

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY via WEBSTORE

MT.DERM GmbH  
Blohmstr. 37-61  
12307 Berlin  
GERMANY

These General Terms and Conditions of Sale and Delivery (these "Terms") are applicable to all U.S. and Canadian buyers (the "Buyers" and each, individually, a "Buyer") of MT.DERM GmbH, a German limited liability company (the Company").

### 1. Terms and Conditions of Sale: (hereinafter, the "Services")

1.1. Company sells goods via its online e-commerce websites <https://shop.cheyennetattoo.com/us>, <https://shop.amiea.com/us> and <https://www.artyst-international.com/us> (the "Webstore"). By virtue of the terms hereunder and upon receipt of valid payment from Buyer, Company shall deliver to Buyer and Buyer shall purchase and accept from Company the products as requested by Buyer (herein, the "Products") described on or in any confirmed order, agreement or quotation, or any combination thereof (the "Order"), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between Company and Buyer regarding the Products (herein, this "Agreement").

1.2. This Agreement shall not apply to any direct-to-Company purchases made between customers and Company over phone, email, or according to a previously arranged sponsorship model, no other terms or conditions shall be of any effect unless otherwise specifically agreed to by Company in a separate written agreement duly signed by an officer of Company. Buyer will be deemed to have assented to all Terms if any part of the Products is accepted by Buyer. If Buyer finds any Term not acceptable, Buyer must so notify Company at once and must reject the Products delivered under this Agreement. Any additional or different terms or conditions contained in Buyer's order or response hereto shall be deemed objected to by Company and shall be of no effect. No general terms and conditions of a Buyer shall at any time form a part of the content of any contract or agreement between the Buyer and the Company, even if they are not further expressly rejected by the Company.

1.3. No subsequent modifications in quantity or quality, are available on purchase through Webstore. All Images, Photos or drawings of product samples includes alongside any quotation remain the property of Company. All drawings and samples provided to Buyer shall be treated confidentially by Buyer and must be returned to Company after usage.

1.4. Order is binding upon the Company upon the acceptance of the Order via confirmed Payment via our Webstore writing or the delivery of the Products to the Buyer. Notwithstanding any prior acceptance of an Order by Company, Company shall have no obligation if the Buyer is in breach of any of its obligations hereunder, or any other agreement between the Buyer and Company, at the time Company's performance was due, including prior unpaid invoices.

1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by the Company in writing on confirmed via confirmed Webstore purchase.

1.6. Buyer shall bear all costs associated with any cancellation or modification of the Order once placed via our Webstore and shipped via our common carrier facilities.

### 2. Prices:

2.1. All price quotations are valid as indicated at the time of the order, and Ex Works, with their origin at: MT.DERM GmbH Gustav-Krone-Straße 3, 14167 Berlin, Germany (per Incoterms 2010). Quotations do not include costs for packaging, postage or other freight charges, insurance or taxes, if any.

2.2. Products' prices will be governed by the Company's current prices which may fluctuate from time to time. Products' prices available as of the date of purchased are binding.

2.3. Company may without notice to Buyer increase the price of the Products by the amount of any new or increased tax or duty (excluding franchise, net income, and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the cost of such materials.

### **3. Terms of Payment:**

3.1. Unless otherwise agreed to in writing by the Company, Buyer shall pay for Orders in advance by credit card or other appropriate payment method made available via our Webstore.

3.2. After shipment of an Order, Buyer's sole remedy for a cancellation of its order shall be rejection of the Products immediately upon delivery.

3.3. If the Buyer accepts delivery, and Order payment is cancelled or incomplete, Buyer shall owe interest to the Company on the remaining balance owed, from the date of confirmed Order delivery, at the rate of one and one percent (1%) per month or such lesser amount permitted by law. The specification or charging of interest shall not be deemed an agreement to extend credit.

3.4. Upon confirmation of an Order through our Webstore, and prior to confirmed receipt of payment in full for Products ordered, Buyer immediately grants to Company/Lender a first priority security interest in the Products following delivery thereof to Buyer ("Collateral"), as security for the timely payment and performance of Buyer's payment obligations to Company, Such Interest shall remain in force until payment in full of the entire purchase price for the Products and any other amounts due to the Company by Buyer.

### **4. Delivery Terms:**

4.1. Except as otherwise specified in this Agreement, the Products shall be sold and delivered Ex Works MT.DERM GmbH, Blohmstraße 37 – 61, 12307 Berlin Germany (per Incoterms 2010). Title to and risk of loss for the Products shall pass to Buyer upon delivery thereof to any common carrier at such facility.

4.2. The Delivery Period commences [upon receipt of payment](#) for the corresponding Order. Date of dispatch shall commence upon delivery thereof to any common carrier at such facility. Due to differing international customs laws, all delivery dates are approximate and time shall not be of the essence.

4.3. Buyer will be billed for and shall pay all freight, transportation, shipping, insurance and handling charges, duties, and taxes, including any applicable VAT, sales, personal property, *ad valorem*, and other taxes, duties, levies or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of the buyer or seller, but excluding any taxes payable by Company with respect to its net income.

4.4. Company shall, subject to Company's available facilities at the shipping point, determine the type of transportation and shall notify Buyer thereof, with any available tracking order information, via their Order account or email address provided, at the time of purchase, or as soon as possible thereafter. Company takes no responsibility for timeliness of delivery once Products are released to the carrier. Buyer shall be responsible for tracking and receiving such deliveries en route.

4.5. Company shall use its reasonable efforts to use a commercially viable common carrier, if available. Except in cases of Company's wilful misconduct or gross negligence, Company shall not be liable to Buyer for delays in delivery or damage to Products while in transit, irrespective of selected mode of transportation.

### **5. Disclaimer of Warranties and Limitation of Liability: (in accordance with 15 U.S. Code CHAPTER 50)**

5.1. Buyer agrees to hold Company, its officers agents or assigns, (including Company affiliates or subsidiaries, and their officers agents or assigns), harmless against any and all claims, demands, damages, liabilities and costs including reasonable attorneys' fees incurred by Company which directly or indirectly result from, or arise in connection with, any negligent act or omission of Buyer, its agents, or employees, pertaining to its activities and

obligations under this Agreement, or negligent use of Company Products, to the full extent allowed by applicable law.

5.2. Buyer agrees that upon receipt of notice of claim or action relating to the use of Company's Products, upon receiving such notice, Buyer will contact Company promptly, or no later than 10 business days from receipt of said notice. Company reserves its rights, at its own expense, to provide its own attorneys to defend against any actions brought or filed against Company or Buyer, their officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed, and, subject to the applicable law and jurisdiction applied, and Buyer agrees to cooperate with Company in good faith in the defense of such claim or action.

5.3. COMPANY SERVICES AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS AND OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH COMPANY WEBSTORE, AND ANY OTHER AFFILIATED WEBSITES OWNED BY COMPANY ARE PROVIDED BY COMPANY ON AN "AS IS" AND "AS AVAILABLE" BASIS, UNLESS OTHERWISE SPECIFIED IN WRITING. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE COMPANY SERVICES, OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH [WWW.MTDERM.DE](http://WWW.MTDERM.DE), AND ANY OTHER AFFILIATED WEBSITES OWNED BY COMPANY, UNLESS OTHERWISE SPECIFIED IN WRITING. YOU EXPRESSLY AGREE THAT YOUR USE OF THE COMPANY SERVICES IS AT YOUR SOLE RISK.

5.4. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT COMPANY SERVICES, INFORMATION, CONTENT, MATERIALS, PRODUCTS OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH [WWW.MTDERM.DE](http://WWW.MTDERM.DE), OR AFFILIATE WEBSITES, OR COMPANY'S SERVERS OR ELECTRONIC COMMUNICATIONS SENT FROM COMPANY, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF ANY COMPANY SERVICES, OR FROM ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS OR OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH ANY COMPANY SERVICES, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, UNLESS OTHERWISE SPECIFIED IN WRITING.

5.5. NOTWITHSTANDING THE TERMS AND CONDITIONS SET FORTH IN SECTION 5.1., COMPANY'S LIABILITY – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE VALUE OF BUYER'S ORDER TO WHICH THE DAMAGES ARE PERTAINING TO, AS DESCRIBED ON THE ORDER FORM, OR THE ORDER VALUE FOR ONE (1) CALENDAR YEAR, WHICHEVER AMOUNT IS LOWER. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND BUYER IN AN EQUITABLE MANNER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

5.6. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

5.7. **Limited Warranty:**

5.7.1. In such circumstance as a full warranty is not allowed, this limited warranty shall apply. As such, COMPANY warrants only to the original purchaser of any COMPANY manufactured and branded products purchased at [www.mtderm.de](http://www.mtderm.de), or Products purchased via Company Webstore, that such product will be free from defects in material and workmanship under normal use and service for one year after date of purchase. This warranty does not cover any defects or costs caused by: 1) modification, alteration, repair or service of this product by any persons or company other than by

COMPANY; 2) physical abuse to, or misuse of the product or operation thereof in a manner inconsistent with the use indicated in the instructions; 3) any use of the product other than by COMPANY for service or repair. Any express warranty not provided herein, and any remedy which other than the warranty contained herein that might arise by inference or operation of law, is hereby excluded and disclaimed including the implied warranties of merchantability and of the fitness for a particular purpose.

5.7.2. After 30 days, products cannot be returned for a refund. Replacement or repair of product, therefore, is your exclusive remedy under this warranty. Please contact our Customer Service Department to arrange returns.

5.7.3. This limited warranty does not cover items manufactured by third parties and sold via Company webstores. Manufacturer information appears on the item page. We recommend that you contact lease third party manufacturers to determine the warranty terms for a particular product, prior to purchase.

## **6. RETURNS**

6.1. At MT.DERM GmbH, we are committed to serving the needs of our customers. Your satisfaction is extremely important to us. In the event you believe a return is warranted, please carefully review the below outlined information, and contact our Customer Service Department at xxx-xxx-xxxx or via email at support@mtderm.de, so that we may promptly address your needs.

6.2. Return Policy: We stand by our products. Buyer may return any unused, defective products purchased via COMPANY Webstore, within 30 days of purchase, for repair or a full refund. Please contact our Customer Service department to arrange returns.

7. **PRIVACY**: Please review our [Privacy Policy](#) to understand our practices.

## **8. ELECTRONIC COMMUNICATIONS**

8.1. Company has made available for Buyer, an electronic commerce platform which allows Buyer to directly buy Product(s) over the Internet via web browser or a mobile app, hosted on www.mtderm.de and other related or affiliated websites (referred to herein as "Webstore(s)"). When you purchase a Product, place on Order, access Company's website or Services, or send e-mail correspondence to us, you are communicating with us electronically. You consent to receive communications from us electronically, as we will require to further communicate with you by e-mail, via our Webstore, or related or affiliated websites owned by Company. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. By accepting these terms and conditions you consent to receiving such emails. You may opt out from receiving promotional and/or informational emails at any time.

## **8.2. TRADEMARKS**

8.2.1. MT.DERM GmbH, MTDERM.DE, Cheyenne™, Artyst™, amiea™, and the stylized "MT.DERM," "Cheyenne", "amiea" and "Artyst" Logos, and related graphics, logos, page headers, button icons, scripts, and service names, (the "Marks"), are trademarks and trade dress of Company in Germany, the EU, the United States and other countries. Company's Marks may not be used in connection with any product or service that is not of Company origin, or in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits MT.DERM. All other trademarks not owned by MT.DERM that appear in any Services are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Painful Pleasures.

## **8.3. COMPLIANCE & EXPORT CONTROL**

8.3.1. Buyer or visitor access to company Webstore(s) is governed by all applicable federal, state and local laws. All information available on www.mtderm.de and related or affiliated websites owned by Company is subject to U.S. export control laws and may also be subject to the laws of the country where you reside.

## **9. Force Majeure:**

9.1. Company shall not be liable to Buyer or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, public health pandemic, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

9.2. When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

## **10. Product Descriptions & Variations:**

10.1. Company attempts to be as accurate as possible. However, Company does not warrant that product descriptions or other content of any Company Services is accurate, complete, reliable, current, or error-free. If a product offered by Company itself is not as described, your sole remedy is to return it in unused condition. You understand that there might be some variation in products sold by Company. Furthermore, you are responsible for ordering products in the correct size and/or gauge for your particular needs, and your sole remedy for improperly sized items is to return it in unused condition.

## **11. Miscellaneous Terms:**

11.1. This Agreement shall be subject to the law of the Federal Republic of Germany. Berlin shall be the place of jurisdiction, without giving effect to principles of conflict of laws.

11.2. Upon mutual acceptance of Buyer and Company in writing, any dispute arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by one (1) sole arbitrator appointed in accordance with the said Rules. The place of the arbitration shall be fixed at Berlin, Germany, but may allow for teleconference attendance or remote participation in the conduct of hearings and meetings as allowable by the arbitral tribunal and only unless agreed upon by the parties. The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the English language, and before a single arbitrator mutually agreeable to Company and Buyer, or if no agreement can be reached, then selected by the ICC. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his or her decision and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. In addition, the losing party shall reimburse the prevailing party for reasonable attorneys' fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

11.3. If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

11.4. In the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.

11.5. The parties hereto are independent contractors and nothing in this Agreement will be construed as creating a joint venture, employment or agency relationship between the parties.

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This Agreement, including any Schedules attached hereto, contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the parties hereto, their successors and permitted assigns.

Berlin, 24th May 2023