

## General Conditions of Sale

### § 1 Scope; Form

(1) These General Terms and Conditions of Sale (“**GTCS**”) shall apply to all our business relations with our customers (“**Buyer**”). The GTCS shall only apply if Buyer is an entrepreneur (§ 14 German Civil Code “**BGB**”), a legal entity under public law, or a special fund under public law.

(2) The GTCS shall apply specifically to contracts for the sale and/or delivery of movable goods (the “**Goods**”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed in writing, the GTCS in the version valid at the time of Buyer's order or, in any case, in the version last notified to Buyer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) Our GTCS shall apply exclusively. Deviating, conflicting, or supplementary terms and conditions of Buyer (“**Buyer Terms**”) shall only become part of the contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall apply in any case, even if we accept or fulfill Buyer's order without reservation in the knowledge of the Buyer's GTC.

(4) Individual written agreements mutually executed with Buyer in individual cases (including collateral agreements, supplements, and amendments) shall in any case take precedence over these GTCS. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications by Buyer with regard to the contract (for example, setting of deadlines, notification of defects, withdrawal, or reduction) must be made in writing, i.e. in written or text form such as letter, e-mail, fax. Legal formal requirements and further proof, in particular, in the case of doubts about the legitimacy of the declarant, remain unaffected.

(6) References to the applicability of statutory provisions shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

### § 2 Conclusion of Contract

(1) Our offers are subject to change and are non-binding. This shall also apply if we have provided Buyer with catalogs, technical documentation, other product descriptions, or documents—also in electronic form—to which we reserve property rights and copyrights.

(2) The order of the Goods by Buyer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 calendar days of its receipt by us, if not otherwise retracted before by Buyer.

(3) Acceptance may be declared either in writing (text form is sufficient) or by delivery of the Goods to Buyer.

### § 3 Delivery Period; Delay in Delivery

(1) The delivery period shall be agreed individually in writing, or if not so agreed, as stated by us upon acceptance of the order (which timeframe shall be an estimate and not binding). We will use commercially reasonable efforts to meet this timeframe.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform Buyer of this without delay and at the same time notify Buyer of the expected new delivery deadline. If delivery of the Goods is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; as Buyer's sole remedy and our sole liability, we shall immediately refund any consideration already paid by Buyer.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by Buyer is required.

(4) The rights of Buyer pursuant to § 8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (for example due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

#### **§ 4 Delivery; Transfer of Risk; Acceptance; Default of Acceptance**

(1) At our sole discretion, the Goods shall ship from either our shipping warehouse or our third-party logistics center. Shipping point will be the place of performance. If we ship the Goods from our shipping warehouse, all Goods shall ship EXW shipping warehouse. Title and risk of loss or damage for all Goods shall pass to Buyer upon delivery of the Goods to the carrier at our warehousing facility. If we ship Goods from our third-party logistics center: all Goods shall ship CPT to Buyer's destination. Title and risk of loss or damage for all Goods shall pass to Buyer - subject to the provisions of § 6 - upon delivery of the Goods to the carrier. Unless otherwise agreed, we shall be 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 Buyer upon handover at the latest. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods, as well as the risk of delay, shall pass already upon delivery of the Goods to the forwarding agent, the carrier, or any other person or institution designated to carry out the shipment. Insofar as an acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply *mutatis mutandis* to an agreed acceptance. The handover or acceptance shall be deemed equivalent if Buyer is in default of acceptance.

(3) If Buyer is in default of acceptance, Buyer fails to cooperate, or our delivery is delayed for other reasons for which Buyer is responsible, we shall be entitled to claim compensation for the resulting damage, including additional expenses (for example storage costs). For compensation, we charge a lump-sum compensation of 0.1% of the net price (delivery value) per calendar day, but not more than a total of 5% of the delivery value, beginning with the delivery date or - if there is no fixed delivery date - with the notification of readiness for shipment.

(4) The proof of a higher damage and our legal claims (in particular, compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be credited against further monetary claims. Buyer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

(5) Partial shipments are permitted within the delivery periods indicated by us, insofar as disadvantages to Buyer do not result.

#### **§ 5 Prices; Terms of Payment**

(1) Unless otherwise agreed in writing in individual cases, our current prices at the time of acceptance of Buyer's order shall apply, plus statutory VAT. Individually agreed prices and discounts granted are to be treated confidentially. Shipping, insurance charges, and all other fees shall be prepaid by us and added to Buyer's invoice.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para. 1), Buyer shall bear the transport costs EXW and the costs of any transport insurance requested by Buyer. If we do not invoice the transport costs actually incurred in the individual case, we will invoice a flat rate for transport costs (excluding transport insurance. The flat rate cost are 5% of net order volume, max 250.00 EUR net.). Any customs duties, fees, taxes, and other public charges shall in any case be borne by Buyer.

(3) The purchase price shall be due and payable within 30 calendar days of invoicing. However, we shall be entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the aforementioned payment deadline, Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 German Commercial Code (“HGB”)) shall remain unaffected.

(5) Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, Buyer's counter rights shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTCS.

(6) If, after the conclusion of the contract, it becomes apparent (for example by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by Buyer's inability to pay, 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 unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) Title to the Goods shall transfer to Buyer pursuant to § 4 of these GTCS. Notwithstanding the foregoing, we shall deliver and install, or cause delivery and installation of, the Goods to Buyer and shall provide, or cause provision of, a functionality check and instruction to Buyer's employees, in accordance with German law.

(2) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain title to the goods sold.

(3) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The purchaser shall notify us immediately in writing if an application for the opening of insolvency proceedings is filed or insofar as third parties (for example seizures) have access to the goods belonging to us.

(4) In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand surrender of the goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the purchaser a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(5) Until revoked in accordance with (c) below, the Buyer shall be authorized 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 products resulting from the processing, mixing or combination of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.
- b) The Buyer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the purchaser stated in paragraph 2 shall also apply in respect of the assigned claims.
- c) The purchaser shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the purchaser meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the buyer inform us of the assigned claims and their debtors, provide us with all information necessary for collection, hand

over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Buyer's authorization to further sell and process the goods subject to retention of title.

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

## **§ 7 Claims for Defects of Buyer**

(1) The statutory provisions shall apply to Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. Claims from supplier recourse are excluded if the defective goods have been further processed by Buyer or another entrepreneur, for example, by installation in another product.

(2) Our standard warranty, with period is 1 (one) year as additionally set forth in the Instructions. For Use included with the Goods. (incorporated herein by reference). This is the only warranty provided with respect to the Goods, except as otherwise expressly provided in these GTCS or as imposed by German law.

(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 Para. 1 S. 2 and 3 BGB). However, we shall not be liable for public statements made by us (for example advertising statements) to which Buyer has not referred to us as being decisive for its purchase.

(4) As a matter of principle, we shall not be liable for defects of which Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, Buyer's claims for defects shall require that Buyer has complied with Buyer's statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, inspection, or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects shall be notified to us in writing within 5 calendar days of delivery, and defects not apparent upon inspection shall be notified to us at [ts@vtherm.com](mailto:ts@vtherm.com) within the same period of time after discovery. If Buyer fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether to redeliver the Goods ("subsequent performance") by (a) remedying the defect, or (b) delivering an item free of defects ("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 Buyer paying the purchase price due. The Buyer shall, however, be entitled to retain a reasonable part of the purchase price in relation to the defect.

(7) Buyer shall give us the time and opportunity required for the Subsequent Performance owed, in particular, to hand over the Goods complained about for inspection purposes. In the event of a Replacement Delivery, Buyer shall return the defective item to us in accordance with the statutory provisions and our standard return policies as then in effect. Subsequent Performance shall neither include the removal of the defective item nor the re-installation if we were not originally obliged to install the item.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and Subsequent Performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if there is actually a defect. Otherwise, we may demand reimbursement from Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to Buyer.

(9) If the supplementary performance has failed or a reasonable period to be set by Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory

provisions, Buyer may withdraw from the purchase contract. In the case of an insignificant defect, however, there is no right of withdrawal.

(10) Claims of Buyer for damages or reimbursement of futile expenses shall also exist in the event of defects only in accordance with § 8 of these GTCS and shall otherwise be excluded.

## **§ 8 Other Liability**

(1) Insofar as nothing to the contrary arises from these GTCS, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual or non-contractual obligations.

(2) We shall be liable for damages—irrespective of the legal grounds—within the scope of fault liability in the event of intent and gross negligence. In the case of simple negligence, we shall be liable, subject to statutory limitations of liability (for example, care in own affairs; insignificant breach of duty), only for damages resulting from

a) injury to life, body, or health; or

b) the breach of an essential contractual obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely; in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from § 8 para. 2 shall also apply to third parties as well as to breaches of duty by persons (also in their favor) for whose fault we are responsible according to statutory provisions. The limitations shall not apply insofar as a defect was fraudulently concealed or a guarantee for the quality of the Goods was assumed and for claims of Buyer under the Product Liability Act (“**ProdHaftG**”).

(4) Due to a breach of duty that does not consist of a defect, Buyer may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of Buyer (in particular, according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation**

(1) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of Buyer 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 the individual case. Claims for damages of Buyer pursuant to § 8 para. 2 sentence 1 and sentence 2(a), as well as claims pursuant to ProdHaftG, shall become time-barred exclusively in accordance with the statutory limitation periods.

## **§ 10 Choice of Law and Place of Jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GTCS and the contractual relationship between us and Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (“**UNK**”).

(2) If Buyer is a merchant within the meaning of the BGB, a legal entity under public law, or a special fund under public law, the exclusive—and international—place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Frankfurt am Main. The same shall apply if Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation, in accordance with these GTCS or a prior individual agreement, or at Buyer's general

place of jurisdiction. Overriding statutory provisions, in particular those regarding exclusive jurisdiction, shall remain unaffected.

### **§ 11 Severability clause**

Should individually provisions in these GTCs lose their validity, this shall not affect the validity of all other provisions. In place of this provision, a valid provision shall be deemed to have been agreed which comes as close as possible to what was intended by the parties.

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