

General Terms and Conditions of Thermokon Sensortechnik GmbH

§ 1 Scope of application

All contractual relations between Thermokon Sensortechnik GmbH (hereinafter referred to as "the Manufacturer") and the Client

are exclusively subject to the following General Terms & Conditions (T & C). These shall also apply to all future business relationships, even in the event that they are not expressly endorsed again. These conditions are to be accepted latest by the time of delivery of goods or services, otherwise they shall be to have been deemed approved. Any of the Client's conditions that either conflict or deviate from the Manufacturer's T & C shall not be recognised, unless the Manufacturer has expressly consented to these in writing. The Manufacturer's T & C also apply when the Manufacturer has performed a delivery to the Client without reservation, despite being aware that the Client's conditions conflict or deviate from its own T & C. All agreements between the Manufacturer and the Client shall be made in writing.

§ 2 Offers and conclusion of contract

The Manufacturer's offers are subject to change and non-binding. In order that an order qualify as an offer in accordance with § 145 of the German Civil Code, the Manufacturer may assume this offer within 2 weeks. Declarations of acceptance, all orders and other verbal agreements shall only be conferred with legal validity upon the written or electronic confirmation of the Manufacturer; and orders from the Client are deemed to be binding proposals upon him. Additions and changes to concluded agreements, including these T & C, need to be in writing in order to be considered valid (§ 126 b of the German Civil Code). The Manufacturer's employees, with the exception of managing directors or proxies, are not entitled to enter into oral agreements that deviate from this.

Drawings, illustrations, dimensions, weights or other performance data are only binding once this has been expressly agreed in writing.

The Manufacturer reserves title or copyright to all submitted and transmitted documents or items (offers, pricing proposals, drawings etc.). The Client may not provide access to these documents and items to third parties, nor announce, use or reproduce them; either personally or through third parties, other than with the express consent of the Manufacturer.

§ 3 Prices

Unless otherwise agreed, the Manufacturer's prices quoted are understood to represent ex-warehouse excluding packing. Statutory VAT is not included in the price, but is recorded separately at the statutory rate on the date of invoice. Additional deliveries or services are charged separately.

§ 4 Delivery and performance schedules

Delivery times or deadlines and performance schedules or deadlines, either binding or provisional, that may be agreed upon must appear in writing.

In the event that a delivery or service is delayed in whole or in part, due to circumstances beyond the Manufacturer's responsibility, particularly events of force majeure, such as traffic congestion, strikes, fire, flood, power cuts, operational disruptions, activities of public officials, lockouts, shortage of materials or other unavoidable events - even when these occur to the Manufacturer's suppliers or subcontractors, and in cases of binding deadlines and schedules - the Manufacturer is entitled either to extend the delivery schedule by a reasonable period for the duration of the obstruction or to withdraw in part or in whole from the unfulfilled portion of the contract. The Client is not entitled to claim for damages deriving either from the Manufacturer extending the delivery schedule or freeing itself from its obligation. In the event of temporary hindrances, delivery and performance schedules are to be extended for the period of delay plus a reasonable time for preparation. Insofar that the Client does not acquiesce to accept the delivery or service due to the delay, the Client may withdraw from the contract with the Manufacturer with immediate effect, by doing so in writing.

The Manufacturer is entitled to perform a partial delivery or service at any stage, when the partial delivery fulfils the Client's intended use within the framework of the contract, and the delivery of the outstanding goods are ensured and do not encumber the Client with any significant expense or additional charges.

The Manufacturer's compliance to its delivery and performance obligations is premised upon the Client's timely and proper fulfilment of obligations. In the event that the Client defaults on acceptance, the Manufacturer is entitled to seek compensation for the resulting damage suffered; the incidence of acceptance default heralds the transfer of liability for incidental deterioration and accidental loss or destruction to the Client.

If, after completion of a contract, the Manufacturer's claims are vulnerable to the Client's inefficient performance, the Manufacturer may refuse to discharge his obligations. The right to withhold performance ceases to apply when the Client effects reciprocation or provides security thereto. The Manufacturer may specify a reasonable period within which reciprocation may be effected or assurance secured. If no payment materialises before expiry of this period, the Manufacturer is entitled to withdraw from the contract.

In the event that the Manufacturer defaults with a delivery or provision of service, or for whatever reason, a delivery or provision is impossible for him, the Manufacturer's liability to compensation is limited to § 11 of these T & C.

§ 5 Cancellation of orders and changes to orders

In all cases where completion or delivery of items ordered may be attributed to a default of the Client, the Client has to disburse the agreed compensation. The same applies when the Client reduces the volume of the order, after having received confirmation of the order. In such cases however, the Manufacturer must take into account expenses saved through alternative deployment of its work force or which he refrains from acquiring with malicious intent.

Additional orders and changes in the scope of services before or during the production phase should be issued by the Client separately. Changed orders and additional orders are not contained in the pricing of the Manufacturer's order confirmation and are to be settled separately. In this regard, additional services particularly include those where the Client requests adaptation to the items on order that differ from standard specification and comply to the Client's requirements.

§ 6 Proprietary rights

In the event that the Manufacturer is committed to supply an item according to the Client's specifications (drawings, models, samples, sketches etc.), the Client assumes responsibility that the rights of third parties are not infringed upon. In the event of willful infringement, the Client is obliged to indemnify the Manufacturer from any claim made by third parties upon initial demand.

§ 7 Transfer of risk

Risk of loss of or damage to the delivered item is transferred to the Client as soon as the acceptance procedure is performed for the work, or when the items have been handed to the dispatch personnel, or the shipment has left the Manufacturer's warehouse. Risk is transferred upon dispatch readiness from the Manufacturer to the Client. Upon transfer of risk, the Client bears liability for every type of loss of, or damage to the delivered item or work.

§ 8 Warranty

The Manufacturer's data on the delivered item or service and representations thereof are representative, insofar that their utility for a contractually intended purpose does not require a closer match. These are not guaranteed features, but are descriptions or designations of items to be delivered or services. Commercial deviations and variances due to legal provisions or technical improvements and replacement of components by equivalent parts are permissible, provided that they do not affect the suitability of the contractually intended purpose. The warranty period for material defects and defects of title is one year and commences upon transfer of risk. Used items carry no warranty when sold.

In regard to deliveries and services rendered by the Manufacturer, the Client assumes all responsibility for the examination and notification of these, in accordance with § 377 of the German Commercial Code. On conclusion of a service contract, § 377 of the German Commercial Code is applied correspondingly. Upon the transfer of risk or acceptance of a product, the Client must examine its functionality immediately and report any identified faults and hidden defects to the Manufacturer in a comprehensible manner, in writing within 7 days. The Client is obliged to provide the Manufacturer with all information and verifiable documentation required for determination of the defect. In the event that the Manufacturer cannot detect a defect upon examination, the Client is to bear the costs of an audit.

In the event that a fault has been detected, the Manufacturer is entitled to exercise the option of three attempts at repair or a new delivery (replacement). If subsequent performance fails, the Client is entitled to set a deadline and reserve his rights in accordance with § 437 Points 2 and 3 of the German Civil Code. The deadline must be made in writing and must be at least 14 business days in length. In the event that the Client calls for remedy of the defect and the Manufacturer determines that this is unjustified, the Manufacturer may claim for the expenses that have arisen from the Client.

If the Client is entitled to a statutory right of termination, this eliminates the obligation to compensation pursuant to § 346 Paragraph 3 Point 3 of the German Civil Code, only when the Client has complied with the diligence of a conscientious businessman.

The right to demand remedy from the Manufacturer is eliminated once compensation has been paid, even when the Client had previously demanded this.

Remedial claims are invalidated when the Client alters, or calls upon a third party to alter, the delivered item without the Manufacturer's consent, thereby making the defect unfeasible or unreasonably difficult to remedy. In any such case of modification, the Client is to bear the additional costs incurred for repair.

§ 9 Reservation of proprietary rights

The Manufacturer retains the ownership title of a delivered item until all payments accruing from the commercial relationship with the Client have been settled. The Manufacturer is entitled to repossess items that have been delivered, when the Client has behaved in a manner antithetical to the spirit of the contract, particularly default of payment.

Repossession avails the Manufacturer with a withdrawal from the contract. Following repossession, the Manufacturer is entitled to redeploy the item, and the proceeds be credited against the Client's liabilities - less reasonable redeployment costs.

The Client is obliged to treat the delivered item with care; and particularly to bear the costs of insurance against fire, flood and theft. In regard to required maintenance and inspection activities, the Client is to perform these duly at his own expense.

The Client is entitled to resell the delivered item during the regular course of business; however, he cedes to all the Manufacturer's claims for the invoiced amount (including VAT) from the return that may accrue from the resale to his customer or any other third party, and regardless of whether the delivered item has been supplied with or without further processing. The Manufacturer gives the Client revocable authorisation to collect receivables assigned to the Manufacturer on its account in his own name. This collection authorisation may only be revoked when the Client fails to discharge his obligations properly, and particularly whether an application for the opening of insolvency proceedings over the Client's assets has been lodged.

The processing or conversion of goods is always undertaken on behalf of the Manufacturer. In the event that the delivered item is processed together with others that do not belong to the Manufacturer, the Manufacturer shall acquire joint ownership in the new item as a proportion of the value of the delivered item (invoiced amount, including VAT) to the other items processed at the time of processing. Incidentally, processing of remaining items is to follow in a similar manner as to those that had been delivered under reservation. In the event that the delivered item has been mingled inseparably with those items that the Manufacturer had not delivered, the Manufacturer shall acquire joint ownership in the new item as a proportion of the value of the delivered item (invoiced amount, including VAT) to the other commingled items at the point of their amalgamation.

If the amalgam is composed in such a way that the Client's items are regarded as the essential constituent, then the Client is to transfer the proportional joint-ownership of the new items to the Manufacturer as agreed. The Client serves as custodian over items, both under sole or joint-ownership, without remuneration.

The Client also assigns security to the Manufacturer in lieu of the delivered item being associated with the property by third parties.

The Manufacturer undertakes to release the collateral owing upon request by the Client to the extent that the realisable value of the collateral exceeds the receivables (including all balance demands from the current account) by more than 10%, where these form the legal basis for present and future claims by the Manufacturer against the Client; the selection of collateral to be released in incumbent upon the Manufacturer.

In the event of seizure of the reserved goods by third parties, particularly attachment thereof, the Client is to allude to the Manufacturer's ownership and must notify the Manufacturer immediately so that he may assert his proprietary rights. Insofar that the third party is not in the position to reimburse either legal or extra-judicial costs to the Manufacturer arising from such a situation, the Client shall assume liability for these.

§ 10 Payment

The Manufacturer's invoices are due immediately. In cases of deliveries abroad, the Manufacturer is entitled to request that the Client seeks an indefinite letter of credit for the amount of the invoiced value of the goods from a major bank that may serve as collateral against claims for payment, based upon the legislation of the Federal Republic of Germany. In the event of payment default by the Client, the Manufacturer is entitled to levy compensatory interest of 10% above the European Central Bank basis rate at the time in question.

The interest rates shall be set at a lower level when the Client may prove a lower charge; proof of a higher forfeit by the Manufacturer is permissible. In the event that the Client does not comply with this payment obligation within a calendar week, the Manufacturer is entitled to cease further work.

Thus, consequent delays are not allowed in contractual penalty agreements.

Offsetting with counterclaims by the Client or withholding of payments on the basis of such claims is permissible only when the counterclaims are undisputed or have been legally established. This does not apply when the Client is practically forced to compensate a defective or incomplete service fully, by virtue of the exclusion to offset, even though he is entitled to counterclaim for fault rectification or completion costs. Moreover, the Client is entitled to exercise a lien insofar that his counterclaim is based upon the same contractual relationship.

§ 11 Limitation of liability

Damage compensation claims - regardless of legal grounds thereto -

lodged against either the Manufacturer or his agents or vicarious agents are excluded, insofar that intentional or grossly negligent behaviour is not in evidence. As long as the Manufacturer is not charged with deliberate breach of contract, his liability is limited to contractually typical and foreseeable damages.

In any case, the Manufacturer's liability remains unaffected by loss of life, bodily injury, loss of health, liability pursuant to the Product Liability Act and other claims arising from product liability as well as assumption of guarantee by the Manufacturer. In the event that the Client appeals for the assumption of a guarantee, he must possess burden of proof of the existence of a warranty claim. Similarly, the Manufacturer's liability for the culpable breach of contractual obligation, otherwise known as a "fundamental breach", that prevents an orderly execution of the contract; however in this case, liability

for compensation is limited to foreseeable and typical damage that may occur.

Insofar that the Manufacturer is liable for the reasons leading to damage compensation, this liability is limited to damages that, at the conclusion of the contract, the Manufacturer had foreseen as a possible consequence of a breach of contract or where the Manufacturer should have foreseen through the use of due care and attention. Indirect or consequential damage, as a result of defects in the delivered item are only eligible for compensation when the damage is occasioned through proper use of the item for its intended purpose.

In the case of liability for negligence, the Manufacturer's liability for property damage and pecuniary loss resulting therefrom is limited to an amount of € 10,000,000.00 per event, for a maximum of two insurance claims a year (according to the operational liability insurance in force at the time), even when it is in breach of a significant contractual obligation. Upon request, the Manufacturer will forward a copy of the insurance policy. In cases where the underwriter is released from the obligation to perform, and are based upon a breach of obligation by the Manufacturer, the latter undertakes the same level of coverage from its own resources.

Liability exclusions and limitations apply in equal measure to the benefit of institutions, legal representatives, employees and other agents of the Manufacturer.

§ 12 Assignment, applicable law, jurisdiction, place of performance and miscellaneous

The Manufacturer is entitled to assign its receivables for deliveries and services.

These General Terms and Conditions and the entire legal relationship between the Manufacturer and the Client are subject to the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

In the event of any legal dispute arising, either directly or indirectly, from this contractual relationship, the parties shall submit to the decision of the competent court within the exclusive jurisdiction of the registered headquarters of the Manufacturer, to the extent that the Client is a qualified merchant entity, as defined by the German Commercial Code, or special fund under German Public law.

The Manufacturer's registered business address is the place of performance.

Should any provision in the General Terms and Conditions, or any provision contained within another agreement, be or become unfeasible, this shall not affect the validity of other provisions or agreements. In the event that the Contract or these T & C contain any regulatory loopholes, these are to be substituted by those legally valid provisions that the contractual parties had agreed upon, for the commercial objectives of the Contract and these T&C, had they been aware of these omissions.

§ 13 Data protection

1. The COMPANY shall comply with the relevant legal provisions, and primarily the General Data Protection Regulation (GDPR), with regard to the CUSTOMER's personal data

2. The COMPANY collects, processes and uses the CUSTOMER's personal data if and insofar as required for the justification, fulfilment and termination of this Agreement.

The CUSTOMER's personal data is only collected, stored, processed and used for other purposes if required or permitted by law or if the CUSTOMER has given consent to do so.

3. The CUSTOMER is aware that it is necessary to collect, process and use the CUSTOMER's name, consumer and/or company characteristics, address, date of birth and bank details in accordance with Section 6 Paragraph 1 b) GDPR for implementing the pre-contractual measures and for fulfilling this Agreement.

4. The COMPANY may check the CUSTOMER's credit rating within the legally permissible scope and for the purpose of making a decision on the justification, fulfilment or termination of the purchase agreement.

Assumptions are made and processed in this respect regarding the CUSTOMER's future conduct. The CUSTOMER's address details are also used for calculating these assumptions.

The COMPANY shall use the services of rating agencies, such as SCHUFA Holding AG, Wiesbaden, Germany, or other third parties for these credit checks and transfer the CUSTOMER's data to these agencies and/or request information on the CUSTOMER from them for this purpose.

The data is collected, processed and used for this purpose in accordance with Section 6 Paragraph 1 lit. b) GDPR.

5. The COMPANY may, in particular, transfer the CUSTOMER's data to third parties if and insofar as this is necessary for implementing pre-contractual measures and for fulfilling this Agreement (e.g. for dispatch, assembling, installing, invoicing and customer service purposes) in accordance with Section 6 Paragraph 1 b) GDPR or otherwise for compliance with a legal obligation within the meaning of Section 6 Paragraph 1 c) GDPR. The COMPANY may also transfer this data to third parties (e.g. debt collection agencies) for debt collection purposes in accordance with Section 6 Paragraph 1 b) GDPR.

6. The COMPANY shall provide the CUSTOMER with free-of-charge information on the personal data stored which relates to the CUSTOMER upon request and in accordance with legal requirements. The CUSTOMER is entitled by law to request for their personal data to be corrected, deleted, restricted for processing or restricted for transfer to third parties. The CUSTOMER may further complain to the supervisory authorities.

7. The CUSTOMER may object to the potential use of their personal data (I) for the required performance of a task which is in the interest of the general public or is performed for the execution of public force transferred to the COMPANY or (II) for the required maintenance of the justified interests of the COMPANY or third party – as specified in Section 5 above, if applicable – in accordance with Section 21 Paragraph 1 GDPR, at any time by sending an informal notification to the COMPANY. The COMPANY shall no longer use the affected data once such objection has been received, unless the COMPANY can provide proof of prevailing, mandatory reasons for the use which are worth protecting.

The CUSTOMER may also object to the potential use of their personal data for direct advertising purposes in accordance with Section 21 Paragraph 2 GDPR, at any time and free of charge, by sending an informal notice to the COMPANY. The COMPANY shall no longer use the affected data for such purposes once such an objection has been received.

8. The responsible instance for all questions relating to data protection and for the execution of the rights described in Sections 6 and 7 is:

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represented by
Henning Koch und Ilja Borchers
Hauser Gasse 19b, 35578 Wetzlar

Telephone: +49 6441/67100-0
E-Mail: datenschutz@thermokon.de

The supervisory authority primarily responsible for the COMPANY is:

The Hessian Data Security Officer:

Prof. Dr. Michael Ronellenfitsch
Gustav-Stresemann-Ring 1
65189 Wiesbaden

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