

General Terms and Conditions of Sale and Delivery (AGB)

For THIMM Group - THIMM Verpackung - THIMM Verpackung Süd -
THIMM Display

§ 1

Scope

These General Terms and Conditions of Sale and Delivery (AGB) shall exclusively apply to all sales and deliveries between THIMM and the customer, who declares to be a business entity according to section 14 BGB (German civil code), as well as legal entities under public law and public institutions.

These General Terms and Conditions of Sale and Delivery (AGB) can be viewed online at www.thimm.com at all times and can be printed out from there and saved.

§ 2

Protective Clause

Any other General Terms and Conditions or conditions of purchase of the contractual partner are hereby expressly excluded.

Such General Terms and Conditions shall only then form part of the contract and shall only apply if they do not contradict the respective General Terms and Conditions of Sale and Delivery (AGB) of THIMM and provided that THIMM has explicitly confirmed the validity.

§ 3

Code of Conduct

THIMM has the aspiration of being an independent and responsible family-owned business. THIMM has therefore committed itself to complying with a code of conduct which can be viewed online at all times at www.thimm.com and can be printed out from there.

§ 4

Conclusion of the Agreement

1. Offers made by THIMM are not binding, unless an explicit engagement has been made.
2. Purchase orders of the customer shall only become effective, if confirmed by THIMM explicitly. THIMM's field service personnel shall neither be authorized to sign a contract nor to receive payments.

3. Dimensions stated in the supply are inside dimensions indicated in mm in the following order: length x width x height. The technical guidelines and standards laid down by the Verband der Wellpappen – Industrie e. V., Hilpertstrasse 22, 64295 Darmstadt, apply as amended, on the date of signing this contract. They will be submitted to the customer on request.
4. THIMM is entitled to assign without restriction all claims from the business relationship with the customer to third parties.

§ 5

Payment

1. The agreed price plus applicable value added tax is to be paid upon receipt of the goods or within the given credit term.
2. Statutory provisions shall apply in the event of customer default, interest on arrears and any other damages incurred by THIMM due to customer default.
3. If the customer is in default of payment, THIMM
 - a) is not obliged to any further delivery under any kind of services until settlement of the outstanding due invoices and
 - b) is entitled, at its own discretion, to withdraw from the contract or to claim damages instead of the performance of this contract, in case the customer fails to effect payment within 10 days upon receipt of a justified reminder and withdrawal has been threatened in advance..
4. Offsetting against counter claims or assertion of a certain retention shall only be permitted, insofar as accepted by THIMM, recognized by declaratory judgement or ready for court decision or based on the same contractual agreement.

5. If THIMM is storing goods in a warehouse that it has created for the customer specifically, then the customer commits to accept and pay for the warehouse stock at the latest upon the termination of the contract.

§ 6 Delivery

1. Unless expressly agreed, delivery is effected franco domicile / ex works. Mode and means of shipment are determined by THIMM.
2. a) Upon sale by delivery to a place other than the place of performance, the risk shall be passed to the person entrusted with the shipment of the goods. The transfer is also deemed made, even if the customer is in default of accepting the goods.

b) Insofar as collection is agreed, the risk passes to the customer upon notice that the goods are ready for dispatch. In the event that collection is not executed on schedule, THIMM is entitled, after fixing a reasonable period, to ship the goods at the customer's expense or store them.
3. THIMM is entitled to deliver in instalments unless this obviously conflicts with the justified interests of the Customer.
4. The following deviations/tolerances which are customary in trade shall be deemed agreed:
 - a) Excessive or insufficient supplies customary in trade as well as partial shipments are permitted, taking into account contractual interests of both parties to an extent reasonable for the customer and in conformity with the relevant trade practice, to a maximum of 500 units = 20 %, 501 – 3,000 units = 15 % exceeding 3,000 units = 10 %. The quantity actually supplied each time will be invoiced.
 - b) Excessive or insufficient supplies by THIMM Display, THIMM Display Service and THIMM Packaging Systems up to 10 % of the ordered quantity cannot be objected. The quantity actually supplied shall be calculated. In case of custom-made products of less than 1,000 pieces, the percentage shall be 20 % and 15 % in case of less than 2,000 pieces.

- c) Delivery dates and deadlines shall be extended reasonably in the event of force majeure and unforeseeable disturbances occurring after the signing of the contract which are beyond THIMM's control (including but not limited to natural disasters, pandemics, wars, operational breakdowns, strikes, lock-outs, unforeseen and significant traffic stoppages). This shall also apply, if these circumstances occur at the place of THIMM's suppliers' place of business or their subcontractors.

If the disturbance lasts more than 6 weeks, both customer and THIMM are entitled to terminate the contract.

If the delivery period is extended due to a circumstance described in Clause 4 c) or if THIMM is entitled to refuse the performance due to circumstances described in Clause 4 c) and/or if THIMM or the customer is entitled, due to these circumstances, to withdraw from the contract, then the customer cannot derive any compensation claims from this.

5. For each delivery of goods supplied on pallets, the customer shall return the loading units to THIMM or its logistics provider in the same manner and quality as it received them. THIMM keeps a palette account for each customer of the pallets it owns or which are owned by the commissioned service provider.
6. Delivery dates and deadlines are not binding if they have not expressly been guaranteed. If a delivery date or deadline is non-binding, after a separate request, a reasonable grace period shall be granted by the customer. After this period has expired THIMM is in default.
7. If the economic situation of the customer deteriorates considerably after the conclusion of the contract, or if after the conclusion of the contract, it becomes clear to THIMM that its entitlement to payment from the customer is at risk due to a lack of ability to perform on the part of the customer, then THIMM is entitled to refuse the performance and to switch the agreed payment method for further deliveries from the overall business relationship with the customer to advance payment and to immediately call due any existing receivables as a deviation from the individually agreed payment term.

A considerable deterioration of the economic situation of the customer is to be assumed when and so long as a commercial credit insurer, in full or in part, refuses cover for the customer's receivables.

8. THIMM is entitled, irrespective of its own contractual and statutory obligations, to have its deliveries and performances provided by third parties.

§ 7

Warranty for Material Defects

1. THIMM shall be held liable for specific properties of a packaging with respect to its suitability for a defined use only if warranted in writing. When using and implementing individual THIMM products and services, the customer is required to check carefully whether such use or implementation should indeed be made or whether it may have a damaging impact on its own production and operations.

Public statements, recommendations or promotional statements made by THIMM shall not be understood as a description of the contractual quality of the goods.

2. The customer shall immediately review the articles as well as the pre-fabricated and semi-finished products sent for remedy for their conformity with the agreement. The risk of any defect passes to the customer upon release for printing/approval of the samples, unless the defect occurs or is detected only in the production process following the release for printing/approval of the samples. The above shall also apply to all other approvals through the customer.
3. Any declarations of conformity, quality agreements, or specifications supplied by THIMM do not represent warranties in the legal sense. Any legally binding warranties must be explicitly named as such by THIMM.
4. For defective goods, THIMM shall, at its own discretion and choice, make warranty by performing rework or replacement. In case of only slight nonconformity with the contract, particularly with respect to minor defects, the customer shall have no right of rescission.
5. a) The customer is under the obligation to check any services, goods or products from THIMM

upon receipt for defects. Any transport damages must be documented if possible at goods-in on the receipt note and notified to THIMM separately. Obvious defects are to be notified in writing to THIMM within 10 working days. Otherwise, the enforcement of warranty claims shall be excluded.

b) The customer must notify of a non-obvious ("hidden") defect in writing within 10 working days from discovering this defect. Clause 5 a) shall apply accordingly.

6. THIMM is not liable for deviations customary in trade and for deviations of quality and workmanship which cannot be avoided (trade practice). Evaluation of trade practice and/or technical avoidance is performed on the basis of verification catalogues for corrugated board boxes laid down by the VERBAND DER WELLPAPEN-INDUSTRIE e.V., DARMSTADT, as well as in accordance with the relevant DIN standard for CORRUGATED BOARD PACKAGES as amended, which will be sent to the customer on request.
7. If technical values such as paper grammages, ECT or BCT values for the products to be delivered by THIMM are determined or stated, negative production-related deviations or tolerances of up to 10% as well as unlimited positive production-related deviations or tolerances up to the respectively stated technical values apply as admissible.
8. Printing of EAN bar codes shall be performed according to state-of-the-art in compliance with the relevant regulations of the CCG.

Further commitments – in particular statements with regard to the reading quality of the cash registers used in the trade – cannot be made due to possible negative influences on the bar codes occurring after leaving our plant and due to the lack of a uniform measuring and reading technique.

9. The warranty for material defects shall be one year from delivery date. This shall not be applicable if even longer time periods are considered by law, compare to the following § 8 (4) sentence 2 of these Terms.

§ 8

Limitation on Liability

1. THIMM shall be held liable without limitation in the event of damage to life, body and health attributable to a wilful or grossly negligent breach of an obligation on the part of THIMM, its legal representatives or vicarious agents, as well as for damage covered by liability under Germany's Product Liability Act and for damages attributable to a wilful or grossly negligent breach of obligation and of a guarantee expressly accepted by THIMM or any breach of data protection.
2. THIMM shall incidentally also accept liability in the event of damage caused by ordinary negligence, but only if this negligence involves the breach of such contractual obligations, of which only their fulfilment enables the due and proper implementation of the contract and on which compliance the contractual partner regularly trusts and must trust (significant contractual obligations such as the defect-free delivery of the good). However, THIMM shall accept liability only if the damage is typically associated with the contract and is foreseeable with a maximum of five times the order volume of the relevant order.
3. The liability limitations set out above also apply as far as the liability of legal representatives, executives and other vicarious agents of THIMM is concerned. Any further liability is excluded, irrespective of the legal nature of the asserted claim. To the extent that liability on the part of THIMM is excluded or limited, this also applies to the personal liability of its executives, workers, staff members, representatives and other vicarious agents.
4. Claims for damages become statute-barred after a calendar year as from delivery of the goods or fulfilling performance, irrespective of the customer's knowledge of the cause of the damage and/or who caused it. The short statute-barred period shall not apply in case of gross negligence or intent on the part of THIMM nor shall it apply in case of physical or fatal injury of persons for which THIMM is liable or any other case if even longer statute-barred period is considered by law.

§ 9

Withdrawal o (Transport-) packages

According to § 15 Abs. 1 VerpackG as a manufacturer or distributor of packaging that is not subject to system participation, we are obliged to commercial and private end consumers to take back used, empty packaging material for our goods of the same type, shape and size as those placed on the market by us free of charge for reuse or recycling. This does not apply to the (transport) packaging produced by us as sales goods. The decision to make use of the return option is the responsibility of the customer. The return can take place at the place of the actual handover, in its immediate vicinity or in the context of recurring deliveries, unless the customer disposes of the packaging material himself (as before).

§ 10

Reservation of Title

1. THIMM reserves title to all goods supplied until full payment has been received from the customer. THIMM also reserves title to the delivered goods until complete settlement of all obligations arising from a current business relationship. This shall also apply, if individual obligations were used for settling current accounts and the balance was accepted.
2. The customer undertakes to duly insure the reserved goods against loss and theft and evidence such insurance to THIMM. The customer hereby assigns in advance its claims arising from the insurance contract to THIMM. THIMM accepts this assignment
3. The customer is authorized to sell the reserved goods in the ordinary course of business. The customer is not permitted to assign the goods by way of pledging or security. Upon agreeing with these general terms and conditions, the customer assigns all claims arising from the sale of the reserved goods and asserted against its customers including all ancillary rights to THIMM. THIMM accepts this assignment.

The customer acting as trustee for THIMM is authorized to collect the assigned debts as long as the customer fulfils its obligation towards THIMM to pay and has not become insolvent.

4. Should the value of securities exceed the debts to be secured by more than 10 %, THIMM undertakes to make available the securities exceeding by 110%. The choice of securities to be made available are at THIMM's discretion.
5. In case of processing or a combination with other goods not belonging to THIMM, THIMM becomes owner or co-owner of the new item in relation to the value of the goods supplied by THIMM at the value of the other processed items.
6. As soon as the customer is in default of payment and/or insolvent, THIMM is entitled to demand the immediate provisional return of all goods kept under reservation of title, without fixing another time limit and to the exclusion of any existing right of retention.
7. The customer is under the obligation to immediately notify THIMM of any accesses by third parties to the goods subject to the reservation of title and of any other damages to the goods by stating the documentation necessary for an intervention.
8. Print plates, dies and associated drawings (hereafter tools) also then remain in the sole ownership of THIMM when the production or procurement was invoiced in full or in part to the customer. THIMM is entitled to destroy these tools six months after the last execution of an order in which the tools were used, without any financial compensation from THIMM to the customer ensuing. Until such period the customer can request the return of the tools at its own cost.

§ 11

Protective Rights

1. THIMM reserves its rights of ownership and Intellectual Property Rights and all other rights to any forms, patterns, illustrations, printing plates, drawings or other technical documents it makes available. The customer may only use these in the manner agreed.
2. In case that THIMM makes delivery based on the customer's prescribed requirements or data, the latter shall be responsible that, in connection with the delivery or information, no rights of third parties are infringed. The customer exempts THIMM from the duty to verify the legal position.

Should third parties in this case assert a claim against THIMM with respect to infringing any protective rights, the customer undertakes to exempt THIMM, upon the first written request, from such claims and from all requisite expenses in connection therewith.

§ 12

Place of Performance, Jurisdiction, Data Protection and Applicable Law

1. Place of performance and exclusive jurisdiction for all deliveries and payments, as well as all disputes in connection therewith shall be THIMM's principal place of business or place of the establishment as chosen by THIMM. THIMM is also entitled to file a claim at the customer's place of business.
2. The law of the Federal Republic of Germany applies exclusively in its currently applicable version with the exception of conflict rules of international private law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, as well as other international regulations on sale and service contracts also shall not apply.
3. From a data protection perspective according to Art. 6 Abs. 1 lit. b. GDPR THIMM is responsible for the processing of personal data of the customer based on the execution of the contract. Personal related data of the customer are solely processed for the execution of the contract. Personal data of the customer are not forwarded to any other third party without prior approval of the customer. Personal data will be deleted if they are not needed by THIMM any longer for the purpose of the execution of the contract unless THIMM has the obligation according to Art. 6 Abs. 1 lit. c. GDPR to store the relevant personal data for any legal requirement or tax purposes or if the customer agreed to the extended storage period according to Art. 6 Abs. 1 lit. a. GDPR.
The applicable data protection regulation stipulates the following rights for the customer due to the processing of his personal data:
 - Right of access according to Art. 15 GDPR,
 - Right of rectification according to Art. 16 GDPR,
 - Right of erasure according to Art. 17 GDPR,
 - Right to restriction of processing according to Art. 18 GDPR,

- Notification obligation according to Art. 19 GDPR,
- Right to data portability according to Art. 20 GDPR,
- Conditions for consent according to Art. 7 Abs. 3 GDPR as well as
- Right to lodge a complaint with a Supervisory Authority according to Art. 77 GDPR.

For further information please see www.thimm.com/gdpr

4. As far as these General Terms and Conditions of Purchase require amendments in writing, it is also accepted to proceed by e.g. E-mail or telefax.
5. On request these general terms and conditions of Sale and Delivery will be transmitted to the customer per email.

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