

HERMOS Schaltanlagen GmbH

General Terms and Conditions

Corporate Guideline

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HERMOS Schaltanlagen GmbH

Gartenstraße 19

95490 Mistelgau

A. General Terms and Conditions of Contract for Service of HERMOS

I. General

1. the following terms and conditions of Hermos Schaltanlagen GmbH (Hermos) apply to all present and future business relations between us and

a. Persons acting in the exercise of their commercial or independent professional activity (entrepreneurs) and

b. legal entities under public law and special funds under public law.

2. all offers, deliveries and services shall be provided exclusively on the basis of the following terms and conditions. Any conflicting terms and conditions of the customer are invalid.

3. in the absence of a special agreement, a contract is concluded with the written order confirmation from Hermos.

4. legally relevant declarations and other agreements must be made in writing to be valid.

II. Prices / Payment / Offsetting

1. the prices quoted are strictly net ex works. The applicable value added tax, packaging, freight, customs duties, insurance and assembly are added to these prices. Hermos is bound to offers and offer prices for 4 weeks.

2. the offer price is only valid for a total award of the deliveries and services offered. We reserve the right to make price changes in the case of partial orders or partial deliveries.

3. the offer price for services such as project planning, drawings, assembly, maintenance, documentation and commissioning refers - unless otherwise agreed - only to the equipment supplied by Hermos within the contractual relationship.

4. Hermos is entitled to invoice on the day of delivery or, in the case of advance invoices, on the day the goods are ordered. In principle, the contractually agreed terms of payment apply. Otherwise, the invoice amount must be paid within 30 days without deduction. Software products and components are only delivered against advance payment or cash on delivery. Repair, customer service and other wage-related invoices or parts of invoices are to be paid immediately upon receipt of the invoice, without any deductions.

5. A payment is only deemed to have been made when Hermos can dispose of the amount. In the case of checks, payment is only deemed to have been made when the check is cashed. Money orders, checks and bills of exchange are only accepted by special agreement and only on account of payment, but not in lieu of performance.

6. in the event of default, default interest of 8% above the prime rate shall be owed, subject to any further damages. If the customer is in default with the fulfillment of his obligations - also from other contracts with Hermos - or if he suspends his payments or otherwise behaves contrary to the contract, all claims against the customer become due immediately and without any deduction.

7. Once the payment deadlines have been exceeded, the customer is no longer entitled to process the goods delivered by Hermos subject to retention of title, to combine them with other items or to mix or sell them.

8. Hermos is also entitled, following a reminder, to reclaim and take possession of goods subject to retention of title free of charge, to deliver outstanding deliveries only against advance payment and to assert the statutory rights due to default. The assertion of the retention of title and the seizure of the delivered goods by Hermos are not deemed to be a withdrawal from the contract, unless this is expressly declared in writing.

9. customers unknown to Hermos will only be supplied on advance payment without proof of creditworthiness; in the case of large orders, Hermos reserves the right to demand an advance payment or the provision of securities.

10. the application for the opening of insolvency proceedings entitles Hermos to withdraw from the contract and to demand the immediate return of the delivered goods.

11. partial deliveries and services may be invoiced separately.

12. the customer is only entitled to withhold payments or offset them against counterclaims insofar as his counterclaims are undisputed or have been legally established.

III. Property rights

1. Hermos reserves the right of ownership and copyright to cost estimates, drawings and other documents.

2. the documents may only be made accessible to third parties with the prior consent of Hermos and must be returned to Hermos immediately on request if the order is not placed with Hermos.

IV. Delivery / Delay

1. the goods are delivered ex works at the expense and risk of the customer.

2. this also applies to partial deliveries to which Hermos is entitled if these are reasonable for the customer.

3. Proof of faultless packaging is deemed to have been provided if the goods have been accepted by the forwarding agent or carrier without complaint. .

4. the customer may not refuse to accept deliveries due to insignificant defects.

5. If Hermos is obliged under the German Packaging Ordinance to take back the packaging used for transportation and the customer requests that it be taken back, the customer shall bear the costs for the return transport of the packaging used.

6. if Hermos takes back properly delivered goods, Hermos is entitled to charge a reasonable administration fee for the expenses incurred.

7. The delivery times stated are non-binding and will be adhered to as far as possible. Delivery dates or deadlines that are to be binding must be expressly agreed as binding.

8. the observance of deadlines for deliveries presupposes the timely receipt of all documents to be supplied by the customer, necessary approvals and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations by the customer. If these requirements are not met in good time, the deadlines shall be extended accordingly; this shall not apply if Hermos is responsible for the delay.

9. if non-compliance with the deadlines is due to force majeure, e.g. mobilization, war, riot or similar events, e.g. strike, lockout, the deadlines shall be extended accordingly.

10. HERMOS shall be liable for personal injury (injury to life, body, health) and/or under the Product Liability Act in accordance with the statutory provisions.

HERMOS shall be liable for intent and gross negligence. HERMOS shall only be liable for slight negligence in the event of culpable breach of a material contractual obligation (cardinal obligation), the fulfillment of which is essential for the proper performance of the contract and on the observance of which the customer may regularly rely. HERMOS shall pay damages, irrespective of the legal grounds (e.g. in the event of non-performance, impossibility, defects, delay, culpa in contrahendo, breach of secondary obligations or tort) in the event of intent in full and in the event of negligence limited to the foreseeable damage typical of the contract.

HERMOS shall not be liable for indirect/indirect damage in the event of negligence. This includes, in particular, lost profits, failed expenses, lost benefits of use, (re-)financing costs and other consequential damages. Insofar as the liability of HERMOS is excluded or limited, this shall also apply to employees, workers, representatives and vicarious agents.

11. at the request of Hermos, the customer is obliged to declare within a reasonable period of time whether it is withdrawing from the contract due to the delay in delivery or insisting on delivery.

12. if dispatch or delivery is delayed at the request of the customer by more than one month after notification of readiness for dispatch, the customer may be charged storage costs of 1% of the price of the items of the deliveries for each month commenced, but not more than a total of 5%. The contracting parties are at liberty to prove higher or lower storage costs.

V. Installation / Assembly / Commissioning

1. the customer shall, at his own expense, undertake and provide in good time for installation and assembly
 - a. all earthwork, construction work and other ancillary work outside the industry, including the necessary skilled and unskilled labor, building materials and tools,
 - b. the items and materials required for assembly, such as scaffolding, lifting equipment and other devices, fuels and lubricants,
 - c. Energy and water at the place of use, including connections, heating and lighting,
 - d. sufficiently large, suitable, dry and lockable rooms at the installation site for the storage of machine parts, equipment, materials, tools, etc. and adequate working and recreation rooms for the installation personnel, including sanitary facilities appropriate to the circumstances; in addition, the customer must take the same measures to protect the property of Hermos and the installation personnel on the construction site as it would take to protect its own property,
 - e. Protective clothing and protective devices that are required due to special circumstances at the installation site.
2. before the start of the installation work, the customer must provide the necessary information on the location of concealed electricity, gas and water pipes or similar installations as well as the necessary structural data without being asked.
3. prior to the start of installation or assembly, the materials and objects required for the start of the work must be available at the installation or assembly site and all preparatory work must have progressed to such an extent that the installation or assembly can be started as agreed and carried out without interruption. Access routes and the installation or assembly site must be leveled and cleared.
4. if the installation, assembly or commissioning is delayed due to circumstances for which Hermos is not responsible, the customer must bear the reasonable costs for waiting time and any additional travel required by Hermos or the assembly personnel.
5. the customer must immediately certify to Hermos on a weekly basis the duration of the working time of the installation personnel and the completion of the installation, assembly or commissioning.
6. if Hermos demands acceptance of the delivery after completion, the customer must carry this out within two weeks. If this is not done, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the delivery has been put into use - if applicable after completion of an agreed test phase.
7. if Hermos has to commission control systems, the customer must provide the necessary operating resources (media) to the required extent. Hermos must be notified of the commissioning within a reasonable period of time. Employees of the customer who are familiar with the system must be present during commissioning. The accessibility of the devices to be put into operation must be guaranteed by the customer. If the device assembly and installation is not within the scope of Hermos' order, the customer must ensure the assembly and cabling of field devices and the connection of the devices in the control cabinet.

VI. Retention of title

1. all goods remain the property of Hermos until all liabilities arising from the business relationship, regardless of their nature, have been met in full. This also applies in particular to claims arising later from repair services, spare parts and accessory deliveries.
2. The buyer is 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.
3. the retention of title shall also extend to the full value of the products resulting from the processing, mixing or combining of our goods, 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. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
4. the purchaser hereby assigns to us as security the claims against third parties arising from the resale of the goods and the product in total or in the amount of our co-ownership share in accordance with the above paragraph. We accept the assignment.

5. the buyer remains authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer meets his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
6. if the realizable value of the securities exceeds our claims by more than 20%, we shall release securities of our choice at the buyer's request.
7. as long as our retention of title exists, leasing, pledging, transfer by way of security or similar transfer of the goods to a third party is not permitted without our written consent.
8. in the event of intervention by creditors of the buyer, in particular in the event of seizure of the goods, the buyer shall notify us immediately by registered letter and shall bear the costs of measures to remedy the intervention, in particular of intervention proceedings, if they cannot be collected from the other party. In order to secure our claims, the buyer shall grant us the right to enter his business premises during his normal business hours and to inspect the business documents necessary to secure our claims.
9. the buyer is obliged to keep the goods in proper condition for the duration of the retention of title and to have any necessary repairs carried out immediately at his own expense.

VII. Rights in the event of defective performance / liability

1. Hermos will, at its discretion, either repair or replace free of charge those parts that prove to be defective as a result of a circumstance that occurred before the transfer of risk. The customer must give Hermos the necessary time and opportunity to do this and ensure at its own expense that Hermos has unrestricted access to the defective parts so that they can be inspected and processed. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage is the customer authorized to remedy the defect himself, whereby Hermos must be informed immediately. Defective wiring, improper handling and assembly do not constitute a breach of duty on the part of Hermos, unless Hermos has carried out the work itself. The customer must report the discovery of defects immediately in writing; replaced parts become the property of Hermos.
2. of the costs arising from the rectification of defects or new delivery, Hermos shall bear the costs of the subsequent delivery of the replacement goods and the shipping costs, insofar as the complaint proves to be justified. Any costs arising from installation and removal on site shall be borne by the customer.
3. unless otherwise provided for in these GTC including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
4. we shall be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable
 - a. for damages resulting from injury to life, body or health,
 - b. for damages arising from the breach of an essential contractual obligation (an obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damages.
5. the aforementioned limitations of liability shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the buyer under the Product Liability Act.
6. insofar as our liability is excluded or limited, this shall also apply to employees, representatives and vicarious agents.
7. all claims of the purchaser shall become time-barred after twelve months. The statutory periods shall apply to intentional and fraudulent conduct and to claims under the Product Liability Act. These also apply to defects in a building and delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness. Hermos and the customer agree that the IT components of the delivery items, even if they regulate or control the building management system of a building, are not considered to be used for a building in accordance with their normal use.

VIII. Impossibility; contract adjustment

1. if unforeseeable events (in particular operational disruptions, delays in the delivery of essential materials, effects of labor disputes, official interventions, strikes) significantly change the economic significance or the content of the delivery or have a significant impact on Hermos' operations, the contract will be adjusted appropriately in good faith.
2. if this is not economically justifiable, Hermos has the right to withdraw from the contract. If Hermos wishes to exercise this right of withdrawal, it must inform the customer immediately after realizing the consequences of the event, even if an extension of the delivery period was initially agreed with the customer.

IX. Use of software

1. insofar as software is included in the scope of delivery, the customer shall receive a simple, non-exclusive right of use including its documentation.
2. the customer is entitled to use the software exclusively on the delivery item intended for this purpose. Use on other systems is prohibited and requires an additional agreement.
3. the customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG).
4. combining the software with other software is only permitted by express agreement with Hermos. The customer undertakes to oblige any legal successor to recognize the terms of use. The granting of sublicenses is not permitted.
5. All other rights to software and documentation, in particular the right of ownership, remain with Hermos.
6. the customer has the non-exclusive right to use standard software with the agreed performance features in unchanged form on the agreed devices. The customer may make a backup copy without express agreement.
7. Hermos is entitled to update the software at its own discretion, but is not obliged to offer these updates to the customer. If a software maintenance agreement (maintenance contract) has been concluded, updated software is the subject of this agreement. New functions and features, on the other hand, must be ordered and paid for separately.
8. Although Hermos takes the greatest possible care in the production of its software, errors cannot always be ruled out given the state of the art. Hermos is liable for reproducible errors in accordance with VII. of these GTC. If reproducible errors cannot be corrected and the software is therefore unusable, the customer will give Hermos the necessary time and opportunity to attempt to develop a modified version of the software on the basis of the customer's written error report.
9. any liability for the usability of the software outside the contractually agreed standard technical applications is excluded.

X. Final provisions

1. All legal relationships between Hermos and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties.
2. the place of jurisdiction is the court responsible for the registered office of Hermos. However, Hermos is entitled to take legal action at the customer's head office. The place of performance for both parties is the registered office of Hermos.
3. should a provision in these terms and conditions or a provision within the framework of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements. The wholly or partially invalid provision shall then be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.

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