

# General Terms and Conditions of Purchase of Thiele GmbH & Co. KG



## § 1 Orders

I. Following General Terms and Conditions of Purchase are valid for all order of THIELE GmbH & Co. KG. For future orders these General Terms and Conditions shall apply without any need of express reference thereto.  
II. Variations of these General Terms and Conditions of Purchase only become part of agreement, if these variations are content of an explicit written individual agreement between us and the Supplier.  
III. General Terms and Conditions of the Supplier are objected. They only shall apply, if we have expressly confirmed the same in writing. Acceptance of delivery without reservation or payments shall not be regarded as implied affirmation to the General Terms and Conditions of the Supplier even without expressly objection.  
IV. Applicable for content and coverage of deliveries and performances is the written and undersigned order under comprehension of these General Terms and Conditions of Purchase.  
V. All supplements, amendments, etc need written form for their effectiveness.  
VI. Decisiveness of written orders applies to all other declarations, commitments etc. given by our staff.

## § 2 Term and Time of Delivery

I. Supplier shall not be entitled to delivery in instalments.  
II. Time of delivery mentioned in the written orders is binding. Applicable for observance of delivery date is entrance of goods at the place, defined by us.  
III. In case of default of delivery of the Supplier, we are able to claim compensation for every complete week of delay about 1 %, altogether not exceeding 5%, of the value of goods delivered (invoice grand total without V.A.T.) of the goods or performances affected by delay. The parties are free to prove considerably lower of higher damages. The acceptance of a delayed delivery remains unaffected to any claim of damage caused by delay.  
IV. If the Supplier does not perform within a reasonable period of grace set by us, we have the right to withdraw from the contract and, in case of negligent breach of duty by the Supplier, to claim for compensation of damage caused by delay or instead of performance. Compensation for damages contains additional costs for material procurement by us or third parties and loss of profit.  
V. In case time is agreed to be of the essence in terms of § 376 HGB (German Commercial Code) exercise and enforcement of claims of damages do not need a prior period of grace.  
VI. If the Supplier invokes "discharging circumstances", especially incidents of force majeure, he is obliged to immediately inform us about the facts and the anticipated duration in writing. An offence against this duty of notification leads to an loss to invoke on these discharging circumstances.

## § 3 Force Majeure

I. All circumstances of force majeure, occurrence of unforeseen and/or inevitable and/or extraordinary incidents, such as interruption of operation, strike and labour conflicts of any kind that are out of our responsibility, discharge us from our obligation of acceptance.  
II. We have the right to withdraw from the contract, if a circumstance as mentioned above under I. lasts longer than one month; the Supplier is not entitled to claim compensation for damages therefor.  
III. In all other cases the contractual duties elongate accordingly.

## § 4 Price and Terms of Payment

I. All prices agreed upon are net-prices including delivery to our works and costs for packaging. Respective statutory V.A.T. has to be shown separately.  
II. All prices agreed upon are fixed prices. Any contract clause which allows an one-sided increase in price by the Supplier is objected. If the Suppliers costs of raw materials or manufacturing rise, he shall bear the price risk. The Supplier has neither right to raise prices and depend delivery upon Purchasers agreement to the risen prices nor to withdraw from the contract. Different only comes into force if there is a case of doctrine of frustration regarding § 313 BGB (German Civil Code).  
III. Every delivery of goods – even part deliveries expressly agreed upon by the Purchaser – shall enclose a bill of delivery, which indicates the accurate purchase order number, article description, sort, condition and respective quantity of goods.  
IV. Invoices shall be sent in single execution by the Supplier at the day of shipping of the goods. Invoices, which do not meet the requirements, are handed back without establishing delay of payment.  
V. Payment will be made within 14 days from receipt of proper invoice and goods with a 3% discount or net within 30 days from receipt of proper invoice and goods.  
VI. Payments can be made by any means of payment in choice of the Purchaser, even including cheques, promissory notes or acceptance.  
VII. We reserve the right under legal requirements to retain the whole purchase price or a part of the purchase price or to offset.

## § 5 Intercompany Settlement

I. In excess of § 4 para. VII we have got the right to offset with all our own claims and claims of related companies against claims of the Supplier and claims of companies related to the Supplier.  
II. Furthermore in case of delay of payment or in case of deterioration in financial position the settlement of claims with different due dates is admissible. In such cases as previously mentioned offset or settlement is admissible, if originally payment by note or any other performance on account of performance has been agreed upon.

## § 6 Assignment and Delegation

I. Assignment of claims of the Supplier out of this contractual relationship requires our prior consent in writing.  
II. Without prior consent in writing the Supplier is even not allowed to delegate other contractual duties or rights.

## § 7 Shipment / Packaging

I. Our specific and general shipping instructions shall be observed exactly in any case; the Supplier is liable for all claims of damages arising out of the non-observance.  
II. We are waiver customer. Concerning the ADSP we declare ourselves to be prohibited / waiver customer. We explicitly prohibit to supply an indemnity insurance in our favour. In an individual case, we can provide a general confirmation of insurance coverage for submission in G/E.  
III. If costs for packaging materials that are subject to reshipment are charged by the Supplier, in case of reshipment the whole amount has to be credited. Reshipment takes place on expense of the Supplier.

## § 8 Passing of Risk

I. The risk of accidental loss passes to us upon handover of the unloaded goods - unloaded by the Supplier or the forwarding company - at our head office or any other point of delivery defined by us.  
II. Handover of the unloaded goods is also applicable in those cases our staff is assistant in unloading.  
III. Paragraphs I. and II. do apply accordingly by free delivery to our authorized representatives or authorized distributors.

## § 9 Receipt of Goods

I. Receipt of goods only takes place during our common business hours.  
II. Only those deliveries are contractual, which correspond in sort, state and workmanship to the drawings, samples and configurations forwarded by us for the order.  
III. If we insist upon initial sample or release specimen before, serial delivery shall start only upon our written acceptance of samples.  
IV. Any kind of concern, which exists on the part of the Supplier against the construction chosen by us as well as evident mistakes in drawings and samples, shall be immediately notified in writing. In such a case of notification execution of order shall start only upon a further written notice by us.

## § 10 Objection Duties / Complaint

I. We comply with our commercial inspection duties by material testing upon arrival in line with the industry standard on unloaded goods in our ordinary course of business concerning variations in identity that are noticeable from the outside and quantity. According to the duration and intensity of the business relation and previous quality-results, further individual good related material testing upon arrival will be performed.  
II. If any material testing upon arrival carries out defects, we are entitled to apply for warranty claims concerning the whole delivery.  
III. Where applicable examinations after AQL take place.  
IV. Notice of defects is on time, if we send a written notice of defects within 14 days after discovery of the defect to the Supplier; in case of obvious defects the term of 14 days starts with receipt of goods.  
V. Previous regulations apply likewise to over and under delivery, as well as for delivery of other licensable good as mentioned in § 377 HGB (German Commercial Code).  
VI. We only take the amount of goods or number of items we have ordered. Over or under deliveries are only acceptable by a prior agreement with us.

## § 11 Warranty

I. If a defect occurs within six month since passing of risk it will be assumed that the goods have already been defect in the moment of passing of risk unless this assumption is incompatible with the kind of goods or the kind of defect.  
II. In case of a well founded notice of defects the Supplier is entitled to rectification of defects (removal of defects) and replacement on our choice. Supplementary performance of the whole delivery can be asked for even if only a part of the delivery has been defect. The Supplier shall bear all expenses within the scope of supplementary performance.  
III. In case of insignificant variations from the agreed character of the goods or in case of insignificant disturbance from suitability we are entitled to withdraw from the contract or claim compensation for damages.  
IV. If the Supplier is not able to execute supplementary performance, the Supplier does not meet the demand within the set time limit, the supplementary performance fails or fixing of a time limit is superfluous, we have the right to reduce the purchase price, to withdraw from the contract, to claim for compensation for damages. This compensation claim contains all costs of a potential replacement purchase or rather costs for rectification of defects by third party.  
V. Compensation for damages contains all appropriate causal damages caused by the defect good.  
VI. If a defect is not identifiable by prior testing of materials and so defectiveness of the delivered goods first can be detected during production process, the Supplier is liable, as far as he is responsible for the defectiveness, in addition to his duty of supplementary performance for all damages, which arise out of termination and delay of production as well as for already performed useless expenses (such as labor costs).  
VII. Compensation for damages also includes such damages, which results out of the fact that installation or mixing led to a defective product. In individual cases compensation for damages therefor contains compensation for damages and expenses, we are liable for in scope of legal warranty deeds or recourse (§§ 476f. BGB (German Civil Code)).  
VIII. For products of the Supplier, by Supplier delivered goods or orders carried out by the Supplier a period of warranty of three years applies, unless the legal period of warranty leads to a longer period. In such cases the legal period of warranty shall apply including the provisions about liability upon recourse (§§ 438, 479 BGB (German Civil Code)) and suspension of the running of time according to § 479 para. 2 BGB (German Civil Code).  
IX. If a supplementary performance has taken place, the warranty period in terms of the replaced or rectified goods begins to start anew, as long as the same cause of defect is affected.

## § 12 Product liability

I. For all defects on the goods which result on Suppliers fault, the Supplier releases us and, as far as necessary, our customers upon first demand from product liability resulting in defects insofar the Supplier would be liable directly.  
II. The Supplier is obliged to carry out all necessary measures within the scope of duty of surveillance by our order, in particular cases even warnings and product recalls. Costs that arise to us out of such measures have to be born by the Supplier.  
III. The Supplier shall insure himself adequately against all risks arising out of product liability. Proof of insurance shall be provided on demand.

## § 13 Quality Inspection

The Supplier has to perform adequate quality inspections, in order to make sure that the products meet the demanded quality requirements. The performed inspections shall be documented continuously. We reserve our right of inspection of documentation of inspection.

## § 14 Proprietary Rights

I. The Supplier is liable therefor that use or reselling of the delivered goods does not infringe any industrial property rights of third parties (patents, utility patents, trade marks, licences or licensing rights and so on).  
II. In case of any breach of proprietary rights of third parties the Supplier releases us from all claims.  
III. In case of legal proceedings because of an infringement of proprietary rights the Supplier is obliged to provide security to the amount of the imminent damage.

IV. Furthermore the Supplier shall bear all judicial and extrajudicial costs and expenses in relation with legal proceedings because of an infringement of proprietary rights.  
V. Beyond that this kind of infringement allows us to withdraw from the contract with the Supplier.

## § 15 Samples, Drawings, etc.

I. All samples, drawings, design models and contractual documentations, specifications, material directives, building codes, we provide to the Supplier, stay our title and have to be handed back latest with the last delivery out of the order or on demand.  
II. The Supplier is obliged to keep all drawings, models, samples, instructions manuals or other documents secret, that we provided to the Supplier in context with implementation of the contract. The supplier is not allowed to duplicate the previous mentioned documents etc., to allow third parties to take access to or provide it to third parties in any other way without our prior written consent.  
III. Furthermore it is prohibited to the Supplier, to deliver to or to produce for third parties tools or devices - produced on our drawings, models or samples - or goods produced with such tools - irrespective of their production stage - without our prior consent in writing. This applies also to all objects, which were developed on our details, ideas, plans or any other kinds of support (trials, testing etc.). Intellectual property rights and - as far as legally admissible - copyright on the previous mentioned objects belong to us. In case of any offence against these contractual obligations the Supplier has to pay damages on us because of all damages arising out of the offence.

## § 16 Export Control

I. The Supplier is obliged to observe all applicable national, European and US-American export control regulations, including all European or US-American lists of sanction or other personal embargos (altogether "export control regulations").  
II. The Supplier is obliged give us unrequested notice under mentioning of the correct AL- or ECCN numbers in such cases, the delivered goods or their parts are listed in the export control list, annex I or IV or in CCL.  
III. The Supplier is obliged to inform us immediately in writing in any case the Supplier detects circumstances after conclusion of contract which justify the presumption of a possible or actual violation of export control regulations. If we detect circumstances after conclusion of contract which justify the presumption of a possible or actual violation of export control regulations, we give notice to the Supplier in writing.  
IV. In any case in which circumstances which justify the acceptance of a possible or actual violation of export control regulations, a default in taking delivery for us is excluded for an adequate time period, to give us the opportunity of proof.  
V. If infringements of export control regulations have been positive detected or can not be excluded, we have, after our choice, the right to withdraw from the contract or to cancel such part deliveries that substantiate the assumption of infringement.  
VI. The Supplier is obliged to exempt us from every damage, which results on the default or non fulfillment of the obligations of the Supplier from this number or sub-numbers. Damages to be replaced also contain the replacement of all necessary and adequate charges which arise for us or have arisen, particularly the costs and expenses of a possible defence, as well as possible official orders or fines.

## § 17 Supplied Materials

I. Materials supplied by us remain our title.  
II. They have to be stored separately and have to be adequately insured against fire, water, theft or other damage events by the Supplier.  
III. Materials supplied by us shall only be used according to the rules.

## § 18 Workings in our Work

Persons, who enter our work in performance of delivery contracts, are subjected to our work rules.

## § 19 Compensation for Damages

I. Compensation for damages of the Supplier based on whatever legal grounds, especially because of breach of duty out of the contract or tortious act, shall be disclaimed. This shall not apply for liability for intent or gross negligence, because of damage to life, body or health or because of breach of fundamental contract obligations.  
II. In case of breach of fundamental contract obligations compensation for damages shall be limited to the typically predictable damage, as far as limitation is excluded because of intent or gross negligence or because of damage to life, body or health.

## § 20 Data Protection

I. The Supplier is obliged to observe the legal regulations on data protection (such as Bundesdatenschutzgesetz (German Data Protection Act)) and to ensure and to supervise compliance with the regulations. The Supplier shall impose these obligations on all persons that are assigned with execution of this contract.  
II. The Supplier processes personal data only in the scope of the order and our instructions according to § 11 BDSG.  
III. After termination of the contractual relationship handed over personal data only may only be recorded or stored in any other form by the Supplier, if legal or contractual period of storage require further storage. Otherwise documents containing personal data shall be handed back to us or - after consulting us - be destroyed by the Supplier according to data protection rules.

## § 21 Miscellaneous

I. The contractual relationship shall be exclusively governed by the laws of the Federal Republic of Germany without regard to its provisions on the conflict of laws and the UN Treaty on the International Sale of Goods (CISG) which shall be expressly excluded.  
II. Place of performance even for our payment duties will be Iserlohn or our work, if we have not agreed on otherwise expressly.  
III. Sole place of venue for all disputes among the parties arising out of and in relation to this business relationship is district court of Iserlohn or county court of Hagen.  
IV. We are entitled to process all data regarding the supplier according to BDSG (German Data Protection Act).  
V. If present terms of purchase should become legally ineffective in certain parts, the effectiveness of the remaining terms and conditions shall not be affected.  
VI. These general terms are executed in German and English. In case of doubt German version shall prevail.