

§ 1 Scope

1. These General Terms and Conditions (hereinafter referred to as "GTC") apply to the delivery of goods (in particular machines and equipment) and the transfer of software as well as service performance (e.g. installing and maintaining machines that have been supplied) in the course of business transactions provided by THERMOTEX NAGEL GmbH (hereinafter referred to as "Supplier"). They also apply in the relevant updated version to all future similar contracts concerning the delivery of supplies and services between the supplier and the customer, even when this has not been explicitly referred to again.
2. The subject of the deliveries, type and scope of services as well as the payment amount are specified in detail in the supplier's offer and/or the order. Conditions in the supplier's offer have priority over the conditions in this GTC if they differ.
3. Any customer's terms and conditions deviating from these GTC are not part of the contract even if the supplier makes deliveries or provides services without explicitly objecting to any such customer conditions.

§ 2 Offer and Conclusion of Contract

1. All supplier offers are subject to change and non-binding provided they have not been explicitly indicated as binding or have a fixed acceptance period. The supplier can accept customer orders or commissions within a fortnight of their receipt.
2. The contract is concluded with the reservation that suppliers supply the supplier himself correctly and in time. This does not apply if the supplier is responsible for his supplier's failure to supply or delayed supply, in particular when he has not concluded a congruent cover transaction. The supplier will inform the customer immediately if goods are not available and will reimburse the customer any pre-payment without delay.
3. The supplier unreservedly retains all property rights, copyrights and industrial rights for drawings, technical records, models and other data, information and documents in physical and non-physical form – also those in electronic form - he has given the customer; these cannot be made accessible to third parties without prior written consent.
4. Supplier specifications regarding the subject of delivery and services (e.g. measurements, utility values, capacity, performance, tolerances and technical data) as well as illustrations of the goods (e.g. in drawings, models and images) are only approximately accurate unless the usability of the delivery and services with respect to a contractually agreed purpose require precise compliance. In particular, they do not represent guaranteed characteristics. Standard deviations in size, colour, form and quality or other properties, which occur due to statutory regulations or in the course of technical developments, as well as replacing components with equivalent components is permissible, provided this does not impair the usability of the delivery and services as far as the contractually agreed purpose is concerned. The same applies to a production related quantity deviations of up to 10 % for print products and other, individually prepared for the customer, processed or labelled goods, such as those, which have customer specific embroideries.

§ 3 Delivery and Risk Assumption; Re-Utilisation of Goods

1. All deliveries are made on a FCA Schutterwald (INCOTERMS 2010) basis unless otherwise agreed. The type of dispatch and packaging are subject to the supplier's best judgement.
2. The supplier is entitled to make part deliveries if the customer can use these independently, full delivery is assured and the customer does not incur significant on-costs or additional expenses due to the partial delivery.
3. Risks regarding delivery of goods transfer to the customer at the point of handing over to the carrier, shipping agent or the third party engaged to carry out the delivery at the latest. This also applies if partial deliveries are made or if the delivery agent has taken over other services (e.g. installing a machine) as well. If the dispatch or the transfer of goods is delayed for a reason caused by the customer, then the risk transfers to the customer on the day the goods are ready to be dispatched and the supplier has informed the customer of this.
4. The customer has the responsibility to ascertain whether the goods are suitable for the use intended by him; if in doubt, the customer will inspect the goods in order to ascertain whether they are suitable for his intended use (e.g. testing whether emblems are wash resistant under his conditions). The customer shall also observe the supplier's instructions e.g. product specific information that is attached to the delivered goods. When in doubt he will additionally inform himself and seek advice. The supplier has contractual duties to give advice only when the parties have explicitly agreed this in writing.
5. If the customer plans to process the goods further he is responsible for ensuring that the materials (e.g. textiles) he has chosen and used for further processing and the operating equipment (e.g. ink ribbons) are suitable for the intended purpose. If the supplier prepares specific logos, emblems or other markings for the customer, the customer will test these (or a proof sample given to him by the supplier if necessary) before carrying out further processing, especially before labels are fixed to the textiles, and will inform the supplier of any complaints in writing or by e-mail.

§ 4 Deadlines and Dates

1. Deadlines and dates for deliveries and services estimated by the supplier are non-binding and are only approximate unless a binding deadline or binding date has been agreed or arranged. If the despatch of goods has been agreed, the deadlines and dates apply to the point in time of transfer to the carrier, shipping agent or other third party engaged to carry out the delivery.
2. Agreed deadlines and dates for deliveries and services do not begin until all technical and commercial details have been clarified and until an agreed deposit is paid. They are extended and/or postponed by the time span in which the supplier is held up by circumstances he is not responsible for, is hindered in carrying out the delivery or service and by an appropriate restart time after addressing the reason for the hindrance. Circumstances, which are not to be represented by the supplier, include instances of force majeure and other unforeseen events (e.g. strikes and lock-outs, shortage of raw materials, difficulties with procurement of necessary official authorisations, official regulations) as well as if the customer fails to participate or is delayed in doing so, and times when the supplier is waiting for necessary information, documents or decisions from the customer.

§ 5 Place of Fulfilment; Provision of Services; Acceptance

1. The place of fulfilment for all contractual obligations is the supplier's headquarters, provided no alternative has been agreed. If the supplier owes the installation and/or commissioning of a delivered machine, the place of fulfilment is the place where the installation or the commissioning has been agreed to take place.
2. If the subject of the contract is the provision of services, then these always need the supplier's written confirmation of the specialist and technical customer specifications as to the binding character of the services that are to be rendered. The supplier can engage independent sub-contractors to render these services whereby the supplier always remains directly responsible to the customer. The customer can object to the use of a sub-contractor only on the grounds of significant reasons.
3. The customer shall supply those participating services needed for the fulfilment of the contract free of charge, on time, properly and in full. The customer makes sure that his employees have the necessary qualifications and experience needed to carry out the participation services, and frees them up from other activities to the extent required. If needed for carrying out the service, the customer makes complete and consistent data, information and documents available and participates in tests and commissioning. If the subject of the contractual services is the delivery and commissioning of machines, the customer shall provide the necessary operating and user conditions and in particular shall ensure that the electrical and other appliances needed for the installation of the machines and their connection are available in a condition that conforms to a current technological status.
4. When commissioning takes place according to statutory regulations or the performance of a commissioning process has been explicitly agreed by the parties, then commissioning is considered as having been carried out at the very latest when
 - i) the delivery and, provided the supplier still owed the installation, the installation has been concluded,
 - ii) the supplier has informed the customer of the readiness to commission by referring to the notional acceptance according to this paragraph and has asked him to approve, and
 - iii) 10 working days have passed since the request to approve without the customer having queried faults, which could delay the approval, or when the customer has started production using the goods (e.g. has started to operate a delivered machine not just for the purposes of testing)Significant faults, which delay approval, are those negating or strongly hindering the usability of the delivery or service for the agreed or required purpose. The above regulations apply as appropriate for partial commissioning.

§ 6 Rights of Use for Provided Software

1. Software is provided to the customer in a currently updated available version at the time of transfer exclusively in the object code, either by download or remote access via the Internet or via a suitable data carrier. The customer has no right of access to the source code of the software. The user rights granted refer exclusively to the use of the software in object code.
2. The customer receives the non-exclusive, time limited right to use of the software provided to him (including the new versions provided as part of supplementary service or maintenance and inclusive of possible customer specific adjustments and additions) - conditionally upon full payment of the agreed remuneration - for the business purposes of the customer agreed or stipulated by both parties. The customer may use the software for the agreed number of workstations and may carry out the necessary duplication.
3. All further rights, in particular the right to distribute, including renting out, to process and further develop and to make them publicly accessible remain with the supplier. The customer is not permitted to use software by or for third party use without prior written consent. Mandatory legal exemptions remain unaffected by this.
4. The distribution of software by the customer to a third party requires the prior written consent of the supplier in all instances. The supplier will grant his consent if the customer submits a third party written declaration in which the same promises the supplier that he will comply with the licence conditions for the software agreed with the supplier and if the customer confirms in writing to the supplier that he has given all non-used software copies to the third party or that he has deleted them.
5. The use of third party software co-distributed through the supplier can be subject to the conditions of the respective manufacturer, which deviate from the above regulations. The supplier will communicate these to the customer when requested as appropriate.

§ 7 Prices and Payment Conditions

1. All prices for delivery and services arise from the supplier's offer as guideline as well as supplement to the supplier's currently relevant price list. All prices are quoted as net prices in Euros unless otherwise agreed, excluding shipping costs, packaging and a mandatory recycling fee as well as custom duties, charges and other public taxes for export deliveries.
2. The agreed prices depend on wage, material, energy and overhead costs at the time the contract is concluded. If costs increase in the period between contract conclusion and delivery deadline, the supplier is entitled to increase the prices, unless the increase in costs was already anticipated when the contract was concluded, the supplier is in arrears with the delivery or is responsible for the increase in costs for some reason himself.
3. The purchase prices for delivered goods as well as licence remuneration for software provided are invoiced to the customer immediately after handing over the goods or provision of software, unless agreed otherwise. Services rendered are charged at cost unless agreed otherwise and the customer will be invoiced as per evidence of the supplier's work. Provided the parties do not agree anything different, the supplier will invoice the customer any add-on costs he has incurred, in particular travel costs and travel times for on-site work at the customer's premises, differentiated according to the actual amount incurred.
4. The supplier will send the customer invoices by letter or electronically by e-mail. They are payable immediately without deductions upon receipt of the invoice, unless otherwise agreed. If the customer gets into arrears with the payment of an invoice then the supplier's legal claims shall remain unaffected.
5. The supplier is entitled to carry out or provide overdue deliveries or services only against pre-payment or sureties, if the circumstances become known after conclusion of the contract, which significantly lower the customer's credit worthiness and by which the payment of the supplier's open claims seem to be endangered by the customer in respect of the relevant contractual relationship.
6. The customer can only set off undisputed or legally determined claims and base a right to retention only on undisputed or legally determined claims based on the same contractual relationship.

§ 8 Liability for Defects

1. The customer must inspect delivered goods for defects immediately upon their delivery. The customer must make a complaint immediately in writing if he discovers defects and describe and document the same to an appropriate extent so that the supplier can check the alleged defects and rectify them. Otherwise § 377 HGB applies fully.
2. The supplier guarantees that the delivered goods and the provided work or work results (hereinafter referred to together as "Subjects of Contract") are in accordance with their product or service specification and that the contractual use of the subjects of the contract are not in conflict with the rights of third parties. Claims can only be made for defects, which are reproducible or can be described comprehensively by the customer. In particular, functional or other faults of the subjects of contract are not considered as defects, which result from the customer's improper use (e.g. using unsuitable materials or equipment) or from other circumstances arising from the customer's area of responsibilities. Furthermore, the liability for defects requires that the customer does not himself make unauthorised changes to the subjects of the contract or orders a third party to do so or uses the subjects of contract contrary to the contractual prerequisites or operating instructions or user handbook, unless the customer provides evidence that the defect is independent from this.
3. If, at the point of transfer of risk, a defect of the transferred subjects of contract is evident, then the supplier has the right and duty to a supplementary performance of his choice in the form of repair or replacement delivery within an appropriate time period. The rectification of the defect can at first also consist of the customer being given reasonable options, which may reduce or avoid the effects of the defect. Replaced parts become the supplier's property. In the case of defects of title, the supplier provides the customer with a legally correct user option for the subjects of contract; alternatively the supplier can also exchange the affected subjects of contract (fully or partially) against equivalent items, if this is acceptable to the customer. If the supplementary performance fails after all (at least 2 attempts at supplementary performance per defect), the customer can choose to claim a reduction of the remuneration (decrease) or can cancel the contract. A cancellation of the contract is not possible in cases of insignificant defects. § 9 of these GTCs applies to defects and associated claims for compensation and reimbursement of unsuccessful attempts.
4. If the supplier provides services in the course of investigating a defect or its repair without being obliged to do so, he can charge remuneration appropriate to the work according to the valid price list at the time. In particular, this applies if a defect reported by the customer that cannot be evidenced or cannot be blamed on the supplier. The remuneration claim does not apply if the customer shows that he had not recognised that there was no defect and that he was not at fault for not realising this.
5. The period of limitations for customer claims as per this § 8 is one year and starts with the delivery of the goods or the approval of the works performance. A shortening of the limitation period does not apply for intent or gross negligence of the supplier, especially if he has fraudulently concealed a defect, or when a defect is founded on the right of a third party, upon which the release of the goods can be demanded. The period of limitation is extended on the basis of supplementary performances carried out by the supplier if need be in relation to components of the subjects of contract exchanged by the supplier (e.g. individual components).
6. The delivery of used or technically reconditioned machines is subject to the exclusion of any liability for defects. Any customer claims with regards to defects of new components or when the supplier installs new components in a machine remain unaffected. Also unaffected is the supplier's liability with regards to compensation and remuneration of costs according to the conditions of § 9.

§ 9 Liability

1. If the supplier provides deliveries or services for the customer for which there is no cost e.g. the provision of machines for trial during a test phase that is free of charge, then the supplier is liable only for intentional and grossly negligent breaches of duties.
2. Otherwise the supplier is liable for damage to property and financial loss as well as for futile costs, for whatever legal reason (e.g. on the grounds of a contract similar relationship of trust, arising from contract or tort) – even due to impossibility or delay or in the case of subjects of contract defects – only to the following extent:
 - i) in the case of intent or gross negligence, according to legal regulations and in the case of taking over a guarantee, at the amount of the protective purpose encompassed by the guarantee;
 - ii) in all other instances, only if a significant contractual duty is breached without which achieving the purpose of the contract and its fulfilment would be endangered and the customer would therefore rely upon as a matter of course (the so-called cardinal duty), but limited, however, to the compensation of the typical, foreseeable damage.
3. The supplier's liability in respect of loss of data is limited to the typical cost of recovery, which would have been incurred in the course of regular maintenance and preparation by the customer of backup copies appropriate to the risk, unless the supplier had caused the loss of data intentionally or due to gross negligence.
4. The customer's claims to compensation lapse one year after the customer has acknowledged the circumstances that have given rise to his claim or from the point in time when the customer should have become aware of the constitutive circumstances and the person who was at fault without gross negligence. Claims due to intentional and grossly negligent breaches of duty are excluded from the limitation period here.
5. The aforementioned liability limitations apply to the same extent in favour of the supplier's institutions, legal representatives, employees and agents.
6. Legal liability for damage due to loss of life, bodily injury or damage to health as well as in line with the product liability law remains unaffected by the aforementioned regulations.

§ 10 Reservation of Proprietorship

1. The goods supplied by the supplier to the customer (hereinafter referred to as „reserved goods“) remain the property of the supplier up until full fulfilment of all, including future claims by the supplier based on the business relationship with the customer. The customer keeps the reserved goods for the supplier free of charge. The customer is obliged to insure the reserved goods against the usual risks such as fire, water, theft etc. with adequate cover. If maintenance and inspection work needs to be performed, the customer must carry this out in good time at his own cost, as long as such services have not been provided by the supplier in accordance with the agreement.
2. If third parties access the reserved goods, especially due to seizure, the customer will immediately refer to the supplier's proprietorship and inform the supplier to enable the supplier to enforce his proprietorship rights.
3. If the customer is in arrears with payment, stops his payments or if his financial situation worsens significantly so that the supplier's claims would appear to be at risk, especially if an application is made for insolvency proceedings to be initiated, the supplier is entitled to demand the reserved goods from the customer. The demand for return involves withdrawal from the contract. Prior deadline setting is not required. The supplier reserves the right to enforce claims for replacement of damages.
4. The customer is entitled to resell the reserved goods in normal business transactions. The customer already surrenders the claims against his buyers from the resale of reserved goods to the supplier at the invoice amount (incl. VAT); the supplier accepts the surrender. The surrender applies irrespective of whether the goods have been sold on without processing or after processing. The customer is entitled to collect the claim, including after surrender. The supplier's authorisation to collect the claim himself remains unaffected. However, the supplier will not collect the customer's claim himself as long as the customer is not in payment arrears and no insolvency proceedings against the customer's assets have been initiated.
5. Processing, connecting or reforming the reserved goods by the customer always takes place on behalf of and for the supplier as the manufacturer, without resulting in any obligations. If processing or combining the reserved goods with other objects that do not belong to the supplier, the supplier gains co-ownership of the new item at the ratio of the objective value of the goods he supplies and the other processed or combined objects at the time of processing or combining.

§ 11 Data Security

1. The customer's personal data (e.g. name and e-mail address of the supplier's contact on the customer side) will be collected, processed and used under observation of the data security regulations, especially the Federal Data Protection Act (BDSG). All data required for business processes will be saved by the supplier and passed onto external service providers (e.g. transport companies), if necessary, for the purposes of contract fulfilment.
2. If the supplier receives the customer's e-mail address in association with the sale of goods or services, he will use it for direct advertising (e.g. by newsletter) for his own, similar goods or services. The customer can object to the use of his e-mail address for advertising purposes at any time without incurring any costs (e.g. by deleting himself from the newsletter mailing list by activating the link in each newsletter). In all other cases, the use of the customer's contact data for advertising purposes only takes place within the scope of legal permits or the agreement of the customer.

§ 12 Final Clauses

1. If the customer is provided with a machine for use for a limited period of time (e.g. for trial run), the customer must handle it with care. The customer's permission to use the machine ends with expiry of the agreed period of use or a demand for return by the supplier. The customer must promptly return the machine to the supplier after the end of his authorised period of use and in the condition in which it was given to him.
2. All changes and supplements to the contract must be made in writing to take effect (a fax or e-mail is sufficient). The requirement of the written form can only be lifted by both parties in writing.
3. The laws of the Federal Republic of Germany apply under exclusion of the conflict-of-law of international private law and under exclusion of the UN sales law (CISG). The court of jurisdiction for all disputes associated with the contract is the court responsible for the supplier's headquarters location. The supplier also has the right to file a law suit with another national or international responsible court.
4. Should individual terms of the contract or these GTC be or become ineffective or should the contract display a loophole, this shall not affect the effectiveness of the remaining clauses. An effective clause, which comes as close as possible to the economic intent of the parties at the time of contract conclusion, shall take the place of the ineffective or missing clause.

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