

## THALETEC GmbH

# Standard Terms of Sale, Delivery and Assembly

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The following conditions only apply to persons who act in their capacity as commercial or self-employed businessmen (entrepreneurs) upon contract-making, and to legal entities under public law and public-law special funds.

### 1. Applicable Provisions

All our deliveries and services shall be subject to the present Terms as well as any contract terms that may have been agreed separately. Buyer's purchasing terms shall not be incorporated herein even if the order is accepted.

### 2. Offer

Our offers are subject to change without notice unless expressly stipulated otherwise by us in writing.

### 3. Contract Terms

- 3.1 Our written order confirmation shall be binding as regards the scope of our delivery obligation, and if we submitted a binding offer that was validly accepted, our offer shall be binding if no order confirmation was issued in time. Any ancillary agreements and amendments hereto shall be subject to our written confirmation.
- 3.2 Our product information and other documents, such as figures, drawings, sketches and dimensional data shall not be part of the contract and shall be binding by approximation only unless we have expressly designated them as being binding. In the event that modifications are made to the products in the course of permanent technical development after submission of the order, we shall be entitled to deliver the technically modified version. We shall be entitled to deviate from pictures, drawings, descriptions, colors, dimensional, weight, quality and other data if Buyer can be expected to accept such deviations given the mutual interests. Buyer shall inform us upon placement of the order if we are not supposed to deviate from any data or specifications under any circumstances.
- 3.3 Our data shall not be valid unless expressly designated as valid in the order confirmation.
- 3.4 The approvals required for the design and the operation of the deliveries shall be obtained by Buyer at his own expense. To the extent that we assist it in obtaining such approvals, Buyer shall bear all costs incurred by us in this connection.
- 3.5 Buyer shall provide sufficient quantities of the media required for the assembly and operation of our delivery in non-aggressive form at its own expense.

### 4. Items Subject to Export License

To the extent that we deliver items abroad, all offers and order confirmations shall be subject to the suspensive condition that the export licenses, if necessary, are granted by the relevant authorities.

## **5. Copyright, Secrecy**

We reserve all property rights and copyrights to all samples, cost estimates, drawings, models, templates and similar information of a physical or non-physical nature - including in electronic form -, and these items shall not be disclosed to third parties. Copies and other duplicates may be made for the agreed purpose only. Neither the originals nor any duplicates thereof may be released to third parties or disclosed in any other way. Without Buyer's consent, we shall not disclose any information or documents to third parties which have been designated as confidential by Buyer.

## **6. Prices**

Notwithstanding any agreement to the contrary, the prices are quoted ex factory including loading in the factory, but exclusive of packaging and other costs. Value-added tax at the respective statutory rate shall be added to the prices in Germany, if such tax is to be charged. For any services that are provided more than 4 months after signing of the agreement, we may charge a reasonable overheads surcharge with respect to any wage and/or material price increases experienced after submission of the offer.

## **7. Payments, Default of Payment, Retention, Rescission**

- 7.1 Unless agreed otherwise, invoices shall be payable without any deductions within 30 days of the date of the invoice.
- 7.2 We shall not be obligated to accept bills of exchange. Any bill charges shall be Buyer's responsibility. If a bill of exchange is not honored, all our claims against Buyer shall become immediately due.
- 7.3 In the event of default of payment, we may charge default interest at a rate of 8 percentage points above the relevant base interest rate. Evidence of higher damages shall be reserved.
- 7.4 We reserve the right to claim reasonable dunning fees, if justified.
- 7.5 Buyer shall not be entitled to retain any payments or to offset its payments against any counterclaims that have been contested by us. Where it becomes obvious after signing of the contract that our claim for payment is at risk due to Buyer's insufficient financial capacity, e.g. if our trade credit insurance refuses to provide full coverage for claims against Buyer, we may refuse performance and grant Buyer a reasonable period of time during which it shall pay or provide collateral concurrently against delivery. If Buyer refuses this arrangement or the time limit granted has expired unsuccessfully, we shall be entitled to rescind the agreement and demand compensation for damages.

## **8. Delivery Date, Delivery Term, and Delayed Delivery**

- 8. The delivery term or delivery date shall not be binding unless made binding in our order confirmation.
- 8.2 The delivery term shall commence upon dispatch of the order confirmation, at the earliest, but not before receipt of the drawings approved by Buyer, release of documents to be obtained, approvals and the information required for the performance of the order, clarification of all commercial and technical issues between the parties hereto as well as compliance by Buyer with all obligations, i.e. provision of an agreed down payment or due payments from earlier deliveries.

- 8.3 If the delivery term cannot be met for reasons of Force Majeure, labor disputes or other events which are beyond our control, the term shall be reasonably extended. The same applies if such circumstances are experienced by our suppliers. We will inform Buyer of the beginning and end of such circumstances at our earliest convenience. The circumstances described above shall not be our responsibility even if they occur in the course of an existing delay.
- 8.4 The delivery term or the delivery date shall be deemed to have been complied with if the delivery has left the factory or readiness for shipment has been notified prior to the end of this term. Where deliveries have to be accepted by Buyer, the date of acceptance or alternatively notification of readiness for acceptance shall be authoritative unless Buyer refuses to accept the delivery with cause.
- 8.5 Compliance with any delivery term shall be subject to proper and timely deliveries by our suppliers.
- 8.6 Buyer may rescind the agreement without granting additional time if we are finally incapable of performing the contract prior to passing of risk. In addition, Buyer may rescind the contract if performance of a part of the ordered delivery becomes impossible and it may claim a legitimate interest in declining the partial delivery. If this is not the case, Buyer shall pay the agreed price that corresponds to the partial delivery. The same applies to our inability to perform. Section 13.2 shall furthermore be applicable.
- 8.7 In the event that we should be in unreasonable default of delivery without Force Majeure, and if Buyer can prove that it suffers damage as a result thereof for which it is to be compensated, compensation shall be granted in the form of a lump sum compensation for default in accordance with the VDMA guidelines. When a reasonable grace period has elapsed, the compensation for default shall amount to 0.5% for each additional full week of delay, but no more than 5.0 % of the value of that part of the total delivery that cannot be used in time because of the delay. Compensation for default shall be subject to a prior, written agreement and shall not be payable without such an agreement. Any other claims based on delayed deliveries shall be exclusively governed by Section 13.2 hereof.
- 8.8 If shipment or the acceptance of the delivery are delayed for reasons for which Buyer is responsible, we may charge the cost arising from the delay, beginning one month after notification of readiness for shipment or for acceptance, with charges amounting to 0.5 % of the amount invoiced for any month at minimum. At the same time, payment of all deliveries and services provided by us until then shall become due. However, we shall be entitled to dispose of the deliveries otherwise when an additional period of time granted by us has elapsed unsuccessfully, and to supply Buyer after a reasonable extended period of time.
- 8.9 Partial deliveries shall be admissible if Buyer can be reasonably expected to accept them.

## **9. Receipt, Acceptance, Passing of Risk, Default of Acceptance**

- 9.1 Risk shall pass to Buyer when the deliveries have left our factory, even if partial deliveries are made or we have accepted to perform additional services, such as payment of shipping cost or delivery to premises and installation. Where deliveries have to be accepted, passing of risk shall be subject to acceptance. Acceptance shall be immediately carried out as per the date of acceptance, or alternatively upon our notification that the deliveries are ready for acceptance. Buyer shall not refuse to accept a delivery in the event of an insignificant defect. We shall be entitled to insure all deliveries against transport damage at Buyer's expense. If upon arrival at Buyer's premises the delivery has transport damages, or if such damages become manifest later, Buyer shall immediately demand a written report of the facts from the carrier.

- 9.2 If shipment or acceptance of a delivery is delayed or omitted due to circumstances for which we are not responsible, risk shall pass to Buyer as of the day it has been notified that the delivery is ready for shipment or for acceptance. We agree to take out the insurance demanded by Buyer at Buyer's expense.
- 9.3 Wherever any materials supplied by Buyer are damaged or rendered useless by us, especially in the course of handling, processing or repair of such materials, our liability shall be limited to incidents of gross negligence and to the amount of 10% of the processing cost unless unlimited liability has been stipulated by law.
- 9.4 Any customer material stored on our premises shall be insured against fire at our expense. Buyer shall apply in writing for any additional insurance at its own expense.

## **10. Export to the U.S. and to Canada**

No liability shall be assumed for the direct or indirect export of our products to the U.S. or to Canada. Buyer shall hold us harmless against any claims that may be raised in the U.S. or Canada as a result of export to these countries even if we agreed to such exports.

## **11. Reservation of Title**

- 11.1 We reserve title to and the right to dispose of the deliveries until receipt of all payments from the contract for delivery and any other contracts previously made. This shall also include any claims arising out of checks or bills as well as claims from current account. If we are made liable for bills of exchange in connection with the payment, the present reservation of title shall not become extinct unless any claims against us arising out of the bill of exchange are excluded. Buyer may continue using the products delivered in the ordinary course of business prior to payment in full of our claims enumerated above unless non-assignment was or is agreed with third parties with respect to the claims assigned to us in advance under Section 11.4. Before that, pledging the deliveries or their transfer by way of security shall not be permissible, and their resale shall only be permitted to resellers in the ordinary course of business subject to the proviso that the reseller receives payment from his customer and immediately forwards such payment to us. The costs of interventions, if any, shall be borne by Buyer.
- 11.2 Buyer shall immediately inform us in the event that deliveries are subject to levies of execution or attachments or other third-party measures or interventions.
- 11.3 In the event of breach of contract by Buyer, in particular, if payment is delayed, we shall be entitled to take back the deliveries after having sent a reminder, and Buyer shall release such deliveries.
- 11.4 Even if we enforce our reservation of title or levy execution against the deliveries, this shall not be deemed a rescission of the contract unless the German Installment Purchase Law is applicable.
- 11.5 We shall be entitled to keep the deliveries insured against theft, fire, water and other damages at Buyer's expense unless Buyer itself can prove that it has taken out insurance.
- 11.6 In the event of breach of contract by Buyer, in particular, if payment is delayed, we shall be entitled to take back the deliveries after having sent a reminder, and Buyer shall release such deliveries. Even if we enforce our reservation of title or levy execution against the deliveries, this shall not be deemed a rescission of the contract.
- 11.7 If insolvency proceedings are initiated, we shall be entitled to rescind the contract and demand immediate release of the deliveries.

## 12. Liability for Defects of the Delivery (Warranty)

Notwithstanding Section 13 hereof, we provide the following warranty for quality defects or defects in title of the delivery, to the exclusion of any other claims:

### Quality defects

- 12.1 Any parts that turn out to be defective as a result of a circumstance taking place prior to passing of risk shall in our sole discretion either be repaired or replaced free of cost. We shall be immediately notified in writing of the detection of such defects. Any parts that have been replaced shall become our property.
- 12.2 Buyer shall grant us the time necessary and sufficient opportunity to perform all repairs and substitute deliveries after coordination with us, otherwise, we shall be released from liability for any consequences resulting therefrom. Only in urgent situations, when the operational safety is at risk, and in order to avoid disproportionate damages, Buyer shall have the right, after having notified us immediately, to remedy the defect itself or have it remedied by third parties, and to claim reimbursement by us of the costs arising therefrom.
- 12.3 If the complaint turns out to be justified, the direct costs attributable to the repair or substitute delivery shall be borne by us to the extent of the cost of the substitute part including shipping free border, the reasonable cost of removal and installation, as well as the cost of dispatch of our fitters and auxiliaries, if necessary, in the Federal Republic of Germany if their assistance can be reasonably demanded on a case-to-case basis. Any other cost shall be borne by Buyer. All parts that have been replaced shall become our property.
- 12.4 Notwithstanding the exceptions stipulated by law, Buyer shall be entitled to rescind the contract subject to the provisions of the law if we allow a reasonable period of time granted to us for repair or substitute delivery on account of a quality defect to pass without results. Where an insignificant defect is present, Buyer shall only be entitled to a reduction of the purchase price. Any other rights to a reduction of the agreed price shall be excluded.
- 12.5 No liability shall be assumed in the case of, in particular, inappropriate or improper use, incorrect assembly or start-up by Buyer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable resources, defective construction works, unsuitable building ground, chemical, electrochemical or electrical influences, unless we are responsible for such influences.
- 12.6 Supplier shall not be liable for any consequences resulting from improper correction of defects by Buyer or a third party. The same applies to any modifications of the deliveries made without Supplier's prior approval.
- 12.7 Any parts or materials supplied by Buyer for processing or as additions for handling an order shall not be subjected to an incoming inspection for defects that are not immediately visible.
- 12.8 The warranty shall be 12 months after start-up, but no more than 18 months after passing of risk. Any parts supplied by Buyer and any consequential damages resulting therefrom shall be excluded from warranty. The chemical and thermal application range of the products delivered shall be subject to our publications.

### Defects in title

- 12.9 Notwithstanding the provisions stipulated in Section 13 hereof, our obligations with respect to industrial property right or copyright violations shall be final. They shall only be applicable if
- Buyer immediately informs us of any industrial property or copyright violations claimed,
  - Buyer supports us to a reasonable extent in defending the claims made, or enables us to perform the modifications,
  - we may reserve all measures of defense, including all settlements out of court,
  - the defect in title cannot be traced back to an instruction given by Buyer, and
  - the violation of a right was not caused by an unauthorized modification or non-compliant use of the deliveries by Buyer.

### **13. Liability**

13.1 If the deliveries are not fit for their contractually agreed use by Buyer because of our default as a result of the omission or incorrect performance of suggestions and advice given before or after the contract was made or of non-compliance with other contractual collateral duties - in particular, the operating and service instructions for the deliveries - the provisions of sections 12 and 13.2 shall apply, *mutatis mutandis*, and Buyer's other claims shall be excluded.

13.2 Our liability for damages not affecting the actual deliveries shall be limited - for any legal reasons whatsoever -

- to intentional acts,
- to gross negligence on the part of the owner, the executive bodies or officers
- to a culpable damages to life, physical intactness, and health
- to damages that we have fraudulently concealed or for which we have guaranteed that they are not present,
- to defects of the deliveries if liability for personal damages or damages of privately used items is mandatory under product liability law.

In the event of a culpable breach of material contractual obligations, we shall also be liable for gross negligence of personnel other than officers or for slight negligence, however, the latter being limited to typical, reasonably foreseeable damages associated with the contract. Any other claims shall be rejected.

13.3. In the event of a quality defect reimbursement of the costs of removal and installation shall be generally excluded.

13.4. Buyer shall not be entitled to any kind of compensation for damages for any legal reason whatsoever. Our liability for consequential damages for any legal reason whatsoever, e.g., resulting from lost profits, increased production cost or reserved production capacity not used, etc., shall be excluded under all circumstances.

### **14. Supplier's Entitlement to Damages for Buyer's Non-Compliance**

If we are entitled to compensation of damages based on non-compliance, the lump-sum minimum damage to be reimbursed shall amount to 20% of the agreed price exclusive of value-added tax. The amount of damages shall be increased or decreased if we prove a higher damage or Buyer proves a lower damage, respectively. Any orders already fulfilled, production already started and engineering costs incurred, if any, shall be the basis of such claims.

## 15. Assembly, Start-Up

Whenever assembly and/or start-up services are included in the scope of performance, the following terms shall apply in addition:

### 15.1 Price

Unless agreed otherwise, services shall be invoiced according to the time expended and our applicable assembly rates. The material expended shall be additionally paid, and the same applies to the travel expenses for the round trip of our personnel, the shipping cost, customs, duties and transport insurance for luggage and tools, the costs for procuring identification documents, passports and other cash expenses, such as telephone charges etc.

### 15.2 Settlement of accounts

Buyer shall confirm the assembly personnel's working hours, travel and waiting times as well as the work performed on the assembly statements submitted by the assembly personnel. If Buyer refuses to confirm this data, or if our personnel is unable to obtain such confirmation for other reasons, accounts shall be settled on the basis of the assembly statements filled out by our personnel. All ancillary works (such as masonry, chiseling, plastering, carpenter's, electrical connection, earthwork and painting works) shall not be included in the offer unless listed separately by items including their quantity and price. Any work not included in the order which is performed by us shall be additionally reimbursed according to our cost rates. The same applies to additional cost incurred by us if the work performance is interrupted for reasons for which we are not responsible.

### 15.3 Buyer's assistance

Buyer shall render assistance with the performance of the work at its own expense. In particular, it shall

- a. provide the necessary, suitable personnel (masons, carpenters, locksmiths and other skilled personnel, auxiliaries) in the numbers and for the times required for the assembly work;
- b. timely perform all earthwork, construction, bedding and scaffolding work including the procurement of the necessary building materials, installation of the power and cooling water connections and the non-pressurized discharge lines, sanitary, electrical, installation, mason's and joiner's work.
- c. provide suitable access roads for the supply of the parts to be assembled which shall be accessible by crane trucks;
- d. provide the necessary information concerning the location of concealed electricity, gas and water lines and pipes and similar installations as well as the necessary structural information without being specifically requested before the beginning of the assembly work;
- e. provide heating, lighting, power, water, including the necessary connections.
- f. provide the necessary dry, lockable, theft-proof rooms for storing the tools as well as social rooms for the service personnel.
- g. protect the assembly site and the materials against any kind of adverse influences;
- h. draw attention to any risks (such as fire hazards in rooms or of materials) that may arise in connection with cutting, welding, thawing and soldering work, and take all necessary precautions (e.g. provision of firewatch teams, fire extinguishing material etc.);

- i. provide protective clothing for aggravated working conditions, including hazardous vapors, gases, acids, dusty air, etc. The same applies to protective clothing and protective devices that are necessary because of special circumstances of the assembly location and are not customary in our trade. In addition, the assembly personnel shall be informed of the relevant safety instructions to be observed in connection with the assembly work;
- j. If our assembly personnel should fall ill or suffer an accident, immediate medical attention shall be insured, and we shall be immediately informed.
- k. if the place of assembly is located outside of the Federal Republic of Germany, it shall obtain the necessary entrance visa for the assembly personnel and any work permits, if necessary, timely procure all approvals from the authorities and otherwise that are required for the design and erection of equipment and plants, instruct our assembly personnel with respect to all obligations (notifications etc.) vis-à-vis the local authorities as well as the existing safety requirements, support them in dealing with the authorities and assist them with the procurement of all documents that ensure free movement within the country and traveling home at any time including their belongings.

#### 15.4 Acceptance

Buyer shall accept the assembly works as soon as it has been notified of completion thereof. The plant shall be deemed to have been accepted as soon as its test run has started, even if Buyer has not assisted the test run despite being invited. On request, self-contained parts of the performance shall be separately accepted. If the plant has been started up, in whole or in part, or if acceptance is delayed without our default, acceptance shall be deemed to have taken place when two weeks have passed since notification has been given that the works have been completed. The plant may be used prior to acceptance subject to our express agreement only; the parts already installed in the plant shall be deemed to have been accepted if so used.

#### 16. Limitation

Buyer's claims - based on any legal reasons whatsoever - shall become statute-barred after 12 months. The statutory time limits shall be applicable to intentional or malicious acts as well as claims for damages under the product liability law. They shall also apply to the defects of a building or deliveries that have been used for a building in compliance with their intended purpose, and have thereby cause a defect of the building.

#### 17. Binding Force of the Agreement

The present Agreement shall remain valid as a whole even if individual provisions contained in any part hereof should be invalid. This does not apply where insisting on the contract would mean undue hardship for either party. In the event that one of the provisions hereof should be invalid, in whole or in part, the parties hereto shall immediately try to achieve the economic effect intended by the invalid provision by other, legally valid means.

#### 18. Jurisdiction, Governing Law

The courts of Magdeburg or of Frankfurt am Main shall be the proper venue for all disputes resulting from the contractual relationship. However, we may also sue Buyer at its place of business. The law of the Federal Republic of Germany shall be applicable to all legal relationships developing between ourselves and Buyer to the extent that this law is also exclusively applicable to the legal relationships between domestic parties.