

# General Terms and Conditions of Sale, Delivery and Payment of herotec GmbH Flächenheizung for Companies

## I. Scope of application

1.1 These General Terms and Conditions of Sale, Delivery and Payment (hereinafter: Terms of Sale) shall only apply towards persons who at the time of conclusion of the contract are acting in the capacity of a commercial or self-employed businessman (entrepreneurs) and to public-law entities and special funds under public law.

1.2 These Terms of Sale shall be legally binding for all legal transactions between *herotec* GmbH Flächenheizung (hereinafter: *herotec*) and its contract partners and shall apply exclusively. They shall be deemed acknowledged at the latest on acceptance of *herotec*'s goods/services by the contract partner.

They shall also apply to all future business relations, even if their incorporation was not expressly agreed again and/or their applicability was not separately pointed out again. Any opposing or deviating provisions of the contract partner shall not be acknowledged by *herotec*. The incorporation of deviating GTC of the contract partner is expressly ruled out. Neither shall they apply if *herotec* has met its obligations under the respective contracts without reservations and/or has accepted the contract partner's performance without objection despite being aware of opposing or deviating GTC of the contract partner. To be effectively incorporated, opposing or deviating GTC of the contract partner shall require *herotec*'s express and written consent.

## II. Offer and conclusion of contracts

2.1. If an order addressed to *herotec* is to be qualified as an offer according to s. 145 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*), *herotec* shall have the right to accept this offer within a term of four weeks. However, a contractual relationship shall only be established, if *herotec* confirms the conclusion of a contract in writing or has already started to execute the assignment. This shall apply in particular also to orders that have been accepted by travelling salesmen and/or commercial agents of *herotec*.

2.2. All agreements made between *herotec* and the contract partner shall be recorded in writing. Any changes and additions to existing contracts shall also require written form to be legally effective. The written form requirement may only be waived by a written agreement of the contracting parties.

2.3. Samples, sketches, drafts, technical data, and information on weights, measurements and colours etc. shall only be binding if the parties have expressly agreed this in writing. *herotec* shall retain ownership and copyrights to these documents. The contract partner is expressly prohibited from passing on these documents or making them accessible to third parties, in particular if they have been qualified as "confidential". These documents may only be passed on to others with the prior written consent of *herotec*.

2.4. Unless otherwise ruled by the parties, the offer/offer prices shall be binding for *herotec* for a term of 30 days from the offer date.

## III. Term of delivery

3.1. As far as *herotec* specifies delivery terms, they shall always be non-binding unless the parties have expressly agreed on a binding deadline for performance in writing and/or this has been promised by *herotec* in writing. The term of delivery shall only commence when all the necessary documents have been provided to *herotec* and all the details of the order/technical questions have been clarified. Moreover, further requirements for meeting the delivery deadline shall include the punctual fulfilment of contractual obligations accepted by the contract partner, in particular the performance of agreed payments and, where applicable, the provision of agreed securities. The delivery/shipment shall, as a rule, be from *herotec*'s place of business in Ahlen - Vorhelm.

3.2. Delivery shall be subject to deliveries from *herotec*'s own suppliers. *herotec* shall immediately notify the contract partner, if *herotec*'s suppliers fail to make deliveries. If *herotec*'s suppliers fail to make deliveries, the purchase contract shall be deemed not concluded.

3.3. Otherwise, the contract partner shall only be entitled to claim further rights in the event of a default for which *herotec* is responsible if a grace period of at least three weeks granted after the occurrence of default has fruitlessly expired. The grace period shall be granted in writing, i.e. by registered letter. The grace period shall commence on receipt of the letter granting the grace period.

3.4. Delivery/shipment shall, as a rule, be effected at the expense and risk of the contract partner, regardless of the mode and place of shipment. Risk shall pass from *herotec* to the contract partner on submission of the merchandise to the transport company or to the person performing the transport. *herotec* shall be free to choose the transport company that is to be commissioned and the means of transport. This shall only not apply if the parties have previously and expressly agreed otherwise.

3.5. The costs of transport insurance shall be borne by the contract partner, as far as he requests the conclusion of such an insurance. The same shall apply if the contract partner requests insurance of the shipment by *herotec* against theft, fire, breakage, water damages and other insurable damages.

3.6. If the shipment should be delayed by circumstances for which the contract partner is responsible, the risk shall already pass to the contract partner on the date when the delivery is ready for dispatch. Any costs incurred by the delay (in particular storage costs) shall be borne by the contract partner.

3.7. If the service or delivery we owe is delayed due to unforeseeable events for which we are not to blame (e.g. labour disputes, business disruptions, difficulties in procuring materials or energy, transport problems, official acts – also where they occur to our sub-suppliers respectively – as well as late incoming deliveries), we shall be entitled to withdraw from the contract in whole or in part, or, at our discretion, to extend the deadline for delivery by the duration of the delay; any claims for damages of the customer shall be ruled out.

## IV. Prices and payment

4.1. Unless otherwise specified in the order confirmation or the offer of *herotec*, the quoted prices shall be ex delivery works Ahlen and shall not include the costs of packaging, freight, loading and unloading, transport, insurance, assembly and start-up of operation.

This shall apply unless the contracting parties have expressly agreed otherwise in writing. The quoted prices shall be in euro, plus legally effective VAT.

4.2. Orders for which fixed prices have not been exclusively agreed, shall be charged at the effective list price on the date of delivery, unless the price increase exceeds the price established on the market. In this case the price increase shall be limited to the established market price.

4.3. If, in the case of agreed fixed prices, a major change of decisive cost factors should occur between the date of the order and the date of delivery *herotec* and the contract partner shall reach an understanding on a price adjustment by means of negotiations.

4.4. The agreed price shall be paid for samples, sketches, drafts, etc. that are expressly ordered or commissioned by the contract partner, even if no order is placed.

4.5. The invoice amount shall be payable, unless expressly otherwise agreed, 30 days after the invoice date without any deductions.

4.6. If an agreed payment deadline has been exceeded and a warning letter has been issued, default interest of 9% over the respective basic interest rate of the German Central Bank shall be payable by the contract partner on top of the invoice amount. A lower interest rate shall apply if the contract partner provides evidence of a lower expense. *herotec* may provide evidence of a greater damage caused by the default.

4.7. *herotec* may initially offset payments against older debts of the contract partner. *herotec* shall inform the contract partner as soon as possible about the nature of the effected offset. A payment shall only be deemed effected when *herotec* can freely dispose over this amount. In the event of a payment by cheque the payment shall not be deemed effected until the cheque has been cashed.

4.8. The contract partner shall have no right of retention. A set-off of claims may only be declared against incontestable or absolute counterclaims.

4.9. Travelling salesmen and commercial agents of *herotec* shall not be entitled to collect debts.

4.10. All debts owed to *herotec* by the contract partner, regardless of the legal relationship they arise from, shall become immediately payable if a circumstance occurs that entitles *herotec* to withdraw from the contract due to legal or contractual provisions.

## V. Reservation of title

5.1. *herotec* shall reserve title and the right of disposal over the delivered goods until full settlement of all debts arising from the business relationship with the contract partner. This shall also apply in relation to future debts that have not yet arisen.

5.2. Any processing or conversion of the goods delivered by *herotec* shall always be effected for *herotec* as the manufacturer but without imposing any obligation on *herotec*. If *herotec* should lose its title due to combination/ mixture/ processing, the parties already agree that the contract partner's title to the combined item shall pass to *herotec* in proportion to its value (invoice amount). The (joint) property of *herotec* shall be stored by the contract partner free of charge. If the reserved merchandise is combined with land, the contract partner shall also already assign his claim and all the collateral rights he is entitled to as consideration for the combination to *herotec* as a security, and *herotec* accepts this assignment.

5.3. The contract partner is entitled to resell the merchandise delivered by *herotec* in the course of its ordinary business. Any receivables arising from such a resale shall already be assigned to *herotec*, including any possible collateral and security rights. Moreover, receivables arising from other legal grounds relating to the reserved merchandise shall also be assigned to *herotec*, and *herotec* accepts the assignment. The assigned receivables shall serve to secure *herotec*'s claims against the contract partner in the amount of the sold reserved merchandise. A re-sale before full settlement of the receivables shall not be admissible if a ban on assignment was or is agreed with the third party concerning the receivables assigned in advance to *herotec*.

5.4. The contract partner shall be authorised by *herotec* to collect the receivables assigned to *herotec* in the course of ordinary business transactions in his own name and at his own expense. This authorisation may be revoked if the contract partner fails to duly meet his payment obligations. If a petition is filed for judicial or extrajudicial insolvency proceedings or in the case of cheque enforcement proceedings, authorisation to collect the assigned receivables shall expire.

5.5. At *herotec*'s request the contract partner shall inform his debtor of the assignment and shall provide *herotec* with the information and documents required to assert its rights.

5.6. Regarding the extended reservation of title (advance assignment of the purchase price debt) an assignment to third parties by the contract partner, in particular to a bank, shall be a breach of contract and therefore inadmissible. *herotec* shall be entitled to verify the contract partner's contractual documents at any time and notify his purchaser of the assignment.

5.7. The contract partner shall be prohibited from pawning the reserved merchandise or assigning it to third parties as a security. If third parties seize the reserved merchandise, in particular by attachment of the reserved merchandise, the contract partner shall point out *herotec*'s title and shall immediately notify *herotec* of this. The contract partner shall be liable towards *herotec* for the judicial and extrajudicial costs, in particular for the costs of necessary legal action according to s. 771 of the German Code of Civil Procedure (*Zivilprozessordnung - ZPO*).

5.8. The contract partner shall treat the reserved merchandise with care. *herotec* shall have the right to insure the delivered reserved merchandise at the contract partner's expense against fire, water, theft and other damages.

This shall not apply if the contract partner has taken out corresponding insurance himself. The contract partner shall provide evidence to *herotec* that such insurance has been concluded, at the corresponding request of *herotec*.

5.9. In the case of a default of payment *herotec* shall be entitled to take back the delivered reserved merchandise after having sent reminders of payment without success. The contract partner shall then be obliged to surrender the reserved merchandise.

- The assertion of a reservation of title or surrender claim and the seizure of reserved merchandise by herotec shall not be deemed a withdrawal notice.
- 5.10. If the value of securities existing for herotec exceeds its owing receivables by over 10% in total, herotec shall insofar be obliged to release securities of its choice at the contract partner's request.
- VI. Industrial property rights**
- 6.1. The contract partner acknowledges any due industrial property rights of herotec pertaining to the delivered merchandise and shall respect them and defend them against violation by third parties.
- 6.2. The contract partner also warrants towards herotec that the production and delivery of products manufactured at his behest and out of the merchandise delivered by herotec do not violate third-party property rights and shall indemnify herotec against all opposing claims.
- 6.3. Casts, templates, tools or other devices manufactured by herotec or manufactured on herotec's behalf for the contract partner shall also remain the property of herotec if costs in relation to this are charged from the contract partner; they shall be carefully stored by herotec unless no follow-up orders are placed within 2 years after the last delivery/order. A restriction of use and/or obligation of surrender shall only be imposed where expressly agreed by the parties in writing.
- VII. Data protection**
- Data protection processing shall be carried out in accordance with the applicable regulations of the German Federal Data Protection Act and the European Data Protection Regulation. herotec shall collect, process and use personal data of the contract partner for this purpose.
- VIII. Compliance**
- The contract partner undertakes to ensure that it and its shareholders, managing directors, supervisory and advisory board members, employees and other representatives comply with statutory regulations and shall in particular take preventive action in any direction against criminal and reprehensible conduct in the course of its business activities in connection with this contract.
- IX. Warranty**
- 9.1. Possible warranty rights for defects shall only be granted if the business contract partner has immediately inspected the merchandise delivered by herotec on receipt for possible defects and has notified herotec of obvious defects immediately and of hidden defects immediately on discovery. If the contract partner fails to notify herotec of defects as required, the merchandise shall be deemed approved. Any associated warranty rights for defects shall then be ruled out.
- 9.2. herotec shall only acknowledge notices of defects if they are communicated in writing. A notice of defects given to field or transport staff or other third parties shall not constitute a due and proper notice of defects.
- 9.3. In the event that merchandise must be repaired or a replacement delivered due to a justified notice of defects, the provisions on the term of delivery shall apply correspondingly. In the case of a justified notice of defects herotec shall have the right to remedy the defects either by delivering new merchandise or repairing the defects according to its choice. Claims of the contract partner for expenses required for remedy, including but not limited to labour, route, transport and material costs shall be ruled out, as far as these expenses are increased by subsequent transport of the delivered item to another location than the originally agreed place of delivery. This shall not apply if herotec was aware of the connection and this connection was required according to the contract.
- 9.4. If herotec fails twice or refuses to remedy the defects, the contract partner may withdraw from the contract or reduce the remuneration. If only some goods of one shipment are defective, the contract partner's right of withdrawal shall be limited to the individual defective goods. This shall not apply if the contract partner is not interested in a partial delivery and/or cannot reasonably be expected to accept a partial delivery. The contract partner shall explain the reasons for unacceptability/loss of interest to herotec. The provisions under clause VIII of these Terms of Sale shall apply to possible compensation claims of the contract partner.
- 9.5. The contract partner's claims for defects shall, as a rule, expire by limitation in 12 months. This term shall commence on delivery of the merchandise. However, by way of derogation, the statutory limitation periods shall apply if the law prescribes longer statutory periods of limitation for buildings or delivered items that are used according to their common general purpose for a building. The statutory limitation periods shall also apply in relation to possible claims for damages of the contract partner due to culpable injuries to human life, body or health, or other damages due to violations of obligations by gross negligence and wilful intent on the part of herotec. The same shall apply if herotec has maliciously concealed a defect. The statutory limitation periods shall also apply to consequential damages caused by a defect.
- 9.6. No warranty rights shall arise if defects were caused by the contract partner's failure to observe herotec's operating or maintenance instructions and this non-observance was the cause of the resulting defects.
- The same shall apply to defects caused by an incorrect assembly or start-up of operation by the contract partner himself or by third parties. Moreover, if modifications are performed on the products, parts are exchanged or if consumables are used that do not meet the specifications of herotec, unless the defect is not causally related to modifications initiated by the contract partner or the used consumables. Natural wear and tear and damages due to incorrect treatment shall also be excluded from the warranty. In particular, herotec shall accept no liability for any changes to the condition of its products due to incorrect storage by the contract partner.
- XI. Claims for damages and liability for other reasons**
- 10.1. Unless otherwise specified in these Terms of Sale, herotec shall be liable to compensate for damages and for wasted expenses according to section 284 of the German Civil Code (*Bürgerliches Gesetzbuch BGB*) due to the violation of contractual or non-contractual obligations only in the case of wilful intent or gross negligence of its legal representatives or its vicarious agents, in the case of injuries to human life, body or health, due to the acceptance of a guarantee or a procurement risk, the violation of major contractual obligations, due to compulsory liability according to the Product Liability Act or other compulsory liability. However, compensation for the violation of major contractual obligations shall be limited to typical damages that are foreseeable under the contract, unless caused by wilful intent or gross negligence on the part of herotec's legal representatives or its vicarious agents or if herotec has liability due to injuries to human life, body or health, or the acceptance of a guarantee or a procurement risk.
- 10.2. This provision shall not modify the burden of proof to the detriment of the contract partner.
- 10.3. The provision in clause 7.5 of these Terms of Sale shall apply correspondingly to the expiry of claims for damages between the contracting parties by limitation. The statutory limitation periods shall also apply to claims arising under the Product Liability Act and due to injuries to human life, body or health.
- XI. Exclusion of procurement risk and guarantees**
- herotec shall accept no procurement risk and grant no guarantees of any kind unless an express written agreement on this has been concluded with the contract partner.
- XII. Right of withdrawal of herotec**
- herotec shall, without prejudice to statutory withdrawal grounds, be entitled to withdraw from the contract with the contract partner for the following reasons:
- a) if it turns out, as opposed to the assumption made prior to conclusion of the contract, that the contract partner is not creditworthy. Creditworthiness can be automatically assumed in the case of cheque enforcement proceedings, a termination of payments by the contract partner or a fruitless attempt at enforcing payment obligations of the contract partner. These relations need not necessarily be relations between herotec and the contract partner,
- b) if it turns out that the contract partner has provided false information regarding his creditworthiness and such information is of crucial importance,
- c) if the reserved merchandise of herotec is sold other than in the contract partner's ordinary course of business including but not limited to an assignment as a security or pawning. Exceptions may only be made if herotec has given its written consent to the sale.
- XIII. Place of performance/legal venue**
- 13.1. The place of performance for deliveries and payment shall be at herotec's registered place of business in Ahlen.
- 13.2. On condition that the contract partner is an entrepreneur as defined by the German Commercial Code (*Handelsgesetzbuch - HGB*), a public-law entity or a special fund under public law, the place of business of herotec in Ahlen shall be the exclusive legal venue for all disputes arising from the contractual relationship. However, herotec shall have the right to take legal action against the contract partner also at his general legal venue or the legal venue of the contract partner's place of business.
- XIV. Governing law**
- The legal relations between the parties shall be governed solely by the law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- XIV. Severability**
- If any provision of the underlying contract should be invalid or ineffective, this shall not affect the validity of the remaining provisions of the contract. The parties shall replace the ineffective or invalid provision by a provision that approximates as far as possible to the economic intentions of the parties. The same shall apply if the Terms of Sale are ineffective in whole or in part. In this case the remaining terms of sale shall also remain effective.

D-59227 Ahlen, January 2023