

Terms & Conditions of thermofer GmbH & Co. KG

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September 2018

Section 1 Scope of Application

- 1.1 These Terms & Conditions (Ts&Cs) apply to any and all business relationships with our Customer, provided that such Customer is a business (Section 14 of the German Civil Code [Bürgerliches Gesetzbuch - BGB]), a legal person under public law, or a special fund under public law.
- 1.2 These Ts&Cs apply as a framework even to future contracts with the same Customer without thermofer having to refer to these again in each individual case.
- 1.3 These Ts&Cs apply exclusively. Divergent, conflicting or supplementing terms and conditions of the Customer only become an integral part of the agreement insofar as we expressly agreed to their validity. This requirement to consent applies to all cases, even if, for example, we execute the delivery without reservations in the knowledge of the Customer's terms and conditions.
- 1.4 In any event, individual arrangements agreed with the Customer in a particular case take precedence over these Ts&Cs. The content of such arrangements is contingent upon a written contract or alternatively, our written confirmation.
- 1.5 Legally relevant declarations and notifications which the Customer is to submit to us following the formation of the contract (e.g. setting of a deadline or notification of defects) must be stipulated in written form and signed to become effective.

Section 2 Formation of Contract

- 2.1 Our quotes are subject to confirmation and are non-binding.
- 2.2 If the Customer places an order for goods, this is deemed a binding offer to enter into a contract. Unless the order stipulates otherwise we are entitled to accept this contractual offer within 4 weeks after receiving it.
- 2.3 Our acceptance of the contractual offer must be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Customer.

Section 3 Delivery Period and Delay in Delivery

- 3.1 The occurrence of our delay in delivery is specified by legal provisions. In any case, however, it requires a reminder by the Customer.
- 3.2 If we are in delay with delivery the buyer may request a fixed compensation for damage caused by the delay. The amount of such fixed compensation for damage totals 0.5% of the net invoice amount for each full week of delay, however no more than a total 5% of the value of the goods that were delivered late. We reserve the right to prove that the buyer did not suffer any damage or significantly less damage than the above fixed amount.
- 3.3 We are at any time entitled to provide partial deliveries or a partial performance unless said partial delivery or partial performance is of no interest to the Customer. The Customer must communicate in writing if it does not accept part deliveries.
- 3.4 The Customer's rights pursuant to Section 6 of these Ts&Cs as well as our legal rights, especially in the event of an exclusion of the obligation to perform (e.g. impossibility of performance), remain unaffected.

Section 4 Passing of Risk, Acceptance, Delay in Acceptance

- 4.1 Delivery is ex works, which is also the place of performance.
- 4.2 At the request and the cost of the Customer, the goods will be sent to an alternative destination. In this case, we are entitled to choose the carrier, the transport route and the packaging ourselves unless

otherwise agreed.

- 4.3 The risk of accidental loss and of accidental deterioration passes to the Customer at the time of handover the latest. However, in the case of a sale by dispatch the risk of accidental loss and of accidental deterioration of the delivery as well as the risk of delay already passes upon handover of the delivery to the forwarding agent, the carrier or any person or institution appointed to carry out the dispatch.
- 4.4 The same consequences arise if the Customer is in default of accepting delivery.
- 4.5 If the Customer is in default of accepting delivery, if it fails to perform an act of cooperation or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to request compensation for the resulting damage, including any additional expenses (e.g. storage costs). In cases like these, we charge fixed compensation in the amount of 0.5% of the net invoice total per day, starting from the agreed date of delivery or, in the absence of such an agreement, upon notification stating that the goods are ready for collection. Proof of any higher damage and our legal claims (especially reimbursement of additional expenses, appropriate compensation, termination) remain unaffected; however, the fixed sum is to be offset against further monetary claims. The Customer has the right to prove that we did not suffer any damage or significantly less damage than the above fixed amount.

Section 5 Reservation of Title

- 5.1 We retain the title to the supplied goods until receipt of all payments resulting from the contract and/or the ongoing business relationship.
- 5.2 Subject to item 5.3, the Customer may neither sell, pledge nor assign by way of security the goods covered by the reservation of title. The Customer shall inform us without delay of any disposal on the part of third parties (especially seizure or attachment).
- 5.3 The Customer may resell and/or process the goods under the reservation of title in the ordinary course of business subject to the conditions presented hereinafter (item 5.3.1 to item 5.3.4).
- 5.3.1 The reservation of title covers products resulting from processing, mixing or combining the goods under the reservation of title at their full value, with thermofer GmbH & Co. KG acting as manufacturer. If intellectual property rights of third parties remain in effect when their products are processed, mixed or combined with ours, we acquire co-ownership in proportion of the invoice values to the processed, mixed or combined goods. Otherwise, the same applies for the product created as it does for the delivered goods under the reservation of title.
- 5.3.2 The Customer already assigns to us any and all claims against third parties from the resale of the goods or the product relative to the amount of our potential co-ownership in accordance with the above paragraph, as security.

We hereby accept this assignment.

- 533 The Customer's obligations as named in item 5.2 apply accordingly to the claims assigned under item 5.3.2.
- 534 The Customer remains authorised to collect, as do we. We shall not collect the claim if the Customer is not in default of payment and if no application has been filed for the instigation of insolvency proceedings against the Customer's assets.
- 5.4 If the realisable value of the securities exceeds our claims by more than 10% we shall, at the Customer's request, release securities at our discretion.
- 5.5 If the Customer is in default of payment we are entitled, in accordance with statutory regulations, to rescind the contract and to demand surrender of the products or goods covered by the reservation of title.

Section 6 Customer's Rights due to Defects, Liability

- 6.1 If and insofar as nothing to the contrary is stipulated hereinafter, the respectively relevant legal provisions apply to the buyer's rights in the event of defects in quality and title or the breach of contractual and non-contractual obligations. In any case, the legal provisions pertaining to the ultimate delivery of the goods to a consumer (supplier's recourse, Sections 478 et seq BGB) remain unaffected.
- 6.2 Claims for defects on behalf of the Customer are excluded if the Customer breaches its statutory duty to examine the goods and to give notice of defects (Sections 377, 381 of the German Commercial Code [Handelsgesetzbuch - HGB]). If and insofar as a defect is discovered during the examination or at a later moment in time, we must be notified of this without delay and in writing.
- 6.3 The Customer shall undertake to indicate obvious defects to us in writing within two weeks of delivery.
- 6.4 If the buyer breaches its duty to examine and/or to give notice of defects we are exempt from liability for defects that have not been indicated.
- 6.5 The right to choose between a remedy of defects and a new delivery is in any case, ours. If supplementary performance fails, the Customer has the right to either reduce the purchase price or, at its discretion, withdraw from the contract. Application of Section 478 (1) BGB remains unaffected.
- 6.6 If the Customer opts for compensation of damages instead of performance, then to this extent the remedial work is only deemed to have failed following our second futile attempt. The statutory cases of dispensability of the extension of time remain unaffected.
- 6.7 We are only liable for damages - regardless of the legal grounds - in cases of
- intent;
 - gross negligence by the boards or executive staff;
 - negligent injury to life, body or health;
 - defects that we fraudulently concealed;
 - the absence of qualities of the supplied goods which we had guaranteed;
 - defects of the supplied goods insofar as under the product liability act liability applies for personal injury or damage to property in relation to objects in private use.

In the event of the culpable breach of material contractual duties, i.e. those duties that are required for the proper performance of the contract and whose compliance the contractual partner reasonably trusts and can be expected to trust, we are also liable for cases of gross negligence committed by non-executive staff and cases of slight negligence, in the latter case limited to reasonably foreseeable damage that is typical of the contract.

- 6.8 We grant a free ten-year warranty on the infrared heating mesh (MESH) developed, manufactured and patented by us. The components not developed and manufactured by us, which are necessary for a functioning heating system - as we sell it - and are supplied to us by our business partners (suppliers) and distributed by us. We grant a two-year warranty free of charge for these. The warranty promise begins from the day on which the sales contract is concluded. In particular, the guarantee does not cover the following: Damage caused by improper or unintended handling of the components and incorrect installation; damage caused by unauthorized modifications or accessories, supplements or spare parts that are not original parts or damage caused by lightning, water, fire, force majeure, incorrect mains voltage or other reasons for which we are not responsible. Furthermore, general signs of wear and tear also do not constitute warranty claims.

If a proven case of warranty should occur, we will exchange the goods complained about within the warranty period free of charge or provide for equivalent replacement.

Warranty claims are asserted by submitting the original proof of purchase (invoice). Furthermore, photos must be submitted that are suitable to prove the existence of the warranty case. This can also be carried out by e-mail to info(at)-address. If we accept the warranty claim, the customer shall return the complained goods to us. The costs will be covered by us in this case. The statutory warranty rights for defects remain unaffected by the warranty promise.

Section 7 Pricing and Terms of Payment

- 7.1 Our current prices valid at the time of signing the contract apply, ex works, plus the statutory rate of value added tax, unless otherwise agreed in the individual case.
- 7.2 The purchase price is due and payable within 30 days as of the date of invoice and delivery or acceptance of the goods.
- 7.3 The Customer has set-off rights or rights of retention only insofar as its claim was established as final and absolute or is undisputed. In the case of defects in our performance the Customer's statutory reciprocal rights remain unaffected.

Section 8 Jurisdiction, Applicable Law

- 8.1 Insofar as permitted by law, the courts of Cologne shall have exclusive jurisdiction for all disputes arising from the contractual relationship. However, we are free to take legal action at the Customer's place of general jurisdiction.
- 8.2 Any and all legal relationships between us and the Customer are governed by the law of the Federal Republic of Germany, excluding the UN Sales Convention.

*Please note: These Terms & Conditions have been translated into English for information purposes only. The *Allgemeine Geschäftsbedingungen der thermofer GmbH & Co. KG*, in their respective applicable version, shall prevail in the case of a conflict between the English translation and the original German version.