



# General Terms and Conditions for the Supply of Products of THIEL & HOCHHE GMBH & CO. KG, Erkrath

## I. Application/Offers

1. These General Terms and Conditions for the Supply of Products shall apply for all – including future – contracts with companies, public law legal persons and public law special funds for deliveries and other services including contracts for services and the delivery of non-fungible goods. General purchase terms and conditions of the purchaser shall not apply and shall also not be deemed to be recognized even in the case that we do not again expressly object thereto at the conclusion of the contract.
2. Our offers are subject to change without notice. Oral agreements and assurances of our employees in connection with the conclusion of the contract shall first be legally binding upon our written confirmation.
3. In case of doubt, the most recent version of the Incoterms shall be authoritative for the interpretation of commercial clauses.

## II. Prices

1. Our prices apply net ex works plus freight and VAT.
2. Should our purchase prices or other third party costs change which are included in the agreed price or if such newly arise more than four weeks after the conclusion of the contract, we shall be entitled to amend the price in the respective amount. For quantities not yet delivered, we reserve the right to increase the agreed price if, due to a change of the raw materials or the economic situation, circumstances occur which substantially increase our purchase costs compared with those on the date of the price agreement. In this case, the customer can cancel its affected orders within four weeks of notification of the price increase.

## III. Payment and Set-Off

1. Insofar as not otherwise agreed or stipulated in our invoices, the purchase price is to be paid immediately after delivery without deduction of cash discount and shall be paid in a manner that we shall be able to freely dispose over the amount on the payment due date. The purchaser shall bear the costs of the payment transaction. The purchaser shall be entitled to a right of retention and authority to set-off only insofar as his counterclaims are undisputed or determined with final, res judicata effect.
2. In the case of exceeding the payment date or with default, we shall calculate interest pursuant to the statutory provisions.
3. The purchaser shall be in default with our accounts receivable at the latest 10 days after the payment date without there being a requirement of a dunning letter.
4. Should it be recognizable after conclusion of the contract that our payment claim is at risk by the absence of the ability of the purchaser to pay or if the purchaser is in default by more than € 5,000.00 or if other circumstances occur which allow the conclusion of a substantial deterioration of the purchaser's ability to pay after the conclusion of the contract, we shall be entitled to the rights pursuant to § 321 German Civil Code ("BGB"). We shall then also be entitled to make all accounts receivable not yet due from the current business relationship with the purchaser immediately payable and due.
5. An agreed discount shall always refer only to the invoice value excluding freight and is conditional on the complete payment of all accounts receivable due from the purchaser on the date of the discount. Insofar as not otherwise agreed, the discount periods shall commence as of the invoice date.

## IV. Performance of Deliveries, Delivery Deadlines and Dates

1. Our delivery obligation is subject to the condition of correct and timely delivery to us by our suppliers, unless we are at fault for the incorrect or delayed delivery to us.
2. Details concerning delivery dates are approximate. Delivery deadlines shall commence with the date of our order confirmation and shall apply only subject to the timely clarification of all details of the order and timely performance of all obligations of the purchaser such as, e.g. supplying of all certificates of public authorities, provision of letters of credit and guarantees or payment of down payments.
3. The date of the dispatch ex works or factory shall be authoritative for the observance of delivery deadlines and dates. They shall be deemed to be met with the notification of the availability for shipment if the goods cannot be dispatched in a timely manner without our fault.



4. In the case of the default of delivery, the purchaser can set us a reasonable additional period within which to perform and, after the unsuccessful expiration thereof, can cancel the contract to the extent that the contract is not performed. Damage claims in such cases shall be determined pursuant to Section XI of these Terms and Conditions.
5. Circumstances of force majeure for us or our sub-suppliers shall entitle us to postpone the delivery for the term of the hindrance and a reasonable start-up period. This shall also apply in the case that such circumstances occur during an existing default. Force majeure shall be deemed to be the equivalent of circumstances not caused by us which make the deliveries substantially more difficult or impossible. Should the performance of the contract become unreasonable for one of the contract parties due to the afore-mentioned occurrences, this party can declare cancellation of the contract.

## **V. Reservation of Title**

Thiel & Hoche GmbH & Co. KG ("the supplier") retains ownership of all goods supplied by him until it has been paid for in full.

If the purchaser combines the goods delivered with other goods to form a unit and if the other goods are being considered the main constituent, then the purchaser shall be committed to assign partial ownership to the supplier to the extent the main unit belongs to him.

In case the purchaser resells the goods delivered according to the terms of the contract, he herewith assigns to the supplier all claims against his customer including any ancillary rights until all of the supplier's demands are completely settled.

If there is a valid reason the purchaser, at the request of the supplier, shall inform the third-party-purchaser about the assignment and he shall provide the supplier with all information and documents necessary to assert his rights.

The supplier shall release the securities held by him to the extent their value exceeds 20 % of the claim to be secured.

## **VI. Quality, Measure and Weights**

1. Quality and measure shall be determined pursuant to the DIN-/EN norms or working materials leaflets applicable on the date of the conclusion of the contract. In the absence of such, trade practice shall apply. References to norms, working materials leaflets or works certificates as well as details concerning quality, measure, weights and use are no assurances or guarantees nor, in the same way, declarations of conformity, declarations of manufacturers and respective markings such as CE and GS.
2. For the weights, the weighing taken by us or our sub-supplier shall be authoritative. The weight proof shall occur by presentation of the weight note. Insofar as permitted by law, weights can be determined without weighing pursuant to norms. The customary surcharge and reductions (trade weights) in the steel trade in the Federal Republic of Germany remain unaffected. The number of unit and bunch items, etc. to be stated in the shipping notification shall, with goods calculated by weight, not be binding. Insofar as usually an individual weighing does not occur, the total weight of the shipment shall apply respectively. Differences compared to the calculated individual weights shall be proportionately distributed.

## **VII. Taking of Delivery**

1. If a taking of delivery is agreed, such can only occur in the supplying factory or in our warehouse immediately after notification of availability for the taking of delivery. The purchaser shall bear the personal costs of taking of delivery. The actual taking of delivery costs shall be invoiced to him pursuant to our price list or the price list of the supplying factory.
2. Should the taking of delivery not occur, not be made in timely or complete manner without our fault, we shall be entitled to ship the goods without taking of delivery or to store such at the cost and risk of the purchaser and to invoice these to him.

## **VIII. Shipping, Transfer of Risk, Packaging, Installment Delivery**

1. We shall determine the shipping route and means as well as the forwarding agent and carrier.
2. Goods in conformity with the contract which are available for shipment must be requested for delivery without undue delay. Otherwise, we shall be entitled, after a dunning notice, to ship such at our choice at the cost and risk of the purchaser or to a warehouse at our discretion and to invoice such immediately.



3. Should the transport on the route foreseen or to the foreseen location in the foreseen time period be impossible without our fault, we shall be entitled to deliver by another route or to another location; the resultant additional costs shall be borne by the purchaser. The purchaser shall be provided with a prior opportunity to comment.
4. With the transfer of the goods to the forwarding agent or carrier, at the latest, however, upon leaving the warehouse or the supplying factory, the risk of loss shall be transferred to the purchaser also in the case of a seizure of the goods, with all transactions, also with deliveries carriage paid and free delivery. We shall acquire insurance only at the instruction and cost of the purchaser. The obligation and costs of unloading shall be borne by the purchaser.
5. The goods shall be delivered unpacked and unprotected against rusting. If such is customary in the trade, we shall deliver packed. We shall acquire packaging, protection and/or transport accessories according to our experience at the cost of the purchaser. These shall be taken back at our warehouse. We shall not assume the costs of the purchaser for transport back or for its own disposal of packaging.

#### **IX. Contracts for Goods Deliverable on Call / Regular Deliveries**

1. With contracts concluded for regular deliveries, calls for deliveries and classification of sorts shall be made to us for approximately the same monthly amounts; otherwise, we shall be entitled to make the determinations ourselves according to our own discretion.
2. Should the individual calls for delivery exceed the total contract amount, we shall be entitled but not obligated to deliver the additional amount. We can invoice the additional amounts at the prices in effect at the date of the call for delivery or the delivery.
3. Contracts with serial deliveries are concluded under the condition that the creditworthiness of the buyer is and remains in adequate relation to the amount of our current trade receivables. The decisive criterion for the adequacy is in particular the insurability of our receivables with an internationally operating trade credit insurer. If the adequacy is not given, we are entitled to demand amendments of the delivery conditions in order to establish the adequacy (e.g. maximum balance, shortening of payment terms, other securities).

#### **X. Liability for Defects of Quality**

1. Defects of quality of the goods are to be notified in writing without undue delay but, at the latest, seven days after delivery. Defects which could not be discovered also with the most careful examination within this term shall be – with immediate discontinuation of any processing and use – notified in writing without undue delay after discovery but, however, at the latest prior to expiration of the agreed or statutory statute of limitations period.
2. With justified, timely objections of defects, we can at our choice eliminate the defect or deliver a defect-free good (remedy). Should the remedy fail or in the case of the refusal of remedy, the purchaser can, after unsuccessful expiration of a reasonable deadline, cancel the contract or reduce the purchase price. If the defect is not material or if the goods have already been processed or restructured, the purchaser shall only have the right of reduction of the purchase price.
3. We shall assume the costs in connection with the subsequent performance only if, insofar as in the individual case, in particular, in the relationship to the purchase price of the goods, such would be reasonable. We shall not assume any costs which occur as a result that the sold goods were brought to a location other than the agreed place of performance, unless such would correspond to the purchaser's use pursuant to the contract.
4. The objection of defects, after performance of an agreed taking of delivery of the goods by the purchaser which were capable of being discovered with the agreed type of taking of delivery, shall be precluded. If the defect remains unknown to the purchaser as a result of negligence, he can only claim rights concerning this defect if we maliciously concealed the defect or we assumed a guarantee concerning the quality of the goods.
5. If the purchaser does not provide us with the opportunity without undue delay to convince ourselves of the defect, in particular, if he does not provide, upon request, the goods objected to or samples therefrom without undue delay for examination purposes, all rights with regard to the defect of quality shall be cancelled.
6. With goods which are sold as degraded goods, the purchaser shall be entitled to no rights with regard to the stated degrading reasons and shall be entitled to no rights from defects of quality for such defects with which one normally must expect. With the sale of Ila-goods, our liability on grounds of defects of quality is precluded.
7. Additional claims of the purchaser shall be determined pursuant to Section XI of these Terms and Conditions. Recourse rights of the purchaser pursuant to §§ 478, 479 BGB remain unaffected.



8. We shall provide no warranty for fitness for a particular purpose or a certain suitability, unless otherwise expressly agreed in writing; otherwise, the risk of use and operation shall be exclusively with the purchaser.

#### **XI. General Limitation of Liability and Statute of Limitations**

1. We shall be liable for breach of contractual and extra-contractual obligations, in particular, due to impossibility, default, fault with contract introduction and tortious actions – also for our management employees and other employed persons – only in cases of malicious intent and gross negligence, limited to damages which were foreseeable at the conclusion of the contract and typical for this type of contract. Otherwise, our liability shall be precluded also in the case of damages caused by defects and consequential damages caused by defects.
2. These limitations shall not apply with a culpable breach of fundamental contractual obligations insofar as the achieving of the contract purpose is at risk, with culpably caused damage to life, limb and health and also not in the case if and insofar as we have assumed a guarantee for the quality of the sold goods as well as in cases of mandatory liability pursuant to the Product Liability Act. The rules concerning the burden of proof remain unaffected herefrom.
3. Insofar as not otherwise agreed, contractual claims which the purchaser accrues from the occasion and in connection with the delivery of the goods shall be time-barred one year after delivery of the goods. This time period shall apply also for such goods which shall be used for a building pursuant to their usual type of use and this caused its defectiveness unless this type of use was agreed in writing. Our liability arising from intentional and grossly negligent breach of obligations, culpably caused damage of life, limb and health as well as the statute of limitations of recourse claims remain unaffected herefrom.

#### **XII. Place of Performance, Jurisdiction and Applicable Law**

1. Place of performance for our deliveries with delivery ex works is the supplier factory and with all other deliveries, Erkrath. At our discretion, jurisdiction is in Erkrath or at the registered office of the purchaser.
2. For all legal relationships between us and the purchaser, in supplement to these General Terms and Conditions, the German non-uniform law applies, in particular, the BGB/HGB. The provisions of the UN Convention dated April 11, 1980 on Contracts for the International Sale of Goods (CISG) shall not apply.

#### **XIII. Miscellaneous**

1. If a purchaser who is located outside of Germany or his authorized agent retrieves goods or transports or ships such abroad, the purchaser shall provide us with the export evidence necessary for tax purposes. If the evidence is not provided, the purchaser shall be required to pay the VAT on the invoice amount for deliveries within the Federal Republic of Germany.
2. With deliveries from Germany to other EU Member States, the purchaser shall notify us prior to the delivery of his VAT Identification Number under which he pays taxes on income within the EU. Otherwise, he shall be required to pay the VAT amount owed by us by law in addition to the agreed purchase price for our deliveries.
3. With the invoicing of deliveries from Germany to other EU Member States, the VAT regulation of the respective recipient Member State shall apply if either the purchaser is registered for VAT in another EU Member State or if we are registered for VAT in the recipient Member State.
4. With varying languages of the contract documents, the German version shall be authoritative.