

# Terms and Conditions of Delivery and Payment (General Standard Terms and Conditions) of the company THIEME GmbH & Co. KG, Germany

## Section 1 APPLICATION

1. These terms and conditions are part of all offers and agreements on the delivery of goods and services rendered by the seller in current and future business relations. Differing conditions of purchase of the buyer shall only be binding for the seller if they have been explicitly acknowledged as binding by him in writing.

## Section 2 OFFER

1. Offers are subject to change without notice unless confirmed to be binding.
2. Test-pieces, samples and other documents and particulars such as illustrations, drawings, weights and measures specifications as well as the reference to DIN standards are only essential character as per agreement if we have expressly confirmed them in writing. Guarantees within the meaning of the law must have been explicitly and separately given by us in writing. The seller reserves the right to conduct modifications with regard to the permanent further development and improvement of his products.
3. Orders shall only be binding with the order confirmation of the seller. Changes and supplements must be made in writing.

## Section 3 PRICES

1. Prices are valid ex works excluding packaging plus value-added tax to the respective legal amount. Sales prices shall only be fixed prices if the seller has confirmed them in writing. Packaging shall be invoiced at the original costs. If the buyer returns packaging used for the transport of the delivered item in accordance with the German ordinance of packaging to the seller, the buyer shall bear the cost of the return transport and the recycling of the used packaging.
2. If deliveries and/or services are performed later than four months after the confirmation of the order the seller shall be entitled to invoice new prices provided catalogue prices and/or materials, wage and other costs have changed in the meantime.

## Section 4 DELIVERY

1. Terms of delivery shall commence upon receipt of all documents necessary for the execution of the order, the agreed advance payment and if materials have been supplied in time. They shall be valid subject to correct and timely self-supply unless the seller has promised binding delivery terms in writing. On notification of the readiness for delivery the delivery term shall be deemed to have been kept if the delivery is impossible without the fault of the buyer.
2. Appropriate partial deliveries as well as deviations from the ordered quantities are allowed up to 10%.
3. In case of all orders without explicit agreement on call-off dates the seller may, at the latest three months after the delivery of the last partial delivery, request a binding fixing of the delivery of the additional call-off amount. If the buyer does not comply with the request within three weeks the seller shall be entitled to stipulate a two-weeks extra period for delivery and to withdraw from the agreement or refuse the delivery and claim damages.
4. Even in a delivery delay the delivery period extends within reasonable limits in unforeseeable events which the seller was unable to avert despite due care under the circumstances of the case, no matter whether they occurred at the works of the seller or with his subcontractors, for instance owing to strike and lock out, operation breakdown, official interference, energy supply difficulties or delay in the supply of essential raw or building materials.
5. If the buyer suffers damage due to a delay of which only the seller is responsible, he shall, on the exclusion of any further claims, have the right to claim compensation for the delay. For each full week of the delay it shall be 0.5%, however, in total no more than 5% of the value of that part of the overall delivery which could not be used in time or as contractually agreed owing to the delay. The right of the buyer to cancel the agreement in case of gross negligence shall remain unaffected.

## Section 5 PROVISION OF MATERIALS

1. If materials are provided by the buyer these shall be provided at his cost and risk in time and in faultless condition including a reasonable quantity allowance of at least 5%.
2. Provided these prerequisites are not fulfilled the delivery period extends appropriately. Events of force majeure excluded the buyer shall bear the accruing extra costs even in case of production delays.
3. The seller's liability as to storage and care of the supplied materials is limited to care as in his own affairs. If applicable the costs of insurance shall lie with the buyer.

## Section 6 RISK TAKING

1. Carriage paid deliveries included the risk passes to the buyer with the forwarding of the delivered item even if partial deliveries are made or if the seller has undertaken additional services such as shipping costs, carriage of installation. If the delivery is delayed due to circumstances for which the buyer is responsible the risk passes to the buyer from the day the delivery is ready.
2. Upon written request of the buyer the goods shall be insured at his own cost against damage caused by storage, transport and fire as well as breakage.

## Section 7 RESERVATION OF TITLE

1. Until the delivered goods are paid and all claims from the business relation, the claim to arise in connection with the purchase item, as well as all claims arising in the future, have been settled the delivered goods remain the property of the seller as reserved goods. The inclusion of individual claims into a current account or the casting of accounts and its acknowledgement shall not cancel the reservation of title. If in connection with purchase price payment a liability of the seller is established on a bill basis the reservation of title shall not expire prior to encashment of the bill by the buyer as drawee. If buyer is in default of payment the seller has the right to withdraw the reserved goods after a reminder and the buyer shall be obliged to restitution.

2. If reserved goods are processed by the buyer into a new chose in possession this processing shall be for the seller without obligations arising for him hereof; the new chose shall be the property of the seller. On processing in combination with goods which are not the property of the seller acquires joint property of the new chose according to the relation of the value of the reserved goods to the other goods at the time of processing. If reserved goods are connected, mixed or mingled with goods which are not the property of the seller according to sections 947 and 948 of the German Civil Code the seller shall be joint owner corresponding to legal provisions. If the buyer acquires the sole ownership with the combination, mixing or mingling he shall even now transfer joint ownership to the seller in accordance with the value of the reserved goods to the other goods at the time of combination, mixing or mingling. In this case the buyer is obliged to cost-free storage of the chose in ownership or joint ownership of the seller that is also deemed to be a reserved good.
3. If reserved goods are sold by the buyer by themselves or conjunct with goods not in the ownership of the seller the buyer shall even now cede claims arising from the resale to the amount of the value of the reserved goods including all subsidiary rights and ranking prior to the rest. The seller accepts the cession. The value of the reserved goods shall be the invoiced amount of the seller plus a security surcharge of 10% which however will not be raised if barred by third party rights. If the resold reserved goods are in joint ownership of the seller, the cession of claims shall extend to the amount equivalent to the value of the seller's share in the joint ownership. Subsection 1 clause 2 shall correspondingly apply for the extended reservation of title. The prior cession according to subsection 1 clauses 2 and 3 pertain to the balance claim.
4. If reserved goods are installed as an integral part into the landed property of a third party the buyer shall even now cede remuneration claims against third parties, or to whom it may concern, to the amount of the value of the reserved goods along with all subsidiary rights including the right to register a claim-securing mortgage ranking prior to the rest; the seller shall accept the cession. Subsections 2 and 3 shall apply correspondingly.
5. If reserved goods are installed as an integral part into the landed property of the seller the buyer shall even now cede all claims arising from the commercial sale of the landed property or landed property rights to the amount of the value of the reserved goods along with all subsidiary rights and ranking prior to the rest; the seller shall accept the cession. Subsection 3 clauses 2 and 3 shall apply correspondingly.
6. Bills arriving at the buyer due to claims ceded shall herewith be ceded to the seller. The buyer shall hold the papers in safe custody for the seller.
7. The buyer is only entitled and authorized to resell, use or install reserved goods within the ordinary, appropriate course of business and subject to the proviso that the claim in the meaning of subsections 3, 4 and 5 does effectively pass on to the seller. The buyer is not entitled to other uses of the reserved goods, in particular pledging or collateral assignment.
8. The seller authorizes the buyer subject to revocation to collect claims ceded in accordance with subsections 3, 4 and 5. The seller shall not make use of the authorization for collection as long as the buyer fulfils his payment obligation including as far as third parties are concerned. Upon the seller's request the buyer shall name the debtors of the claim ceded and notify them of the cession. The seller has the rights to notify the debtors of the cession himself.
9. The buyer shall immediately notify the seller about third party enforcement proceedings pertaining to reserved goods or ceded claims while simultaneously submitting documents required for the objection. Intervention costs accruing thereof shall in any case be to the debit of the buyer.
10. If claims ceded are collected by the seller the buyer is obliged to co-operate comprehensively in the collection by the seller and shall in particular conduct the accounting, give information and hand over documents if these are required in the collection.
11. Provided the payment is suspended or insolvency proceedings have been filed or opened the right to resale, use or installation of reserved goods and the authorization to collect the ceded claims shall expire. In case of a protest of a bill of exchange or cheque the authorization to collection shall also expire.
12. If the value of the securities allowed for exceed the claims by more than 20% the seller shall in this respect be obliged to retrocession or release at his choice. Upon settlement of all claims of the seller from the business relation the property in the reserved goods and the ceded claims shall pass to the buyer.
13. If the seller makes use of his reservation of title within the scope of the above provisions by withdrawing the reserved goods he shall be entitled to sell the goods or have them auctioned by private contract. The repurchase of the reserved goods is conducted at price obtained, however at no more than the agreed delivery prices. Further claims to damage compensation, in particular to lost profit, shall be reserved.

## Section 8 TERMS AND CONDITIONS OF PAYMENT

1. Invoices are due within 14 days from the date of the invoice date without deduction ex paying office of the seller.
2. As a matter of principle assembly works, wage works, repairs and other services rendered are due without deduction.
3. The settlement of an invoice by cheque or bill is conducted on account of payment and in the case of bills requires the prior consent of the seller. All costs arising thereof shall be to the debit of the buyer.
4. Delay of payment or the emergence of circumstances appropriate to deduce the creditworthiness of the buyer shall result in the immediate payability of all claims of the seller. In addition the seller shall be entitled to only conduct deliveries against advance payment, to call due all outstanding on deferred invoice amounts and to demand against return of bills accepted an account of payment, cash payment or securities, to withdraw from the agreement after a reasonable extra time and to demand damage compensation owing to non-fulfilment, in addition to bar the buyer from a resale of the goods and to retrieve goods unpaid to the debit of the buyer.
5. Overshooting provided interests for arrears customary in banking, however at least 8% above the respective basis rate of the European Central Bank, shall be invoiced. The buyer is at liberty to submit evidence of a smaller damage. Independent of this the seller is at liberty to claim further damage caused by the delay.

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## Section 9 MOULDS

1. The buyer shall bear the costs of moulds produced by the seller or third parties commissioned by him. The price for moulds also includes non-recurring sampling costs; however, they do not include the costs for testing end processing devices as well as modifications initiated by the buyer.
2. Buyer and seller agree - save as otherwise agreed upon - that the buyer shall be owner of the moulds after the costs have been paid. The handing over of the moulds shall be substituted by the seller's compulsory safe custody.
3. The seller undertakes - notwithstanding subsection 6 - to use the moulds exclusively for orders of the buyer.
4. Independent of the legal right to possession of the buyer and the life of the moulds the seller has the right, until the purchase of an agreed minimum number of items or until expiry of the agreement, to exclusive ownership of the moulds.
5. The purchase price of a mould ordered and paid by the buyer does not include the consideration for the know-how provided by the seller during the design and the construction. This shall in addition be adequately remunerated by the buyer on the delivery of the moulds to him.
6. As long as the buyer has not fulfilled his obligations to pay the costs of the moulds and/or does not accept the delivery and/or is in default of payment, the seller shall have the right of retention of the moulds and shall in addition be entitled to further use the moulds at his discretion until all claims have been paid, in particular by selling mouldings; therefore the obligation of the seller to use the moulds exclusively for orders of the buyer shall not apply. Provided that industrial property rights of the buyer exist in parts of a mould the buyer shall grant the seller for the time of his default a cost-free licence for the production and sale of mouldings.
7. The seller is obliged to store and maintain the moulds for mouldings with due diligence for subsequent orders of the buyer. The obligation to storage expires if the buyer has not given further orders for mouldings within two years after the last delivery.
8. The seller shall only be liable for diligence as in his own affairs and not for damages occurring despite appropriate handling of the moulds used for mouldings. Maintenance costs which accrue with the normal use of the moulds during the agreed service life shall be to the debit of the seller.
9. As owner of the moulds the buyer shall bear the risk of an accidental destruction of the mould, as well as all costs of the necessary insurance of the moulds.
10. If the obligation to storage expires according to section 9 subsection 7 the seller may be fixing a deadline request the buyer to collect the moulds. Upon expiry of the deadline the seller is entitled to either store the moulds at the cost of the buyer or to scrap them. If the seller stores the mould beyond the two-year time limit the seller shall be free from any liability as to the moulds.

## Section 10 WARRANTY

1. The buyer is obliged to inspect the goods immediately upon delivery for defects or to ascertain if goods other than agreed were delivered.
2. Notices of defects in the meaning of subsection 1 can only be considered if they have been asserted in writing within 14 days after the goods were received.
3. In case of a defect which cannot reasonably be identified during an immediate inspection the complaint must be forwarded without delay within the 12-months warranty period.
4. If the delivery, the installation or the start of operation is delayed without the fault of the seller the liability shall expire at the latest 12 months after passing of the risk.
5. Deviations customary in trade regarding measures, quantity, weight, quality colour etc. shall not justify complaints. As far as the condition of our products within the meaning of section 434 of the German Civil Code is concerned on principle only our product description shall be deemed to have been agreed on. Public statement, advertisement or commercials of our products shall not be considered a statement of condition within the meaning of this agreement. A reference to DIN standards shall imply a more detailed description of the goods but not a warranty undertaking within the meaning of section 443 subsection 1 of the German Civil Code.
6. The statutory period for warranty claims shall be 12 month from the day of the passing of risk.
7. If the notice of defect has been submitted with reasons and in due time the seller is entitled at his choice to either remedy the defect or provide substitute delivery within a reasonable period. If the attempt to remedy the defect, to provide substitute delivery or to remove the defect in title (subsequent fulfillment) fails within a reasonable period, or if it causes inappropriate expenditure, the buyer shall be entitled at his choice to reduce the remuneration or to request the cancellation of the agreement. In case of a minor infringement of contract, in particular minor defects, the buyer merely has the right to reduce the purchase price. If, due to a defect and after failure of subsequent fulfillment, the buyer chooses to cancel the agreement he shall not be entitled to damage compensation owing to the defect except for the claims subsequently defined in section 12.
8. As far as essential third-party products are concerned the liability of the seller is limited to the cession of liability claims to which he is entitled against the deliverer of the third-party product.
9. Liability for consequences is cancelled in case of inadequate modifications or repair works conducted by the buyer of third parties without prior authorization.
10. No warranty shall be assumed for unsuitable or inappropriate use, defective assembly - or commissioning by buyer or third parties, natural wear and tear due to ageing and/or waste (for example of gripper tabs, transport straps, conveying belts, stops, pushers etc. made of wood or plastic, suction cups, air filters and so forth), faulty or negligent handling in particular due to the neglect of the required regular maintenance by non-authorized third parties, or due to the use of unsuitable machines and equipment and replacement materials by buyer (such as the use of spare parts not authorized by Thieme), defective preliminary works in construction, chemical, electrochemical or electric influences, provided that these cannot be attributed to the fault of seller.

11. As far as the direct costs of remedying or substitute delivery is concerned the seller, if the complaint turns out to be justified, shall bear the cost of the spare part including its shipment as well as the reasonable costs of dismantlement and installation in addition to the possible costs of providing its assembly and auxiliary personnel, provided that this can be reasonably demanded under the given circumstances. Seller and buyer shall come to an agreement as regards these costs. In all other cases the buyer shall bear the costs.
12. The warranty period for the spare part and the repair shall be 3 months; however, it shall be continue at least to the expiry of the original warranty period of 12 months for the item delivered. The term for the liability for defects of the item delivered shall be extended by the duration of the business interruption caused by the remedy works.
13. Further claims of the buyer, in particular a claim for damages which have not occurred with the delivered item itself shall be excluded. The disclaimer of liability shall not apply in case of intent or gross negligence of the owner or managing executives and in cases in which, due to the product liability law on defects of the delivered item, liability is imperative for personal and material damages of privately used objects. The disclaimer of liability does also not apply in the event of a guarantee in the juristic sense.

## Section 11 LIABILITY

The liability of the seller shall exclusively be governed by the arrangement stipulated in these conditions. Damage claims of the buyer against the seller and his vicarious agent or servant no matter for what legal reason, in particular from recourse in the meaning of section 478 of the German Civil Code, negligence upon completion of agreement, violation of accessory contractual obligations and unauthorized action shall be excluded unless they rest upon intent or gross negligence or if imperative according to the product liability law. Claims of the buyer for expenditure in case of recourse shall remain unaffected. This exclusion does also not apply to physical as well as health injuries not attributable to us.

## Section 12 INDUSTRIAL PROPERTY RIGHTS

1. The buyer shall be liable to the seller for the exemption of ordered deliveries and performances from industrial property rights of third parties shall hold the seller safe and harmless from all corresponding claims and shall be obliged to compensate him for the damage accrued. The seller has the right to stop deliveries, productions and other works without delay if a third party affirms opposing industrial property rights. This applies without examination of the juridical position.
2. The seller reserves property and copyright-related utilization rights to cost estimates, drawings, supplied software and other documents without limitation; these may not be made accessible to third parties and may only be handled in accordance with the legal provisions of section 69 a cont. of the German Copyright Act. Drawings and other documents pertaining to the offers must be returned upon request without delay if the order is not given by the buyer.

## Section 13 ASSEMBLY WORKS

Providing assembly works our assembly conditions shall apply complementarity.

## Section 14 DATA PROTECTION

The seller has the right to process data on the buyer received with regard to the business relation or in connection with it within the meaning of the German Federal Data Protection Law, no matter whether these have been derived from the seller himself from third parties.

## Section 15 OFFSETTING AND RETENTION OF GOODS

The exertion of the right to retain goods against due payments or the offsetting with affirmed counterclaims have been acknowledged or finally and conclusively ascertained.

## Section 16 CESSION CLAIMS

The buyer may cede claims from this agreement only with the explicit consent of the seller.

## Section 17 CONCLUSION

1. Only German law shall apply. This shall also be valid if the buyer is a foreigner or if his domicile is abroad. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. As a supplement to the above provisions the stipulations of the German Commercial Code for business among general merchants, and subordinately the provisions of the German Civil Code, shall apply.
3. Place of fulfillment for delivery, performances and payments shall be Teningen, Germany.
4. The sole place of jurisdiction including summary proceedings and summary bill enforcement proceedings shall for both parties and for all present and future claims from the business relation be the court at the seller's domicile.
5. If a provision is not binding in law this shall not affect the validity of the remaining provisions.