the defect, the time of discovery and the timeliness of the notice of defects.
4. If the customer chooses to withdraw from the contract due to a legal or material defect after subsequent performance has failed, he shall not be entitled to any additional claim for damages due to the defect.
5. If the customer chooses compensation after failed subsequent performance, the goods remain with him if this is reasonable. The compensation is limited to the difference between the purchase price and the value of the defective item. This shall not apply if we have fraudulently caused the breach of contract.
6. The warranty period is 1 year.
7. As a general rule, the agreed quality of the goods shall be exclusively determined by our product description. Public statements, recommendations or advertising do not constitute a contractual description of the quality of the goods.
8. The customer does not receive any guarantees in the legal sense from us. Manufacturer's warranties within the scope of a maintenance contract remain unaffected by this.
9. Place of performance for all warranty claims is Much, Germany.

§ 8 Liability

1. In the case of slightly negligent breaches of duty, our liability shall be limited to the foreseeable, contract-typical, direct average damage according to the type of goods. This also applies to slightly negligent breaches of duty by our legal representatives or vicarious agents. We shall not be liable in the event of a slightly negligent breach of immaterial contractual obligations.
2. The above limitation of liability does not apply to claims arising from product liability. Furthermore, the limitations of liability do not apply to liability for intentional conduct, for guaranteed characteristics and also not in the case of bodily injury or damage to health or loss of life attributable to us.
3. Claims for damages by the customer due to a defect become time-barred after one year from delivery of the goods. This does not apply if we can be accused of gross negligence or intent, as well as in the case of bodily injury or damage to health or loss of life of the customer attributable to us.

§ 9 Force majeure / Withdrawal

1. In the event of force majeure, strike, lockout or other significant operational or sales disruptions, we shall be released from the obligation to perform for the duration of the disruption and the extent of its effect, taking into account the interests of the customer. In the case of permanent events, we are entitled to withdraw from the contract.
2. The same applies if the proper processing of our order is not guaranteed due to insolvency or a significant deterioration in the financial circumstances of the customer.
3. If we withdraw from the contract due to reasons for which the customer is accountable, the customer is obliged to compensate us for the damage which arises, or has arisen.

§ 10 Final provisions

1. The customer may only transfer his rights under the contract in whole or in part to third parties with our written consent.
2. Offsetting with counterclaims is only permissible if the counterclaim is undisputed or has been legally established. The same applies to a right of retention, whereby the customer in this respect waives the assertion from earlier or other transactions in the current business relationship.
3. The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.
4. The place of performance for all obligations arising from this contract is Siegburg, Germany.
5. The place of jurisdiction for all disputes arising from this contract is Siegburg, Germany. The same shall apply if the customer does not have a general place of jurisdiction in Germany or if the customer's place of residence or habitual abode is unknown at the time the action is brought.
6. Should individual provisions of the contract, including these General Terms and Conditions, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic effect comes as close as possible to that of the invalid provision.