

The following Terms and Conditions do not apply to the USA and Canada

Terms and Conditions

of tmax Germany GmbH and Thermisol GmbH (hereinafter: tmax)

1. Scope

(1) All tmax deliveries, services and offers shall take place, with the exception of the aforementioned, exclusively on the basis of these T&Cs, if the contractual partner (hereinafter: Client) is a Contractor within the meaning of § 14 BGB [German Civil Code] and the contract relates to the operation of the company and in relation to legal persons under public law and special funds under public law within the meaning of § 310 Para. 1 BGB. The T&Cs are consequently parts of all contracts tmax concludes with the aforementioned Clients for deliveries and services it offers. The T&Cs also apply to all future deliveries, services or offers to the Client, even if they have not been separately agreed upon once again.

(2) The Terms and Conditions of the Client or Third Party do not apply even if tmax does not separately object their validity in individual cases. Even if tmax makes reference to a letter that includes or states the T&Cs of the Client or a Third-Party, or tmax unreservedly makes a delivery in the knowledge of the Client's T&Cs, this does not imply agreement with the validity of those terms and conditions.

2. Offer and Conclusion of Contract

(1) All tmax offers are subject to change and are non-binding, unless expressly marked as binding or if they contain a specific acceptance period. tmax can accept orders or commissions within 14 days of receipt.

(2) The respective contract concluded in writing is solely decisive for the legal relationship between tmax and the Client, including these T&Cs. This fully reflects all agreements between the contracting parties on the subject of the contract. Verbal commitments made by tmax prior to concluding this contract are not legally binding and verbal agreements of the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they continue to apply with binding effect.

(3) Supplements and amendments to the agreements made, including to these T&Cs, must be made in writing in order to be valid. With the exception of the managing directors and authorised signatories, tmax employees are not entitled to make verbal agreements which deviate from this. To comply with the written requirement, telecommunication shall suffice, particularly fax or email, provided that a copy of the signed declaration is sent.

(4) tmax information regarding the object of the delivery or service (e.g. weight, dimensions, use values, maximum capacity, tolerances and technical data) and representations of the same by tmax (e.g. drawings and images) are only approximate, as far as the usability does not presuppose an exact conformity for the purpose provided for in the contract. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Standard trade deviations and deviations, which are made on the basis of legal provisions or represent technical improvements, are permissible as well as the substitution of components with equivalent parts, provided they do not impair the usability for the contractually intended purpose.

3. Prices and Payment

(1) Prices apply to all of the services and scope of supply listed in the order confirmations. Additional or special services will be charged separately. Prices are ex-works in Euros plus packaging, VAT, duty for export deliveries as well as fees and other public charges.

(2) All offer prices are calculated based on the existing drawings and data sets as well as at the price of raw materials at the time the offer is created. tmax reserves the right to increase prices accordingly six weeks following conclusion of the contract, if price factor increases occur following the conclusion of the contract. In particular this includes material manufacture, material and product procurement, wage and non-wage labour costs, social contributions, energy costs and costs arising from environmental or currency regulations. tmax shall immediately inform the Client regarding price factor increases and provide evidence upon request. If due to the price adjustment, the new price is 20% or more than the original price, the Client is entitled to withdraw from contracts that are not yet fully performed. The Client can assert this right, however, only immediately after notification of the increased price.

(3) Invoice amounts are due without any discount and within thirty days, unless otherwise agreed in writing. The receipt by tmax is the decisive date for payment. Cheques are only considered as payment once they have been cashed. If the Client does not make payment by the due date, all existing amounts from the date due shall bear interest at 9 percent over the basic rate of interest in accordance with § 247 BGB; the enforcement of higher interest and further damages in the event of default payment shall remain unaffected.

(4) Off-setting with counterclaims or the right of retention of payments against such claims by the Client is only permitted, insofar as the counterclaims are undisputed or are counterclaims from the same contractual relationship. Right of retention can only be applied by the Client if his counterclaim concerns the same contractual relationship.

(5) tmax is entitled to only undertake outstanding deliveries or provide services in return for prepayment or security deposit, if it becomes aware after conclusion of the contract of circumstances capable of significantly reducing the creditworthiness of the Client and through which the Client's payment of outstanding receivables to tmax compromises the latter as a result of the respective contractual relationship (including other specific contracts covered by the same framework contract).

4. Delivery and Delivery Period

(1) Deliveries shall be ex-works.

(2) Deadlines and dates proposed by tmax are only approximate unless a fixed deadline or date has been promised or agreed. If shipment has been agreed, refer to delivery times and dates at the point of handover to the forwarder, freight forwarder or other third parties commissioned with the transportation.

(3) tmax can request an extension or postponement of the delivery and service dates and deadlines for the period in which the Client fails to fulfil its contractual obligations towards tmax, without prejudice to its rights arising from client default.

(4) tmax shall not be held liable for the inability to deliver or for delays to deliveries, insofar as this is due to force majeure or other events which were unforeseeable at the point of concluding the contract (e.g. malfunctions of any kind, difficulties in procuring materials or energy, transportation delays, inter-company strikes, lawful lockouts, a lack of workforce, energy or raw materials, difficulties procuring the necessary official permits, regulatory measures, particularly also events caused on the basis of the Protection Against Infection Act, or the non-delivery,

incorrect or untimely delivery by suppliers) for which tmax is not responsible. Within the meaning of this paragraph, force majeure shall apply to all events whose occurrence and effects on the contractual performance of the Terms and Conditions cannot be avoided through reasonable measures, particularly those events which are beyond its control (particularly natural catastrophes like storms, floods, earthquakes and other events, like wars, uprisings, terrorist attacks, boycotts and inter-company strikes, and epidemics). tmax is entitled to withdraw from the contract if such events significantly impede or make impossible the delivery or service by it, and if this obstruction is not merely temporary. In case of obstructions of temporary duration, delivery deadlines or delivery dates shall be extended or postponed by the period of time of this obstruction plus an appropriate lead time. Insofar as the Client cannot reasonably be expected to accept the delivery or service due to the delay, it may withdraw from the contract through prompt written confirmation sent to tmax.

(5) tmax is only entitled to make partial deliveries, if

- the partial delivery is suitable for the Client within the context of the contractual purpose,
- the delivery of the remaining goods ordered is assured and
- thus shall not incur considerable additional expenditure or costs for the Client (unless tmax agrees to pay these costs).

(6) If tmax defaults on a delivery or service, or if a delivery or service becomes impossible for whatever reason, tmax is liable to compensation which is limited subject to clause 8 of these T&Cs.

5. Place of Performance, Postage, Packaging, Transfer of Risk, Acceptance

(1) The place of performance for all obligations resulting from this contractual relationship is Mannheim, unless otherwise specified. If tmax is also responsible for installation, the place of performance will be the place where the installation took place.

(2) The type of postage and packaging are subject to duly exercised discretion by tmax.

(3) Insofar as tmax is not responsible for installation, the risk is transferred at the latest upon handover of the delivery item to the carrier, freight forwarder or other particular third-party to carry out the shipment to the Client, whereby the start of the loading procedure is decisive. Should the shipment be delayed in such cases or the transfer be delayed as a result of a circumstance whose cause lies with the Client, the risk shall pass to the Client from the day on which the delivery item is ready for dispatch and tmax must notify the Client regarding this.

(4) Storage costs following transfer of risk shall be borne by the Client. Should tmax provide storage, storage costs shall be 0.25% of the invoice amount of the delivery items to be stored per lapsed week. The enforcement and evidence of greater or lower storage costs are reserved.

(5) tmax shall only dispatch upon the express wish of the Client and at the cost of the latter shall be insured against theft, breakage, transport, fire and water damage or other insurable risks.

(6) Insofar as receipt has taken place, the delivery item shall be deemed as accepted if

- the delivery and installation has been completed, if tmax is also responsible for installation,
- tmax has notified the Client of this with reference to the notional acceptance in accordance with 5.6 and has prompted the Client to accept,
- twelve working days have passed since delivery or the Client has started using the delivery item (e.g. the delivery item has been put into operation), whereby the dates start at the earliest upon receipt of the aforementioned informal communication, and in this case when six working days have passed since delivery or installation and
- the Client has failed to expressly accept within this period for a reason other than a defect notified to tmax, which makes the use of the delivery item impossible or impairs it significantly.

6. Warranty and Material Defects

(1) The warranty period is one year from delivery or, insofar as acceptance is required, from acceptance.

(2) The delivered items must be carefully inspected promptly following delivery to the Client or third party designated by him/her. This applies with regard to obvious defects or other defects, which would have been identifiable through an immediate and thorough inspection, as approved by the Client, if tmax does not receive a written notification of defects within seven working days after delivery. With regard to other defects the delivery items will be deemed as approved by the Client if he/she has not sent tmax a notification of defects within seven working days after the date the defect became apparent; if the defect was already recognisable to the Client at an earlier point in time during normal use, however, this earlier point in time is decisive for the start of the complaint period. Upon tmax request, a rejected delivery item must be sent back to tmax carriage paid. In the case of a justified notification of defects, tmax shall reimburse the costs of the cheapest shipping route; this does not apply if the cost increases due to the delivery item being in a different place to that where it is intended to be used.

(3) For materials defects of delivery goods, tmax is obliged and entitled to initial repair or replacement according to their choice within a reasonable period. In the event of failure, i.e. impossibility, unacceptability, refusal or undue delay to the repair or replacement, the Client can withdraw from the contract or reduce the price appropriately.

(4) If a defect is due to a fault by tmax, the Client can request compensation pursuant to the specific conditions in 8.

(5) tmax cannot remedy defects found in components from other manufacturers due to licensing and factual grounds. At their discretion, tmax will assert their warranty claims against the manufacturers and suppliers on behalf of the Client or assign them to the Client. Warranty claims against tmax exist only in the event of such defects under the other requirements and in accordance with these T&Cs, if the legal enforcement of the aforementioned claims against the manufacturer or supplier were unsuccessful or are pointless due to bankruptcy for example. During the legal dispute the statute of limitations for the relevant warranty claims made by the Client against tmax is suspended.

(6) The warranty does not apply if the Client changes the delivery item without tmax approval or has a third party make such changes, and hereby it becomes impossible or unreasonably difficult to remedy the defects. In any case the Client shall bear the additional costs of remedying the defect arising from such change.

(7) A delivery of used items agreed with the Client in individual cases shall take place to the exclusion of any warranty for material defects.

7. Intellectual Property, Property Rights

(1) tmax shall retain ownership or copyright of all the submitted offers and estimates as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids. The Client must not make these items known, nor their content accessible, to third parties without express approval by tmax, nor must they use or make copies of them themselves or by means of a third party. He/she must return these items to tmax in full at the latter's request and destroy any copies made, even if they are no longer required in the proper course of business or if negotiations do not lead to the conclusion of a contract.

(2) In accordance with the provisions of clause 7 of these T&Cs, tmax is responsible for ensuring the delivery item is free from industrial property rights or copyrights of third parties. Either party must inform the other immediately in writing if claims are to be invoked due to the infringement of such rights.

(3) In the event that the item delivered infringes upon an industrial property right or upon copyright of a third party, tmax may modify or exchange the delivery item at its discretion and cost, in such a way that third party rights are not further infringed upon, the delivery item continuing to fulfill the agreed contractual functions, or by providing the Client with right of use through conclusion of a licence contract. If it fails to do so within a reasonable time, the Client is entitled to withdraw from the contract or reduce the price accordingly. Possible claims for damages by the Client are subject to the limitations of clause 8 of these T&Cs.

(4) In the event of legal infringements by products supplied by other manufacturers and delivered by tmax, tmax shall, at its discretion, either assert its claims against the manufacturers and sub-suppliers for the account of the Client or assign them to the Client. Claims against tmax exist in these cases in accordance with the provisions of clause 7 of these T&Cs, only if the judicial enforcement of the aforementioned claims were unsuccessful or are pointless due to bankruptcy for example.

8. Liability for Damages

(1) tmax liability for compensation, as well as due to legal reasons, shall be restricted according to clause 8 of these T&Cs, particularly due to impossibility, default, breach of obligations during contract negotiations and unauthorised action, to the extent that culpability is involved.

(2) tmax is not liable in the event of simple negligence of its executive bodies, legal representatives, employees or other vicarious agents, insofar as it does not constitute a breach of essential contractual obligations. Essential to the contract is the obligation of timely delivery and installation of the delivery item, its freedom from defects which more than merely insignificantly impair its functionality or suitability for use, as well as advisory, protection and care obligations which should allow the Client the contractual use of the delivery item or are intended to protect life or limb of the Client's personnel or to protect its property from substantial damage.

(3) Insofar as tmax is liable for damages pursuant to 8.2, this liability is limited to damages which tmax should have foreseen as a possible consequence of a breach of contract when the contract was concluded or which they should have foreseen when exercising due diligence. Indirect and consequential damages resulting from defects of the delivery item are only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

(4) In the event of liability for simple negligence, the obligation of tmax to pay compensation for property damage is limited to EUR 10 million, and for financial losses to an amount of EUR 250,000.00 per claim, even if it is a violation of essential contractual obligations.

(5) The above exclusions and limitations of liability apply to the same extent in favour of tmax executive bodies, legal representatives, employees and other vicarious agents.

(6) Insofar as tmax provides technical information or acts in an advisory capacity, and this information or advice is not part of the contractually agreed scope of services owed by it, this shall be free of charge and to the exclusion of any liability whatsoever.

(7) The limitations of clause 8 of these T&Cs do not apply to the liability of tmax for deliberate behaviour, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act.

9. Retention of Title

(1) The retention of title agreed below safeguards all existing current and future claims by tmax against the Client due to the existing supply relationship between the contracting parties (including balance receivables from a current account agreement limited to this supply arrangement).

(2) Items delivered by tmax to the Client remain the property of tmax up until the complete payment of all secured receivables. The delivered items and the delivered items covered by the retention of title taking their place in accordance with the following provisions are hereinafter referred to as "reserved goods".

(3) The Client shall store the reserved goods free of charge for tmax.

(4) The Client is entitled to process and sell the stored goods during the course of ordinary business upon until the enforcement event (Para. 9). Pledging and transfer of ownership are not permitted.

(5) If the reserved goods are processed by the Client, it is agreed upon that processing shall be undertaken in the name and on account of tmax as manufacturer, and tmax shall acquire direct ownership or, if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the reserved goods, co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur for tmax, the Client hereby assigns his future ownership or, in the above-mentioned relationship, co-ownership of the newly created object as security to tmax. If the reserved goods are combined or inseparably mixed with other items forming a single thing and if one of the other items is to be regarded as the main item, then tmax, insofar as the main object belongs to it, shall transfer proportionate co-ownership of the uniform item to the Client in the ratio specified in sentence 1.

(6) In the event of the resale of the reserved goods, the Client hereby assigns the resulting amount receivable against the purchaser by way of security to tmax, in the case of co-ownership of tmax to the reserved goods in proportion to the co-ownership share. The same applies to other receivables that occur for the reserved goods or otherwise arise with regard to the reserved goods, e.g. insurance claims or claims in tort in the event of loss or destruction. tmax revocably authorises the Client to collect receivables assigned to the Client in its own name. tmax may only revoke this direct debit mandate in an enforcement event.

(7) If third parties access the reserved goods, in particular by seizure, the Client shall immediately inform them regarding the tmax ownership and inform tmax of this to allow tmax to enforce its ownership rights. If the third party is not in a position to reimburse tmax for the judicial or extrajudicial costs incurred in this regard, tmax shall be liable to the Client for this.

(8) tmax shall release the reserved goods and the items or receivables replacing them if their value exceeds the amount of the secured receivables by more than 50%. The choice of items to be released afterwards lies with tmax.

(9) If tmax withdraws from the contract in the event of behaviour contrary to the contract on the part of the Client, in particular default in payment (enforcement event), it shall be entitled to demand the return of the reserved goods.

10. Confidentiality

(1) All specifications, design information, technical configurations and other information provided by tmax are the intellectual property of tmax (7.1) and are confidential. This information includes trade secrets which are the sole property of tmax. The Client may only pass this information onto, or reproduce it, for those employees who must be aware of the information in order to perform their duties and who agree in writing to keep this information confidential.

(2) The transfer to Client companies affiliated with the group requires the prior written consent of tmax, even if the company is not active in the same industry as the Client.

(3) All information provided by tmax must be received confidentially. The Client is obliged to apply the customary and reasonable care to ensure the information is stored confidentially. This also applies to planning documents expressly marked with a copyright reservation regardless of the form of their storage or embodiment.

(4) Excluded from this is information that was available to the Client in general through public or published sources, provided that such publishing does not breach these conditions or is due to a fault or omission of the Client, or was lawfully acquired from a source who is directly or indirectly subject to a non-disclosure obligation towards the Client or tmax, or was disclosed by a court order, or was disclosed to the general public with the prior written consent of tmax.

(5) This non-disclosure obligation is valid for two years after termination of the business relationship between the parties.

11. Data Protection

(1) tmax shall process personal data, insofar as is required for the fulfilment of this contract, pursuant to Art. 6 Para. 1, Lit. b General Data Protection Regulation (EU-GDPR). The responsible body (data controller) within the meaning of GDPR is tmax Germany GmbH, Ölhafenstr. 20-28, 68169 Mannheim, Germany. Personal data is information that relates to definite or definable natural persons. To processing belong the collection, gathering, organisation, saving, adaptation or change, readout, query, use, disclosure through transfer, distribution or any other form of provision, matching or linking, restriction, deletion or destruction.

(2) Processing shall take place for the purpose of fulfilling this contract and within the limits of what is necessary. Personal data will be collected as part of processing, collection and saving of tmax data, it will be used and transferred to third parties to the extent necessary, for example to suppliers, service providers and any other companies involved in the provision of services.

(3) The Client and its employees have the right of access to their personal data as well as well as a right to rectification, erasure or restriction of processing, furthermore a right to object to the processing and the right to transfer data to the Client, insofar as the legal requirements for this are fulfilled in each individual case. Further information can be found in the tmax privacy policy.

(4) tmax maintains current technical measures to ensure data security in compliance with the provisions of GDPR, in particular the protection of personal data against dangers during data transmission as well as against third parties gaining knowledge.

(5) tmax Data Protection Officer contact details: Roland Mons, my-dsb.com UG, Theodor-Heuss-Anlage 12, 68165 Mannheim, email: dataprotection@de.tmaxgroup.com, telephone no.: +49 (0) 621 - 911 090 80, Fax: +49 (0) 621 - 911 090 81.

12. Final Provisions

(1) If the Client is a businessman, a legal entity under public law or a special fund under public law, or has no general place of jurisdiction in the Federal Republic of Germany, at the discretion of tmax the place of jurisdiction is Mannheim or the Client's headquarters for all possible disputes resulting from the business relationship between tmax and the Client. For complaints made against tmax, the place of jurisdiction in these cases, however, is exclusively Mannheim. Mandatory legal provisions on exclusive jurisdiction remain unaffected by this regulation.

(2) The relationships between tmax and the Client are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

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