

# **Standard Terms & Conditions of Sale of JOHS. THOMS GmbH & Co. KG**

## **1. General**

The following Terms & Conditions of Business shall apply to any current and future offers/quotations made by us and to contracts and deliveries to a commercial counterparty (referred to hereinafter as the Purchaser). Our terms and conditions apply exclusively. Any derogations from these Terms & Conditions of Sale shall require the express written agreement of the parties. These Terms and Conditions shall also apply if we accept the Purchaser's payment in knowledge of conflicting terms and conditions or terms and conditions deviating from these Terms and Conditions without objection.

## **2. Offers/quotations**

2.1. Any offers/quotations made by us shall remain subject to change and non-binding until the conclusion of a contract.

2.2. Any orders submitted by the Purchaser shall be binding on the Purchaser. A contract shall come into being when we give written confirmation of the order or complete the delivery or the provision of the service.

2.3. No information stipulated orally nor the information stipulated in our documentation shall contain any warranties. Information relating to the condition of the items delivered shall be for the purposes of specification only and shall not constitute any warranty. Nor shall we give any warranty in respect of the characteristics of samples or specimens.

## **3. Deliveries, delivery periods and transfer of risk**

3.1. Deliveries of goods shall be made EXW (Incoterms 2020), to the extent that no provisions are agreed to the contrary. If it is agreed in individual cases that we shall be responsible for shipping, even if we bear the cost of transportation the goods shall be shipped at the risk of the Purchaser by a means of transport selected by us at our complete discretion. If goods which have been notified as ready for shipping are not collected in accordance with the contract, risk shall be transferred to the Purchaser on notification of the goods' readiness for shipping and the purchase price shall be due and payable.

3.2. All specified delivery periods shall be considered approximate. All agreements concluded for the delivery of or from lots to be offloaded or floating or rolling goods shall be subject to correct and timely procurement by us.

3.3. The timely and unconditional issue of an import licence shall be a pre-condition for all contracts for goods, the delivery of which into the domestic customs area requires such import licence. Should the licence not be issued for reasons which are not attributable to us, the Purchaser shall not be entitled to demand the execution of the contract in the domestic customs area.

3.4. We shall be entitled to make partial deliveries, to the extent that it is reasonable to make such deliveries to the Purchaser.

3.5. The Purchaser shall check and issue a receipt in respect of the delivery documentation. Any reservations shall be noted on the delivery documentation and notified to us immediately in writing. Otherwise the delivered quantity in respect of which a receipt is given shall be deemed to have been accepted. Deliveries which contain up to 10% more or less than the ordered quantities shall be accepted by the Purchaser as in

accordance with the contract.

3.6. Delays in delivery attributable to force majeure, unforeseeable difficulties as the result of shortages of raw materials, the limitation or the shutdown of operations, measures implemented by the authorities, pandemics, epidemics or to other events which are not attributable to us, shall lead to an appropriate extension of the delivery period. The same shall apply in the case of delays in delivery due to the occurrence of such events within the business of our suppliers. Industrial action, including strikes and lawful lock-outs within our business or the businesses of our suppliers shall also constitute force majeure. If as the result of such events delivery subsequently becomes impossible or unreasonable for one of the parties, both of the parties shall be entitled to withdraw from the contract.

3.7. In the event of a delay in delivery, after having stipulated an appropriate period and if delivery is not made within such period, the Purchaser may withdraw from the contract. Moreover, liability for delay or the inability to make delivery shall be governed by clause 8 of these Terms & Conditions.

## **4. Prices and price changes**

Our prices are quoted net / no tax paid. Any new or increased supplementary costs incurred after the conclusion of a contract, such as duties and taxes, shall be borne by the Purchaser. Any reductions on such grounds shall benefit the Purchaser. The prices shall not cover any collection of packaging or empty containers.

## **5. Terms and conditions of payment, set-off and right of retention**

5.1. For the purposes of performance and the timeliness of payment, the date of receipt of payment in our account shall be the applicable date.

5.2. We shall not be obliged to accept cheques and banker's drafts. Payment by way of cheque and/or banker's draft shall only be accepted on account of performance.

5.3. If the purchaser defaults on the settlement of a claim, all claims - including those from other contracts - with the purchaser shall become due immediately. In the event that we are obliged to perform in advance, we may refuse the performance incumbent upon it if, after conclusion of the contract, it becomes apparent that our claim to counter-performance is jeopardized by the purchaser's lack of ability to perform. The right to refuse performance shall not apply if the counter-performance is performed or security is provided for it. We shall be entitled to set a reasonable period of time within which the purchaser shall, at its option, perform the counter-performance or provide security concurrently with the performance. After unsuccessful expiry of the deadline, we may withdraw from the contract. The details are governed in accordance with § 321 of the German Civil Code (BGB).

5.4. The Purchaser shall not be entitled to set off any counter-claims, unless it is a question of an undisputed, acknowledged or judicially determined claim of the Purchaser. The Purchaser shall only be authorised to exercise a right of retention if its counter-claim is based on the same legal relationship.

5.5. Should a date agreed for payment not be complied with, the Purchaser shall be in arrears even in the absence of notification. In such a case we may apply interest at a rate of up to nine percentage points above the applicable base rate

(section 247 of the German Civil Code) and a lump sum for delay in the amount of EUR 40.00.

## **6. Retention of title**

6.1. The delivered goods shall remain our property until complete payment of the sums due. Should a current account relationship exist, the retention of title shall also apply as security for all claims arising from the commercial relationship and for our claim in respect of payment of the balance. Payment shall be deemed to have been made to us with the effect of a release when the full amount has been received by us. Any processing or adaptation of the goods to which title is retained shall occur without this giving rise to any obligations for us.

6.2. Should the goods delivered by us be processed, amalgamated or mixed with goods which belong to a third party, we shall have joint title to the new item or the mixed stock in accordance with the ratio of the value of our goods to which title is retained to the remaining goods at the time of the processing, amalgamation or mixing. Should the Purchaser acquire sole title to the new item, it hereby assigns to us joint title to the new item in accordance with the invoice value of our goods to which title is retained to the value of the remaining goods at the time of the processing, amalgamation or mixing and shall preserve such new item for us with the due care of a careful merchant.

6.3. The Purchaser, which shall only be entitled to further dispose of the delivered goods in the ordinary course of its business and only then when any claims arising from such on-sale are assigned to us, hereby assigns to us all claims arising from such on-sale, irrespective of whether or not the on-sale occurs without or after any processing or amalgamation or mixing of our goods with other goods. We hereby accept such assignment. The value of the goods to which title is retained shall be the amount invoiced by us plus a supplement of 10% by way of security, which shall not however be applied to the extent that it conflicts with the rights of any third party.

6.4. In the event of the on-sale of our goods after their processing, amalgamation or mixing or the on-sale of the new item created after such processing, amalgamation or mixing, any rights against the party acquiring from the Purchaser shall be assigned to us in the amount of the invoice value of our processed, amalgamated or mixed goods or only in the amount which corresponds to our share of the co-ownership rights, should such amount be lower. This provision shall also apply in the event of any disposal after our goods, as the result of any amalgamation or processing, have become an integral part of another item.

6.5. The Purchaser shall be authorised by us to enforce any assigned claims. We may revoke such authorisation, should the Purchaser not comply with the contractual obligations owed to us. Any collection costs shall be borne by the Purchaser. The Purchaser must notify us immediately of any restriction or of any other impairment of our rights. The Purchaser shall be prohibited from pledging or transferring by way of security the goods to which title is retained by us, and from entering into any agreement prohibiting assignment or from any assignment without our consent in the context of a factoring. Should the value of the security interests granted to us exceed the sums payable to us by more than 10% in total, we shall be required at the request of the Purchaser to release the security interests of our choice. Upon payment of the sums payable to us, title to the goods to which title was retained and the assigned claims shall be transferred to the Purchaser.

## **7. Liability for defects**

7.1. The Purchaser shall be obliged immediately to inspect at its

own cost the delivered goods and to notify us in writing immediately of any defects, non-compliant deliveries, and of any non-compliant deliveries or insufficient volumes which cannot be accepted. Within three working days (working days in this sense are Monday to Friday with the exception of public holidays at the place of delivery) shall be deemed to be immediate, unless in individual cases special circumstances indicate that a different period is appropriate. In the case of goods delivered by tank truck, such special circumstances apply that make immediate inspection upon delivery necessary. Hidden defects must be notified to us in writing and at the latest seven days from the date of their discovery. Violations of this obligation lead to the approval of the goods according to § 377 HGB. If the suspicion of a not only completely insignificant defect arises with regard to delivered products, the purchaser is obligated to notify us immediately of the existing suspicious facts, even if further examinations must be carried out in order to verify the defect. Any breach of this obligation shall result in the Purchaser's liability for damages, unless the Purchaser is not responsible for such breach of obligation. An investigation by us of the defects complained of shall not constitute any waiver of the claiming of a delay in relation to the complaint.

7.2. Any defects in the quality of a partial delivery shall not grant any right to refuse the remainder of the agreed delivery volume, unless the Purchaser is able to prove that the acceptance of only part of the delivery would be unreasonable for it in light of the circumstances.

7.3. We shall at our discretion deliver free of charge replacements for goods or repair goods which are defective on the date of the transfer of risk. Should we permit any period stipulated by us for such delivery of replacements or such repairs to elapse without taking action through our own fault or omission, should such subsequent performance fail definitively or should we repudiate such subsequent performance or should such subsequent performance become impossible for us or unreasonable for the Purchaser, the Purchaser may withdraw from the contract or reduce the purchase price. The costs for shipping within the scope of subsequent performance shall be borne by us. However, insofar as the shipping costs increase due to the fact that the goods have been taken to a place other than the place of performance by the Purchaser or the Purchaser's customer, the difference shall be borne by the Purchaser. This shall also apply accordingly to other costs which we have to bear within the scope of subsequent performance. If the defect is merely insignificant, and should the Purchaser be able to use the goods without suffering any disadvantage, it shall only be entitled to a reduction in the purchase price. This right shall be limited to the affected partial delivery alone, to the extent that such a limitation is not unreasonable for the Purchaser on the basis of the nature of the item. Should the specified delivery volumes not be complied with, the Purchaser shall after the failure of attempts to correct the defect have a claim to an appropriate reduction only. This provision shall not apply if the parameters of performance are expressly guaranteed or if the acceptance of the subject-matter of the delivery is not reasonable in the given circumstances.

7.4. Warranty claims shall be prescribed one year from the date of the commencement of the statutory limitation period. The limitation period in the event of a delivery recourse in accordance with the sections 445b and 478 of the German Civil Code shall not be affected by the provisions of the two paragraphs referred to above. Claims for compensation on the basis of death, physical injury or impairment of health caused by a defect or in accordance with the Law on Product Liability shall also not be limited by these provisions. These provisions shall also not limit any other claims for damages pursuant to the law on warranties in the event of gross negligence, intent or the infringement of material terms of the contract (please see section 8 "Liability" in relation to material terms of the contract) on our part.

## **8. Liability**

8.1. Claims for damages of any kind against us and our legal representatives and vicarious agents are excluded, unless there is intent or gross negligence or the breach of an essential contractual obligation.

8.2. An essential contractual obligation in this sense means any obligation that must be fulfilled in order for the contract to be properly executed and on whose fulfillment the Purchaser may regularly rely.

8.3. Liability shall, however, be limited to compensation for the foreseeable damage typical of the contract, unless intent is involved.

8.4. The above limitations and exclusions of liability shall not apply to liability under product liability law or in cases of injury to life, body or health.

8.5. The Purchaser's claims for reimbursement of expenses according to § 284 BGB (German Civil Code) are excluded to the extent that a claim for damages instead of performance is excluded according to the above provisions.

8.6. The statutory burden of proof shall not be changed by the provisions of this contractual clause.

## **9. Place of performance, place of jurisdiction and applicable law**

9.1. The place of performance for deliveries and for the fulfillment of warranty claims shall be the place of dispatch and for payment Hamburg.

9.2. The exclusive place of jurisdiction shall be Hamburg if the Purchaser is a merchant, a legal entity or a special fund under public law or has no general place of jurisdiction in Germany. We may also commence proceedings against the Purchaser at the Court in the location of its registered office or establishment.

9.3. If the purchaser is domiciled outside the EU and the European Economic Area, the Court of Arbitration of the Hamburg Chamber of Commerce shall have exclusive jurisdiction over all disputes arising out of and in connection with the contracts concluded under these General Terms and Conditions and shall make its final decision to the exclusion of the ordinary courts of law. The respondent shall be entitled to file a counterclaim before the Court of Arbitration. The place of arbitration shall be Hamburg, the language of the proceedings shall be German. The proceedings and in particular the taking of evidence shall be conducted in accordance with the Rules of the Arbitration Court of the Hamburg Chamber of Commerce and the rules of the 10th Book of the German Code of Civil Procedure. In the taking of evidence, the arbitral tribunal shall be guided by the customs of proceedings in German state courts. Procedural principles of common law, such as in particular the production of documents (so-called document production), shall not apply directly or mutatis mutandis. Insofar as one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, these shall be limited to the costs billable under the German Lawyers' Fees Act (RVG).

9.4. German law shall apply exclusively and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.