

# General terms and conditions of sale and supply



## 1 Scope of validity, exclusive validity

- 1.1 Offers made by and goods and services supplied by heimatec GmbH shall be subject exclusively to the following terms and conditions. By concluding their first contract, heimatec GmbH and its Customer agree that the terms and conditions shall also govern all subsequent transactions including any transactions concluded orally and in particular by telephone. The Customer's own purchasing terms and his other terms and conditions shall apply only inasmuch as they do not contradict the following terms and conditions. This shall also apply when we unreservedly supply goods or services to the Customer in the knowledge of contrary or varying terms or conditions used by the Customer.
- 1.2 Special and subsidiary agreements reached before conclusion of the contract shall only become part of the contract if they are also included in writing in the order acknowledgment.
- 1.3 Our terms and conditions of sale shall apply only to business enterprises ("Unternehmer") as described in § 310 (1) of the German Civil Code (BGB).

## 2 Offers, contractual documentation, conclusion of the contract

- 2.1 Any offers made by heimatec GmbH are subject to change. A contract shall be formed only when the order has been acknowledged by heimatec GmbH.
- 2.2 The Customer's orders shall be binding for four weeks. The details given in offers, brochures and other written material (illustrations, drawings, specifications on performance, weights and measurements, etc.) are only to be considered approximations. Notwithstanding any express agreement to the contrary, such details do not constitute warranted characteristics.
- 2.3 heimatec GmbH shall retain the title to and the copyright on cost estimates, drawings and other documentation; third parties may not be given access to these. If no contract is concluded, the documentation shall be returned to heimatec GmbH without delay and at the Customer's expense.

## 3 Prices, payment terms

- 3.1 If more than four months have elapsed between the acknowledgment of the order and the delivery of the goods or services, heimatec GmbH is entitled to adjust the price to the list prices valid at the time of the delivery. The list prices valid at the time of delivery shall apply to long-term supply contracts unless agreed otherwise.
- 3.2 All prices are stated exclusive of packaging, freight and insurance costs and also exclusive of VAT at the statutory rate in force on the invoice date.
- 3.3 Except where differing terms are stated in the order acknowledgment, invoices shall be payable immediately without being subject to any discount. This notwithstanding, heimatec GmbH shall be entitled at all times to make delivery dependent on its receiving payment on a reciprocal and simultaneous basis.
- 3.4 Payments shall be made to the heimatec GmbH's bank accounts as stated in the invoice with all costs and fees borne by the Customer.
- 3.5 Bills of exchange and cheques shall be accepted only as conditional payment.

## 4 Late payment

- 4.1 If the Customer's payment falls overdue by a period of more than 14 days or if the Customer dishonours any bills of exchange or cheques accepted by heimatec GmbH, then heimatec GmbH shall without prejudice to any other rights be entitled:
  - a) to demand immediate payment of all outstanding accounts;
  - b) to withhold delivery of all goods or supplies relating to as yet unfulfilled contracts if the Customer is not willing to make payments on a reciprocal and simultaneous basis or to provide security for its payments despite being requested to do so;
  - c) to assert all rights with regard to retention of title (no. 10);
- 4.2 heimatec GmbH shall also be entitled to impose an interest charge as damage caused by delayed payment at a rate of 8% above the current base interest rate of the European Central Bank. Furthermore, heimatec is entitled to claim additional damages and reserves the right to claim a higher interest rate for late payment on other legal grounds.
- 5 Offsetting, retention of payment
- 5.1 The Customer may only state his intention to set off payments against claims made by heimatec GmbH if the Customer's claim is undisputed by heimatec GmbH or has been established by declaratory judgment. Furthermore the Customer may only assert the right to withhold payment if both parties' counter-claims are based on the same contractual relationship.
- 5.2 The Customer may only assert a right to withhold performance or to retain payment if heimatec GmbH's claim for payment and the Customer's counter-claim are based on the same contractual relationship.

## 6 Delivery and delivery schedules, deliveries by heimatec GmbH

- 6.1 No transactions to be performed at a fixed point in time ("Fixgeschäfte") shall be agreed upon.
- 6.2 heimatec GmbH shall be deemed to have complied with the stated delivery deadline if the goods ordered have been despatched by the time said delivery deadline passes.
- 6.3 The delivery period quoted by heimatec GmbH shall begin only after all technical issues have been clarified.
- 6.4 Furthermore, adherence by heimatec GmbH to its delivery obligations shall also be dependent upon the Customer's timely and correct performance. heimatec reserves the right to avail itself to the defence of non-performance.
- 6.5 If the Customer defaults in accepting goods or services ordered or culpably fails to fulfil other duties of cooperation, then heimatec GmbH shall be entitled to demand compensation for the costs incurred thereby including any additional expenditure. It also reserves the right to make additional claims.
- 6.6 heimatec GmbH shall otherwise be liable in accordance with statutory provisions where the delivery delay is due to a deliberate or grossly negligent contractual breach for which it is responsible. A fault on the part of its representatives or vicarious agents shall be attributed to heimatec GmbH. Where the late delivery by heimatec GmbH is not due to a deliberate contractual breach for which it is responsible, liability for damages shall be limited to typically foreseeable damages.
- 6.7 heimatec GmbH is entitled to make early and partial deliveries. heimatec GmbH may invoice partial deliveries immediately.
- 6.8 heimatec GmbH reserves the right in all instances to make deliveries dependent upon its receiving the correct supplies in a timely fashion.

## 7 Passage of risks and acceptance of goods

- 7.1 Goods are supplied ex-factory at the Customer's own risk and expense.
- 7.2 Risk shall pass to the Customer when the goods are accepted or alternatively when the goods are delivered to the shipping agent. This shall also apply if partial deliveries are made or if heimatec GmbH has assumed the responsibility for performing additional services, such as bearing the costs of shipping or undertaking the delivery itself.
- 7.3 In the event that the Customer defaults in accepting the goods or otherwise culpably delays the delivery, risk shall pass to the Customer immediately and the agreed purchase price shall become due. The costs of storing goods at heimatec GmbH's or third-party premises are to be borne by the Customer. heimatec GmbH retains the right to assert further claims for damages against the Customer.
- 7.4 The Customer's shipping instructions shall be binding on heimatec GmbH only if they have been acknowledged in writing by heimatec GmbH. heimatec GmbH shall take out shipping insurance only upon specific written request by the Customer and at the Customer's expense.

## 8 Warranty, obligations to inspect goods and to give notification of defects

- 8.1 The Customer's rights with respect to defective deliveries may only be asserted if the Customer has fulfilled its obligations to inspect the goods and give notice of any defects as provided for by § 377 of the German Commercial Code (HGB).
- 8.2 In the event the goods purchased are defect, the Customer is entitled to demand subsequent performance either by having the defect remedied or having new, nondefective goods delivered. If the defect is to be remedied, then heimatec GmbH shall bear all costs of remedying the defect, in particular transport, road, labour and material costs, provided that these do not increase because the goods purchased have been brought to a place other than the place of performance.
- 8.3 If subsequent performance is unsuccessful, the Customer shall be entitled to demand a reduction in price or to rescind the contract.
- 8.4 heimatec GmbH, including its representatives or vicarious agents, shall remain liable in accordance with statutory provisions inasmuch as the Customer asserts any claims for damages based on deliberate actions or gross negligence on the part of heimatec GmbH. In so far as heimatec GmbH is not alleged to have committed any breach of contract, then liability for damages shall be limited to the foreseeable, typically arising costs. The same shall apply to the culpable non-fulfilment of material contractual duties.
- 8.5 Liability arising from the culpable injury to life, body or health of another person shall remain unaffected. This also applies to the strict liability under the German Product Liability Act ("Produkthaftungsgesetz").
- 8.6 Our liability is excluded inasmuch as nothing to the contrary is stipulated above.
- 8.7 The limitation period, by which claims based on defects may be asserted, shall run for 12 months starting when risk passes to the Customer.
- 8.8 The limitation period for claims based on defective delivery as provided for under §§ 478 and 479 BGB shall remain unaffected and shall run for five years starting on the date the defective goods are delivered.

## 9 Joint and several liability

- 9.1 Irrespective of the legal nature of the claim asserted, heimatec GmbH shall assume no further liability for damages than that provided for under no. 7 of these terms and conditions. This shall apply in particular to claims for damages related to faults occurring at the conclusion of the contract, claims based on other contractual breaches, or relating to tort claims for compensation for injury to property as provided for under § 823 BGB.
- 9.2 In so far as liability for damages is excluded or limited, this shall also apply with regard to liability for damages caused the employees, representatives and vicarious agents of heimatec GmbH.

## 10 Retention of title

- 10.1 heimatec GmbH retains title to the goods delivered to the Customer until payment has been made in full. The retention of title shall also apply to all claims existing at the time the contract was concluded. It shall also apply to all claims arising from subsequent transactions, particularly the delivery of replacement parts as well as services provided by Customer service and/or repairs (reserved goods).
- 10.2 Subject to cancellation, the Customer is entitled to resell the reserved goods in the course of its regular business activities provided that it does not fall into arrears with payments to heimatec GmbH. The Customer may not pledge the reserved goods as collateral or assign them as security. The Customer is itself required to retain title on the reserved goods resold on credit.
- 10.3 The Customer assigns herewith to heimatec GmbH all of its accounts receivable and claims for remuneration arising from the resale of the reserved goods or based on other legal grounds (e.g. resulting from torts or insurance claims) to the full extent of the invoiced value of the reserved goods. The Customer shall be entitled to collect on its own behalf the claims assigned to heimatec GmbH. heimatec GmbH may revoke the authorisation to collect the claims and disclose the assignment of the claims in the event of any situations described under no. 4.1 or if a petition is filed to institute insolvency proceedings against the Customer's property. In this case the Customer is obligated to name the debtors and the relevant claims as well as to make available all documentation required for the claims to be asserted.
- 10.4 In the event that a third party intervenes with the reserved goods, the Customer is obligated to inform the third party of heimatec GmbH's ownership and to inform heimatec GmbH thereof in writing without delay. Inasmuch as the third party is not in a position to reimburse heimatec GmbH for the court costs and other costs of bringing action in accordance with § 771 of the German Code of Civil Procedure (ZPO), the Customer shall be liable for the resulting shortfall.
- 10.5 If the realisable value of the securities due heimatec GmbH from the retention of title exceeds the total value of heimatec GmbH's claim against the Customer by more than 20%, heimatec GmbH shall at the Customer's request release the securities due to it under this agreement at its own discretion up to the nominated value limit.
- 10.6 After the customer has surrendered the reserved goods, heimatec GmbH shall be entitled to realise these after giving prior notification. The costs incurred by the realisation are to be borne by the Customer. The proceeds from the realisation shall be added to the accounts receivable from Customer's, subject to the addition of a realisation fee amounting to 15% of the revenue gained from the realisation. The second sentence under no. 4.2 shall apply mutatis mutandi.

## 11 Place of fulfilment, place of jurisdiction, applicable law

- 11.1 The place of fulfilment for all claims related to the contract concluded between the Customer and heimatec GmbH and the exclusive place of jurisdiction for disputes between merchants within the meaning of the HGB shall be the domicile of heimatec GmbH. heimatec GmbH shall, however, also be authorised to file suits in the city where the delivered goods are stored.
- 11.2 The laws of the Federal Republic of Germany shall apply exclusively. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 11.3 Data will be stored in accordance with the provisions of the German Data Protection Act (BDSG).