

I. Scope of our Conditions of Purchase

1. Our orders and contracts of all types are executed exclusively to these Conditions of Purchase which the contractor expressly accepts – also for future contracts. The delivery of goods or the provision of services is deemed an acknowledgement in all events. Deviating terms and conditions from the contractor – irrespective of the time we receive them – are not binding and are expressly rejected and opposed.
2. Deviating terms and conditions or other agreement are only binding if they occur in writing or are confirmed by us in writing.

II. Order / Contract

1. The prices stated in our order/contract are fixed prices. The contractor is bound to its price quotation. We will receive an order confirmation within five days for every order placed. Orders become binding if the supplier does not send a written objection or deviating order confirmation to us within five days.
2. Deviations from our order/contract and the documents presented or changes to the appearance and workmanship, quality or efficiency of the goods or services to be provided compared to designs already delivered or agreed on require our prior written approval.
3. We can change technical details up to four weeks before reaching the delivery date. Should samples be made available to us, serial production or delivery may only begin after our prior written approval.
4. In order to disclose the contract or part of the contract to third parties (sub-suppliers), our prior approval is required provided it does not concern insignificant back-work. The contractor is responsible for the third parties commissioned by it also when we have given our approval to the disclosure.
5. We can withdraw from the order/contract up to four weeks before the delivery date is reached if the contractor's economic or business conditions change in an unacceptable manner unless the contractor can verifiably convince us of the contrary.
6. For longer-term planning we award blanket orders on the basis of rolling requirement forecasts which are sent to the suppliers on a cyclical basis. The order commitment ensues from separate framework agreements and the related call-off orders which are concluded with the suppliers or on the basis of performance specifications in accordance with Sect. 315 of the German Civil Code (BGB) which we communicate to the supplier. Provided no shorter deadlines are agreed elsewhere, the call-offs become binding at the latest if the supplier does not object within five days of receipt.

III. Contract documents

1. Orders/contracts and all documents associated with these must be treated as business secrets. The contractual cooperation with us may not be used for advertising purposes.
2. Sketches, drawings, information as well as all intellectual and material property that is made available to the contractor or is manufactured by the contractor according to our specifications must be treated confidentially and may not be used for any other purpose than that agreed without our approval, in particular, may not be disclosed to third parties. On request as well as when the contract has been fulfilled, all documents made available must be returned to us.

IV. Delivery

1. The dates marked on our orders/contracts for the provision of goods and services are binding and must be adhered to. The contractor must immediately report foreseeable delays in performance in writing. Such notification does not indemnify the contractor from possible compensation claims we are entitled to. Early deliveries are only permitted subject to our express consent.
2. In the event of non-fulfilment, we are entitled to assert compensation of 20% of the total gross contract value, and in the event of a delay in performance 0.5% of the total gross contract value per calendar week or part thereof, but at most 20%. The proof of further compensation which is then payable by the contractor is not excluded by the above stipulation. Likewise the contractor can provide evidence that no or a significant lower damage than the flat rate asserted has occurred.
3. Additional costs of expedited shipping required in order to comply with delivery dates are borne by the suppliers.
4. In the event of circumstances due to force majeure, industrial disputes, operational breakdowns beyond our control, official measures and other unavoidable circumstances, we are entitled - irrespective of our other rights - to withdraw from the contract in whole or in part, provided these disturbances are of not insignificant duration and result in a considerable reduction in our requirements or where the use of the service is no longer economically reasonable.
5. The risk of accidental destruction and of accidental deterioration only passes to us when the receiving centre specified in the order has actually obtained possession of the delivered goods.
6. The contractor makes spare parts available for goods for the duration of the normal use of the delivered goods and supplies us at the conditions common in the market as required.
7. All deliveries are understood to be free domicile including packaging. Partial deliveries are only permitted with our prior written approval.

V. Prices and payment

1. The agreed prices are fixed prices. They are understood to include free delivery to our factory or the delivery address specified by us including packaging and other charges. Value added tax must be accounted for separately on the invoice.
2. Payment is made in Euro at our choice either within 14 days with 3% discount, after 30 days with 2% discount or after 90 days net unless otherwise agreed in individual cases. Should delivery occur after receiving the invoice, the date of delivery is decisive with regard to the above methods of payment.
3. In principle, all payments are made on condition that the delivery and invoice are correct. Payment by bills of exchange does not require a special agreement. Even when paying with a bill of exchange, we are entitled to deduct the discount.
4. The contractor may only assign receivables from the business relationship to third parties with our written consent.
5. The contractor is not permitted to offset receivables unless these are undisputed and were legally determined.
6. Advance and pre-payments are only made in special cases after prior written arrangement and only against a bank guarantee.

VI. Warranty

1. In the event of a faulty performance/delivery as well as in the event of other breaches of duties from the contractual obligation, we are entitled to all statutory rights and claims without restriction.
2. In the event that the operational safety is compromised and/or to avoid unusually high damages to us or third parties, we are entitled to remove the defect and repair the fault or make covering purchases at the contractor's expense also without prior arrangement.
3. The contractor indemnifies us from all third party claims – especially those from product liability – that are based on the defectiveness of the partial work performed on our products (in particular, the supply of basic materials) or other breaches of duties from the contractual obligation for which the contractor is responsible.

VII. Provision of material and tool costs etc.

1. Materials or tools that might be provided by us remain our property, must be stored properly by the contractor – separate from its own property – and adequately insured against damages of all kinds (fire, water, theft etc.). They may only be used for their designated purpose and must be returned on request as well as after the end of the contract.
2. Possible processing or remodelling of the material provided by us is always done for us as manufacturer. In the event of combination and/or mixing, we acquire co-ownership of the new standard item in proportion to its value.
3. Should the order contain the absorption of costs for tools and/or models etc. in total or in part, the manufacture of such tools, models etc. occurs for us and such items become our property as soon as they are completed. This applies irrespective of whether the absorption of costs in this regard was stipulated or is contained in the contractual remuneration. The above provisions under Point VII 1. on storage, insurance, use and return apply accordingly.

VIII. Place of fulfilment, legal venue and final provisions

1. Place of fulfilment for all goods and services is the receiving centre prescribed by us or – if this has not been specified – our registered office.
2. Should the contractor be a merchant, legal person under public law or special fund under public law, the legal venue is the location of our registered office and possibly in addition also the location of our subsidiary registered in the commercial register which concluded the contract. We are, however, also entitled to sue the contractor in the court responsible for its registered office.
3. All legal relationships between us and the contractor are subject to the law of the Federal Republic of Germany under the exclusion of the UN Convention on the International Sale of Goods (CISG).
4. The contractor agrees that we may store and process data electronically within the framework of the Federal Data Protection Act (BDSG) if this is necessary for the business. This agreement is also deemed to act as notification in terms of Art. 26 (1) BDSG.
5. Should part of the agreement or these Conditions of Purchase be invalid, the validity of the remaining agreement or these Conditions is not affected by this.

„This translation is a service for our international customers. Relevant is the German version of our terms of delivery and payment. (“Lieferungs- und Zahlungsbedingungen”) Issued 04/2014“

I. SCOPE OF APPLICATION

1. The present payment and delivery terms apply to all our contracts and other types of performance in the commercial sector (in relation to entrepreneurs and businesses, including in future). Any terms asserted by the customer are herewith expressly refuted where they are not in compliance with the present payment and delivery terms; we shall not be bound by them even where we fail to object to them expressly upon receipt thereof.
2. Any amendments or of addenda to the present payment and delivery terms as well as a waiver of the writing requirement must be in writing.

II. OFFER/ORDER

1. Our offers are subject to change. Any documents provided with the offer such as catalogs, brochures, illustrations, drawings, etc. state only approximate values and descriptions. We reserve the ownership and copyrights to individual documents such as cost estimates, drawings, etc. They may not be made accessible to third parties and must be returned immediately upon request, but in every case upon cancellation of the order. Use of such individual documents is only permitted with our consent. Personal use by the customer is prohibited.
2. The minimum order/delivery value is €150.00.
3. Our written order confirmation will be authoritative. We reserve the right to changes to the delivery item through technical development.
4. The assignment or pledging of the customer's rights from the contract is prohibited.
5. Customers from EU-countries are obligated to report their VAT ID to us immediately and at their own initiative.

III. PRICES

1. Our prices are in EUROS ex works or ex warehouse plus value added tax at the statutory rate and plus packaging, shipping and insurance.
2. Material price increases and personnel cost increases occurring between the time of the conclusion of the contract and the time of delivery may not be charged to the customer. This provision will not apply to goods and services which were delivered or rendered within 4 months after the conclusion of the contract unless they are delivered and rendered within the framework of a permanent debt relationship.

IV. PAYMENT

1. Unless otherwise agreed, payment is due 30 days net after invoicing in cash or via bank transfer.
2. We are not obligated to accept bills of exchange. If we except bills of exchange it is only for the purpose of payment and only in return for payment of the discount and collection expenses by the customer.
3. Counterclaims contested by us or which were not declared res judicata will not entitle the customer to retention or set-off. This will not apply to the right to refuse performance from the same contract.
4. Where the customer is in arrears with payment or his credit rating deteriorates significantly after conclusion of the contract all debts will be due for payment in cash, even in the case of a payment deferral and any acceptance of bills of exchange or checks. Moreover, in this case we will have the right to demand advance payment or a deposit and to rescind all contracts concluded after an adequate period of grace.

V. DELIVERIES

1. We make every effort to comply with the specified delivery deadlines; the agreement of binding delivery dates or deadlines must be in writing. It will commence upon the date of our order confirmation, but at earliest on the day on which we have the complete, settled order (in particular from the technical aspect with regard to all measurements, etc.) and we have received any agreed down payment. Where the customer requests changes to the order after our order confirmation, the delivery deadline will be extended appropriately if we consent to the requested changes.
2. Moreover, delivery deadlines will be extended in cases of force majeure, war, strike, lockout, political unrest, impairment of transport, official measures, etc. as well as upon the onset of unforeseeable obstacles beyond our control, whether they occur at our plant or to one of our own suppliers (e.g. breakdown, fire damage, unforeseeable supply bottlenecks, etc.) for the duration of the impairment plus an adequate run-up period.
3. Any delivery deadlines will be regarded as having been complied with if the shipment is ready for collection at the agreed date or was dispatched.
4. Partial deliveries are permitted. We may deliver up to 15% and in the case of customized products, up to 25% more or less than the agreed volume. The actual volume delivered will be the basis for calculation.
Precise quantity
Thermik reserves the right to charge an extra cost surcharge of 10% of the order value on orders with a precise quantity larger than 500 units on the basis of the manual effort for bulk materials
5. The choice of production site will be incumbent solely on the manufacturer.
6. Subject to the proviso of any guarantee rights in accordance with Item VII the customer is not entitled to return the goods without our prior written consent. Where we consent to a return outside of any guarantee rights this will be in return for a credit and we have the right to take the condition of the returned goods into account in this credit and to deduct a handling fee of 10% of the value of the shipment.

VI. RISK AND SHIPPING

1. Shipment is at all times at the risk of the recipient or customer, even where prepaid shipment has been agreed on. In every case, the risk will pass to the customer when the shipment leaves the plant or warehouse. Where shipment or delivery is delayed at the customer's request or the customer fails to collect the goods contrary as agreed the risk will pass upon the readiness for dispatch/collection.
2. Where shipment or inspection and acceptance is delayed or cancelled due to circumstances beyond the seller's control the risk will pass to the customer from the date of the report of readiness for dispatch or acceptance. The customer will bear the warehouse costs after the passing of the risk. In the case of storage by us the warehouse fees will be 0.1 % of the invoice amount of the goods being stored per each new calendar day. Additional storage costs may be claimed and proven. Where the goods have not been shipped after 4 weeks, they will be released.

3. We have the right but not the duty to insure the shipment against breakage, transport, fire and water damage at the customer's expense. The type of shipping, shipping route and packaging will be chosen by us as is customary in the business if not instructed otherwise by the customer at the customer's expense.

VII. GUARANTEE/DAMAGE COMPENSATION

1. The customer guarantees the accuracy and completeness of the papers provided to us for performance of the order, the specified measurements and other data and references for our performance. Any misunderstandings of these by the customer cannot be used to claim defectiveness of our performance.
2. Instructions by the customer on use of the parts which deviate from our standards will not be inspected with regard to applicability and/or compliance with norms. Inspection of the suitability of thermal products for such types of applications will be solely incumbent on the user.
3. Any visible defects of our shipment and/or work are to be reported in writing immediately, but at least within ten days after performance of the delivery/work. Hidden defects are to be reported by the latest within 10 days after detection. Defective items must be kept in the condition they are in at the time they were detected for inspection by us or our representative.
4. We will rectify any legitimate defects claimed through make-up performance. We will always have the option of deciding whether make-up performance will be in the form of removal of the defect or delivery of a flawless item. Where make-up performance fails within the adequate stipulated period the customer may rescind the contract or have the price/remuneration adequately reduced. The guarantee period is 12 months as from passing of the risk. The above provisions on the guarantee period will not apply where the law on buildings, items for buildings and building defects and the purchase of consumer goods (including recourse claims) prescribes longer periods.
5. Any guarantee is subject to the proviso that the delivered goods are maintained and treated professionally. No guarantee is being assumed for damage caused due to the following reasons: improper use, defective assembly or operation by the customer or third party, natural wear and tear, defective or negligent treatment, inappropriate tools or replacement materials. All guarantee rights will be extinguished through changes or repair work performed inappropriately by the customer or third parties without our prior written consent. No guarantee shall be given for customer provisions if these are faulty or exhibit defects before installation. Provisions must generally be checked by the customer for faults and defects before delivery.
6. Any damage claims by the customer, regardless of the legal ground, in particular due to breach of duty from the debt relationship and an illegal act are excluded. This will not apply in cases of willfulness or gross negligence, injury to life, limb or health, liability according to the Product Liability Act for a guarantee assumed by us for damage due to a culpable breach of cardinal contractual duties or in other cases of statutory liability. However, liability for the breach of cardinal contractual duties is limited to typical, foreseeable damage unless there is willfulness or gross negligence or liability for injury to life, limb or health.
7. The customer will be liable for all costs, fees and any fines incurred to us through non-compliance with turnover tax regulations regarding the EU domestic market and/or due to failure to report the turnover tax ID number.

VIII. RETENTION OF TITLE

1. We reserve the title to the delivery item until full satisfaction of all claims against the customer we are entitled to from the entire business relationship.
2. In the case of the processing of the delivery item and its compound we will obtain a share in the ownership of the newly created item on the basis of the ratio of the value of the good to the value of the item created through processing. The invoice value, alternatively the market value, will be authoritative for determining the value of the goods to the value of the new item; the time of processing is authoritative for the value of the processing. When processing the goods, the customer will be working for us, but will not obtain any claims against us on the basis of the processing.
3. The customer must insure the goods against theft, damage, destruction and loss (in particular fire and water) and provide proof of this upon request. He must provide information on the location of the goods and allow us or our representative access to the place of storage.
4. The customer has the right to process or sell the goods in normal business transactions provided that he is not in arrears with payment to us. The customer is hereby forehandedly assigning any claims he is entitled to from such sales to the full amount to us. Subject to revocation we authorize the customer to collect the assigned debts for his account in his own name. At our request the customer will disclose the assignment and provide the requisite information and documents.
5. Where the security exceeds our debts by more than 20% we will be obligated to release the excess share of the security we are entitled to upon the customer's request or the request of his creditors.
6. The customer must inform us immediately where debt enforcement is carried out against the goods or claims assigned to us through advance assignments. The customer will bear the costs and damages.

IX. PLACE OF PERFORMANCE AND JURISDICTION, FINAL PROVISIONS

1. The place of performance for the delivery is the respective place of shipment of the goods. The place of performance for payment- including payment with bills of exchange-is our headquarters.
2. The place of jurisdiction for all disputes arising from the contract in relation to businessmen is our headquarters. However, we have the right to sue the customer before the court having jurisdiction at his domicile.
3. The laws of the Federal Republic of Germany will apply to all legal relations. Application of international sales law, in particular of the United Nations Sales Convention (CISG) is excluded.
4. Should part of the present contract or of these payment and delivery terms be invalid this will not affect the validity of the contract or these terms.