

General Terms and Conditions (GTC)

For THIMM Verpackung - THIMM SCHERTLER Verpackungssysteme - THIMM Display - THIMM Display Service - THIMM Print - THIMM PrePress Services

A / Scope

§ 1

These General Terms and Conditions shall exclusively apply to all contracts – also future contracts – of any nature between THIMM and the customer or supplier, 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 are available on the Internet at www.thimm.de and can be printed.

§ 2

Other general terms and conditions of the customer or supplier are not accepted. Such general terms and conditions shall only be part of the agreement if expressly acknowledged by THIMM in writing or electronically. The acceptance of goods without reservation shall not be deemed such an acknowledgement. Customers pursuant to the General Terms and Conditions are suppliers and buyers.

B / Conditions of Sale

§ 1

Conclusion of the Agreement

1. Offers made by THIMM are not binding, unless a written engagement has been made.
2. Purchase orders of the customer shall only become effective, if confirmed by THIMM in writing or in qualified electronic form in accordance with the Digital Signature Act. THIMM's field service personnel shall neither be authorized to sign a contract nor to receive payments.
3. Data required for the processing of the contract are retained by THIMM. Any disclosure to third parties for commercial reasons will not be effected. On request, such data will be transmitted to the customer together with these general terms and conditions per email. THIMM is exempted from any further obligation to give information stipulated in section 312 e sub-section I item 1 – 3 BGB.
4. 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.
5. We are entitled to assign all claims arising from our business relationship to third parties.

§ 2

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. After expiration of the credit term the customer is in default of payment.

During the time of default, the customer shall pay interest on the money debt amounting to 8 % above the base interest rate pursuant to section 247 BGB. The right to claim a higher damage caused by default shall be reserved.

3. If the customer is in default of payment, THIMM
 - a) is not obliged to any further delivery under any contract until settlement of the outstanding money debt 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.
4. Offsetting against counter claims shall only be permitted, insofar as accepted by THIMM or recognized by declaratory judgement or ready for court decision.
5. The customer may exercise the right to retention only if the customer's counter claim is based on the same contract.

§ 3

Delivery

1. Unless expressly agreed otherwise in writing or electronically, 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. 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 5,000 units = 20 %, 5,001 – 30,000 units = 10 % exceeding 30,000 units = 5 %. The quantity actually supplied each time shall be calculated.

Excessive or insufficient supplies by THIMM Display and THIMM SCHERTLER Verpackungssysteme 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.
 - b) In case of force majeure and unforeseeable disturbances occurring after the signing of the contract which are beyond THIMM's control (breakdowns, strikes, lock-outs, traffic stoppages), the delivery time shall be reasonably extended. This shall also apply, if these circumstances occur at the place of THIMM's suppliers' place of business or their subcontractors.
 - c) If the disturbance lasts more than 6 weeks, both customer and THIMM are entitled to terminate the contract.
4. For each delivery of goods supplied on pallets, the customer shall concurrently return to THIMM the same number of pallets of equal standard as received. THIMM keeps an account of all pallets it owns for each customer. On request, the customer receives a statement of this account.
5. Delivery times are without obligation, unless they are expressly confirmed as binding in writing or by a qualified electronic medium. In case of a delivery time without obligation, a grace period of 14 days will be granted. After this grace period has elapsed, the customer is entitled to grant THIMM a reasonable time for delivery. After this period has expired without any result, THIMM will be in default.
3. Legally founded warranties require the express written statement by THIMM.
4. For defective goods, THIMM shall, at its own discretion and choice, make warranty by performing rework or replacement.
5. Should the subsequent performance fail, the customer may, at its own choice, claim reduced payment (reduction of purchase price) or cancellation of the contract (withdrawal). In case of only slight nonconformity with the contract, particularly with respect to minor defects, the customer shall have no right of rescission.
6. Should the customer choose to terminate the agreement due to defective title or defect after the subsequent performance failed, the customer shall have no right to claim damages due to the defect.
7. a) The customer shall notify any obvious defect within two weeks from receipt of the goods in writing. Otherwise, the enforcement of warranty claims shall be excluded. The timely dispatch to THIMM is deemed compliance with the set period.
 - b) A non-obvious defect ("hidden defect") has to be notified in writing within two weeks from discovering this defect. Clause a) shall apply accordingly.
8. 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.
9. 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.

§ 4

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.

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.

§ 5

Limitation on Liability

1. THIMM is liable for damages in accordance with these provisions on the basis of concluded contracts for any legal ground including default, bad performance and non-contractual liability,

10. The warranty for material defects shall be one year from delivery of the goods.

- a) without limiting the extent of damage for damage caused intentionally or by gross negligence by the legal representatives or executives of THIMM, as well as for damage caused by serious organisational faults and for personal injuries;
 - b) with limitation to foreseeable damages which might typically occur under the contract
 - aa) for each slight infringement through negligence of material contractual obligations,
 - bb) for gross negligence or intent by the vicarious agents of THIMM - except for personal injuries - ,
 - cc) for personal injuries caused by neglect of duty independent from fault (no-fault-liability),
 - c) in all other cases limited to the amount of the contractual net remuneration for each case of damage.
- 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 obliged to notify THIMM without delay about any seizure of the reserved goods through third parties, as well as about other damage inflicted on the goods, while submitting evidencing documents required for an intervention.

Liability according to the Product Liability Act shall not be affected by the above regulations.

§ 7 **Protective Rights**

- 2. 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 THIMM's part, neither shall it apply in case of injury or fatal injuries of persons THIMM is liable for.
- 1. 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.
 - 2. Should third parties 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 expenses in connection therewith.

§ 6 **Reservation of Title**

- 1. THIMM reserves the title to all goods supplied 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.

C / Conditions of Purchase

§ 1 **Conclusion of the Agreement**

- 1. Purchase orders shall only become effective if placed by THIMM in writing or in qualified electronic form in accordance with the Digital Signatory Act.
- 2. The technical specifications stated in THIMM's purchase order as well as the characteristics of the contractual item according to the technical descriptions shall be binding upon the supplier.
- 3. The information provided by the supplier in safety data sheets, declarations of no objections or specifications shall be deemed warranted properties of the goods.
- 4. In case of purchase orders for printed matters, die plates, printing plates and stamps, corrections or proof printings shall be submitted to THIMM in appropriate numbers for approval prior to starting production.

§ 2
Delivery

1. Deadlines and periods agreed upon are binding. Deliveries are deemed made in time upon receipt at the receiving location defined by the buyer.
2. The supplier is obliged to compensate the buyer's damages caused by default.
3. Cases of force majeure, strikes, riots, measures by authorities, as well as other material, unforeseeable and serious circumstances exempt the contracting parties from their obligations throughout the term of the disturbance.

The contracting parties undertake to inform the other party immediately about the start and the end of such circumstances.

If, due to such circumstances, the delivery is delayed by more than one month, either party is authorized to withdraw from the agreement with regard to the part of the agreement affected by the delayed delivery.

4. The risk will pass upon receipt of the goods at the receiving location defined by the buyer.
5. Unless otherwise agreed, dispatch and packaging costs shall be at the supplier's expense. In case of ex works or ex supplier's warehouse prices, the goods shall be dispatched at the lowest costs, unless the buyer requires a special shipping mode. In case of franco domicile prices, the customer may also determine the shipping mode.

Additional costs for shipment by express required for the compliance with a set delivery date shall be borne by the supplier.
6. Shipping notes indicating the content as well as the entire purchase order shall be attached to each supply. The buyer is to be informed immediately about the dispatch of goods stating the above information.
7. In case of shipment on euro-pallets, only actually returnable pallets shall be used. Shipments on non-returnable and special pallets require our prior consent, unless they are required for technical reasons. The supplier will be charged with at-cost prices for damaged euro-pallets. Insufficient deliveries are generally excluded. Excessive deliveries are to be mutually consented.

§ 3
Billing and Payment

1. Invoices shall correspond to the purchase order regarding the order of items and prices including item numbers and cost centre.

2. Unless otherwise agreed in an individual case, payments shall be effected

within 30 days less 3 % cash discount
or
within 60 days net.

3. The term of payment commences upon accomplishment of the delivery and receipt of the invoice made out duly. Cash discounts are also permissible, if the buyer offsets or retains a reasonable amount due to defects. Payments shall not be deemed an acknowledgement of supplies with regard to quality, faultlessness and quantity.
4. Without prior written consent of the buyer, which shall not be rejected unduly, the supplier is not authorized to assign its non-cash claims or have them collected by third parties. Section 354 a HGB (German commercial code) shall apply to claims for money.

§ 4
Material Defects

1. The buyer shall immediately inform the supplier in writing about any defects detected in the course of ordinary operations. The supplier renounces the objection of a delayed notice of defect.

2. The supplier shall grant a two-year warranty.

Third parties' rights to assert claims for defects shall become statute-barred at the earliest 2 months after the elimination of the defect at the third party. This suspension of expiry of prescription shall terminate at latest 5 years after delivery to the buyer.

3. In case of delivery of defective goods prior to or upon passing of risk or in case of defects occurring during the warranty period, the supplier shall at its own expense and at the buyer's choice either eliminate the defect or deliver new faultless goods.
4. If the supplier fails to comply with the obligation of subsequent performance or fails to fulfil it within a reasonable period of time, the buyer may withdraw from the contract without granting a further period and return the goods at the buyer's risk and expense.

In urgent cases, the buyer may – in conjunction with the supplier – remedy the defects itself or have them remedied by a third party. Costs incurred in this respect shall be assumed by the supplier. If necessary, THIMM may buy goods in replacement; Additional costs, if any, shall be borne by the supplier.

5. On request and at the expense of the supplier, the buyer shall immediately make available the goods involved in claims due to defects.
6. Unless otherwise agreed in the above provisions, the consequences resulting from defective supplies shall be governed by legal regulations.

§ 5
Liability

Unless otherwise agreed in an individual case, the legal regulations shall apply.

§ 6
Tools, Copyrights, Right to bear a Name

1. Insofar as THIMM provides the supplier with drawings, drafts, illustrations, printing plates, calculations, samples, tools etc. in order to execute an order, THIMM reserves the property and copy rights to such items. Without express written consent of THIMM, these items or the ideas embodied therein shall not be made available to third parties. Upon accomplishment of the order, the supplier shall return them to THIMM without specifically requested to do so and shall not disclose them to third parties.

The assertion of rights to retention regarding these items shall expressly be excluded.

If the supplier violates these obligations, THIMM is entitled to claim payment of a contractual penalty amounting to € 5,000.00 for each case of violation. The amount of the contractual penalty paid shall be credited against any further claim for damages.

2. Without THIMM's written consent, the name "Thimm" shall not be provided on print products.
3. Drafts, etc. established by the supplier with regard to THIMM's purchase orders as well as all rights connected therewith shall pass into THIMM's ownership upon payment. This shall also apply to any copy rights, tools, printing plates, etc. manufactured and invoiced in accordance with THIMM's purchase order.

D / Place of Performance, Jurisdiction, Supplementary Agreements

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.
2. Exclusively German law as amended shall apply. 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 shall not apply.
3. Should any individual provision in this contract be or become legally ineffective, the remaining provisions shall remain unaffected thereby. The ineffective or partly ineffective provision is to be replaced by a provision which conforms as closely as possible with the economic purpose of the ineffective provision.
4. Any undertakings, ancillary agreements, modifications and supplements to this contract require the written form, whereby in an individual case, this formal requirement can only be waived in writing.
5. The customer agrees that person-related data given when establishing or maintaining business relations are retained, and in particular saved, by THIMM according to § 26 BDSG (German data protection act).

On request, these General Terms and Conditions will be transmitted to the customer per email. THIMM is exempted from any further obligation to give information stipulated in § 312 e sub-section I item. 1 – 3 BGB.

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