

# General Terms and Conditions

easyTherm GmbH

## 1. Scope of Application

**1.1** Delivery of goods/provision of services of *easyTherm* GmbH ("**easyTherm**") to its buyers ("**Contractual Partners**") (together "**Contracting Parties**") shall be performed solely on the basis of these GTC.

**1.2** Contractual Partners of *easyTherm* are consumers as well as entrepreneurs. If different provisions apply to consumers and entrepreneurs, it will be indicated.

**1.3** Provisions of Contractual Partners contrary to and/or varying from these GTC, in particular their terms and conditions, apply only to the extent and inasmuch as they have been expressly confirmed in writing by *easyTherm*. *easyTherm* is under no obligation to object to contrary and/or varying provisions, or terms and conditions, of Contractual Partners even if their validity is specified in those provisions or terms as an express condition for the business transaction.

## 2. Offers/order confirmation

**2.1** Our offers are subject to change; cost estimates are not binding. Documents such as illustrations, sketches, drawings, statements of cost, etc., are only binding if it was expressly agreed upon in writing. Contracts come into force only after the receipt of the written order confirmation of *easyTherm* at the Contractual Partner, or else by the delivery of goods or provision of services.

**2.2** Scope and content of the contractual relationship are determined by the written order confirmation of *easyTherm*; or, if no such confirmation is on hand, through the actual scope of delivery or service.

## 3. Regulatory approval

If the fulfilment of the contract requires any regulatory approvals, the Contractual Partner shall provide such approvals in due time; otherwise, *easyTherm* shall be entitled to withdraw from the Contract, irrespective of other claims.

## 4. Plans and documents/system software/installation rules

**4.1** All catalogues, brochures, illustrations, control programs, etc. of *easyTherm* are and remain the intellectual property of *easyTherm*. Any use, copying, distribution, publication, exhibition and other ceding to third parties requires the prior express written consent of *easyTherm*.

**4.2** *easyTherm* reserves the right to change the goods and/or services and/or plans and/or documents if it is deemed necessary due to technical and/or legal and/or other changes and/or conversions and/or further development. Such changes result in a corresponding adjustment of the price and/or delivery period.

**4.3** When operating the goods, all installation, operation and other technical instructions as well as other information from *easyTherm* must be complied with. The Contractual Partner shall, where appropriate, pledge his customers to this obligation.

**4.4** A formal acceptance of goods requires a separate agreement.

## **5. Delivery and performance period**

**5.1** Any periods specified by *easyTherm* are non-binding. Under no circumstances shall periods begin before all order details have been agreed upon.

**5.2** *easyTherm* is entitled to deliver partial deliveries or perform partial services.

**5.3** *easyTherm* is entitled to withhold deliveries and services, including, for example, the fulfilment of warranty claims, until the Contractual Partner has met all his obligations.

**5.4** *easyTherm* is entitled at any time to withdraw from the Contract or terminate it without notice if the Contractual Partner breaches one of his obligations.

## **6. Transfer of benefits and risks**

**6.1** Benefits and risks are transferred to the Contractual Partner as soon as *easyTherm* has notified the Contractual Partner that the goods are ready for delivery, even if the delivery includes installation.

**6.2** If dispatch is delayed for reasons for which *easyTherm* is not responsible, the goods shall be stored at the expense and at the risk of the Contractual Partner.

**6.3** The Contractual Partner shall organise the transport at his own expense and risk.

**6.4** *easyTherm* is under no obligation to take out transport insurance. Goods will be insured only upon written order by the Contractual Partner and at his expense.

**6.5** The Contractual Partner expressly agrees that third parties tasked by *easyTherm*, e.g. sales partners of *easyTherm*, receive the goods for the Contractual Partner.

**6.6** If the Contractual Partner is a consumer, the risk is transferred to him when any goods are dispatched, providing that the Contractual Partner has approved of and/or determined the type of dispatch.

## **7. Force majeure**

In the event that *easyTherm* is not able to deliver the goods/perform the service due to force majeure, *easyTherm* shall inform the Contractual Partner of it immediately and without culpable delay. In the case of force majeure, *easyTherm* is entitled to withdraw from the Contract in its entirety or in parts. In any event, any delivery and performance periods of *easyTherm* will be extended by the duration of the force majeure.

## **8. Prices/costs**

**8.1** All prices of *easyTherm* are net ex factory (excluding statutory fees and taxes), including packaging costs, yet excluding transport costs and/or insurance.

**8.2** The standard hourly rates of *easyTherm* apply to the provision of services such as installation, maintenance and repair work as well as training sessions. *easyTherm*.

**8.3** In the following cases, the Contractual Partner is obligated – irrespective of other provisions on the bearing of costs – to bear all costs that *easyTherm* incurs:

- a) Commissioning of goods;
- b) Changes in the scope of delivery and/or scope of services for whatever reason, e.g. for technical reasons, etc., without notifying the Contractual Partner;
- c) Cancellation/annulment of the Contract;
- d) Postponement of performance and/or delivery due to reasons for which the Contractual Partner is responsible, e.g. non-fulfilment of duties and/or obligations of the Contractual Partner or at his request;
- e) Justified assertion of retention of title, or enforcement of property rights on the part of *easyTherm*.

## **9. Payment**

**9.1** All claims of *easyTherm* are due for payment immediately upon receipt of invoice without deduction of a discount or other deductions. *easyTherm* shall be entitled to deliver goods/provide services only against advance payment. If cash on delivery is agreed, payment amount must not be more than EUR 5.000,--.

**9.2** *easyTherm* is entitled to set off payments made by the Contractual Partner against any collection costs. Payments are allowed to be set off against other claims even if the Contractual Partner has dedicated them to the contrary.

**9.3** If the Contractual partner is in default of payment, *easyTherm* is entitled to regard the entire still open purchase price as due and/or charge default interest of 12% p.a.

**9.4** The Contractual Partner is obligated to accept the goods and/or services. The following applies in addition to and/or varying from the above only for the contractual relationship with entrepreneurs:

**9.5** If payments by instalment have been agreed upon, delay in the instalment payment results automatically in a payment target deemed to have been missed.

**9.6** If the Contractual Partner is in default by more than 14 days or in the event of insolvency of the Contractual Partner, granted special discounts and bonuses expire and will be charged back.

## **10. Retention of title**

**10.1** Until full payment of the purchase price, *easyTherm* shall retain the unrestricted property right to the goods. *easyTherm* is entitled to identify the goods as its property on the outside. The Contractual Partner is not permitted to remove this identification.

**10.2** The Contractual Partner is not permitted to resell, process, pledge the goods, cede them as collateral or dispose of them in any other way as long as the retention of title is in place. The Contractual Partner shall inform *easyTherm* of any change to the actual or legal status of the goods under retention of title, e.g. seizures or deterioration of condition.

**10.3** The assertion of the retention of title does not constitute a withdrawal from the Contract and does not relieve the Contractual Partner of his obligations, in particular payment of the purchase price.

**10.4** If *easyTherm* asserts retention of title, the Contractual Partner is obligated to surrender the goods under retention of title without delay. *easyTherm* is entitled to retrieve the goods under retention of title at any time. In addition, the Contractual Partner must pay adequate compensation for the time he possesses the goods and

also provide restitution for any impairment of value, at least, however, 25% of the goods. The following provision apply only to business relationships with Contractual Partners who are entrepreneurs.

**10.5** In the event that, despite the agreed retention of title, the goods are resold or transferred to a third party in any other way, the Contractual Partner shall already now assign to *easyTherm* by way of security all claims arising from such transactions against the third party in the amount of any outstanding claim. *easyTherm* The Contractual Partner undertakes to take all steps necessary for the assignment immediately, e.g. entry in the books, in particular lists of open items, notification of the debtor, etc. The Contractual Partner is obligated, and *easyTherm* is entitled to inform the third party of the assignment. The Contractual Partner shall immediately send a copy of the agreement to *easyTherm* .

## **11. Obligation to give notification of defects**

The Contractual Partner is obligated to check goods and services immediately upon transfer of risk, or performance, for their flawlessness and completeness and to notify *easyTherm* promptly of any defects in writing, specifying details. This provision also applies to hidden defects as of the moment of detection. If the Contractual Partner is an entrepreneur, giving notification of a defect does not entitle the Contractual Partner to withhold payments in part or as a whole. In the event that the commissioning of the goods is performed by *easyTherm* or an authorised third party, the Contractual Partner shall raise his objection during commissioning. If the Contractual Partner does not give notification of defects (in due time), he loses all claims.

## **12. Warranty/guarantee**

**12.1** Statutory warranty periods apply. Rectifications of defects outside the warranty period shall have no effect.

**12.2** *easyTherm* shall warrant only those properties that the Contractual Partner was expressly granted by *easyTherm* . Any liability or warranty for the compatibility of products with other products, systems, equipment or parts thereof as well as for the suitability for a particular purpose is excluded.

**12.3** *easyTherm* is entitled to determine the type of warranty. Substitute performance is precluded without the prior express consent of *easyTherm*.

**12.4** A prerequisite for warranty claims or any guarantee claims of the Contractual Partner is that the goods were commissioned by *easyTherm* or an authorised third party. A warranty for activities of third parties, e.g. plumber and/or electrician, etc., is excluded.

**12.5** The warranty and any guarantee shall expire as soon as the Contractual Partner fails to have the repairs and maintenance work required within the warranty period and/or guarantee period performed on the goods.

**12.6** There is no warranty and guarantee for wear parts; in the event of force majeure; exposure to moisture; excessive soiling; fire; inadequate ventilation; voltage fluctuations of more than +/- 10%; as well as exposure to electromagnetic influences and other influences.

**12.7** After correction or replacement, the warranty period shall not start anew.

**12.8** Installation, maintenance and/or repair locations must be kept accessible during normal working hours, otherwise default of acceptance on the part of the Contracting Partner is given.

**12.9** When accepting repair orders and/or when performing work on used systems and/or equipment of other manufacturers, *easyTherm* does not assume liability or warranty with the exception of any (new) goods that *easyTherm* installs as part of such work.

**12.10** If *easyTherm* manufactures goods on the basis of design specifications, drawings or models of the Contractual Partner, *easyTherm* is in principle under no obligation to check the correctness of these specifications. The liability and warranty of *easyTherm* do not extend to the correctness of the design and other specifications of the Contractual Partner but only to the fact that the goods were manufactured in accordance with these specifications.

**12.11** Any and all modifications of goods not authorised by *easyTherm* , e.g. operation of goods together with other devices and/or accessories, whose compatibility has not been expressly confirmed by *easyTherm* ; or the improper operation and/or use of more than 1,500 full-load hours per year; or the use of the delivered products for commercial purposes (with the exception of the condition mentioned below) result in the exclusion of warranty.

The following applies in addition to and/or varying from the above, only for the contractual relationship with entrepreneurs:

**12.12** The warranty period is 3 months.

**12.13** Warranty is only provided if a repair and/or revision of the goods required by the end of the warranty period has been carried out by *easyTherm* or by a person authorised by *easyTherm* . The warranty expires when the client and/or external personnel carry out the repair and/or revision.

**12.14** In the case of a partial delivery of goods and/or performance of services, the warranty period begins with the provision of the respective (partial) delivery or performance of the (partial) service.

**12.15** To be eligible for warranty, the Contractual Partner shall grant *easyTherm* all facilitations for the determination and rectification of the defect. The replaced parts or equipment shall become the property of *easyTherm* . Presumption according to Section 924 of the Austrian Civil Code (ABGB) is excluded.

**12.16** *easyTherm* is entitled to have defective goods or parts thereof sent in for correction.

**12.17** Warranty on the basis of Section 922 (1) second sentence, second clause ABGB (description, sample, samples), Section 922 (2) and Section 933 b (1) ABGB are excluded. If a sample delivery is agreed, it will be sent by *easyTherm* under exclusion of all warranty and liability.

### **13. Liability**

**13.1** *easyTherm* is liable for personal damage, without restrictions according to statutory provisions, which are caused by the breach of obligations by *easyTherm* . Contractual claims for damages exist only for wilful intent and gross negligence. Statutory limitation periods apply.

**13.2** The goods only ensure that level of safety and security that can be expected on the basis of the applicable statutory (product) provisions, use instructions, etc. A

prerequisite for the required safety and security of the goods in operation is that any connection work and/or installation work and/or commissioning work and/or repair work is carried out by *easyTherm* or an authorised partner, using original spare parts.

**13.3** In the case of liability, only money can be demanded as compensation; liability is limited to the amount of the net value of the goods, with a maximum amount of EUR 5,000.00

**13.4** The rectification of consequential damage by *easyTherm* is excluded.

The following applies in addition to and/or varying from the above only for the contractual relationship with entrepreneurs:

**13.5** Contractual claims for damages exist only for wilful intent and gross negligence. Liability for indirect damage (such as lost profits, consequential damage and/or third party claims) is excluded. The burden of proof according to Section 1298 ABGB is excluded.

**13.6** All claims for damage arising from defects in deliveries and/or services – if the damage has not been expressly accepted by *easyTherm* – must be enforced judicially within 6 months after the defects were objectively noticeable; at the latest, however, within 3 years after the event that established the claim; otherwise, the claims expire.

**13.7** The Contractual Partner shall indemnify and hold harmless *easyTherm* in all those cases in which claims were asserted against *easyTherm* by third parties due to the behaviour or action of the Contractual Partner. The Contractual Partner shall fully bear any consequence of breaching his obligations.

## **14. Offsetting/retention/challenge**

**14.1** The Contractual Partner expressly waives setting off his own claims, irrespective from what title or legal relationship, against claims of *easyTherm* or to withhold or reduce payments he owes for whatever reason.

**14.2** If the Contractual Partner is a consumer, he can set off against the liability only those claims associated with it, claims recognised by the contractor or claims established by court.

**14.3** To the legally permitted extent, the Contractual Partner – if he is an entrepreneur – and *easyTherm* waive challenging the contractual relationship between them for the purpose of adaptation or annulment or to assert that the contractual relationship has not been concluded on a valid basis and/or is null and void.

## **15. Written form**

Changes and additions to the contractual relationship between the Contracting Parties require the written form as well as the signature of both Parties. This also applies to a possible waiver of the written form requirement. Verbal additional agreements do not exist. The written form requirement is satisfied by e-mail and/or fax.

## **16. Data protection/confidentiality**

**16.1** *easyTherm* is entitled to store personal data of the Contractual Partner and use it in any form in compliance with all applicable data protection provisions.

**16.2** The Contractual Partner undertakes to keep strict confidentiality in terms of all information about *easyTherm* and/or its business partners that comes to his knowledge before or during the implementation of the Contract.

## **17. Place of jurisdiction/choice of law**

**17.1** All disputes arising out of or in connection with the contractual relationship, including the question of its valid conclusion and/or its anticipatory and after effects, will be settled exclusively by the competent court at the seat of *easyTherm* or, at the option of *easyTherm*, by the competent court in whose administrative district the Contractual Partner has his headquarters, a branch or assets.

**17.2** If the Contractual Partner has his headquarters outside of the European Union, disputes arising from or in connection with a contractual relationship between the Contractual Partner and *easyTherm* are finally decided according to the Viennese Rules by one or several arbitrator(s) appointed according to these Rules. The place of arbitration shall be Vienna. The arbitration language is German.

**17.3** If the Contractual Partner is a consumer, the domicile, habitual residence or place of employment of the Contractual Partner shall be the place of jurisdiction.

**17.4** All contracts between *easyTherm* and the Contractual Partner are subject solely to Austrian law, excluding conflict of law rules. The application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.

## **18. Severability clause**

Should one or several provisions of these GTC be invalid and/or be unenforceable or should a gap become apparent, the validity of the remaining provisions of the GTC shall not be affected. The replacement of invalid and/or unenforceable provision(s) and/or the completion of a gap are done automatically to the legally permitted extent in such a way that these provisions and/or gaps will be replaced/filled so they meet the intentions of the Contracting Parties as closely as possible.

© *easyTherm*, valid as of July 2018. Misprints and printing errors reserved!