

Theuma Group

General Terms & Conditions



1 Applicability

1.1 These General Terms and Conditions apply to agreements for purchase and sale or contracting of work (both of products and services, and with or without assembly) concluded by the Seller and the Buyer. The term "Seller" shall mean the party: (*Theuma NV [Company number 0440 316 949], Theuma DoorSystems NV [Company number 0422 748 071], Thura Machinefinanciering B.V. [Chamber of Commerce number 28098694], Theuma Metal Industries B.V. [Chamber of Commerce number 31037795] and Theuma DoorSystems B.V. [Chamber of Commerce number 32101833]*) who sells or installs the goods and/or services, and who carries out the works, and the term "Buyer" shall mean the customer who purchases the goods and/or services, or orders the works, and has them installed or carried out. The Seller and the Buyer are collectively referred to as the "Parties".

1.2 If the Parties agree exceptional stipulations in specific circumstances, then these exceptional stipulations shall prevail over the provisions of these General Terms and Conditions that conflict with them. Thus the Seller's General Assembly and Servicing Conditions, which will additionally be applicable if the Seller is responsible for assembly (only TDS BV), take precedence over any conflicting provisions in these General Terms and Conditions.

1.3 All offers by the Seller are without obligation.

The agreement only comes into effect by means of the written confirmation of the order/confirmation of assignment by the Seller, irrespective of whether the Buyer's order has been conveyed verbally, by telephone, electronically or in writing. If the description of the goods or the work in the Seller's quotation differs from the description in its confirmation of order/confirmation of assignment, only the latter shall apply.

The Buyer must notify the Seller in writing within 48 hours of receipt of the confirmation of order/confirmation of assignment of any inaccuracy in the confirmation of order/confirmation of assignment, after which only the confirmation of order/confirmation of assignment shall apply.

The Seller reserves the right, at its sole discretion, to refuse an order from the Buyer.

On delivery from stock or from the warehouse within 24 hours after conclusion of the agreement, the invoice shall replace the Seller's written confirmation of order/confirmation of assignment.

1.4 Only these General Terms and Conditions shall govern the agreement. The Buyer's General Terms and Conditions shall not be applicable, unless the Seller accepts them expressly and in writing.

1.5 Deviations from these General Terms and Conditions shall only be valid subject to specific written agreement from the Seller.

However, the Seller reserves the right to make minor changes prior to the delivery or implementation, to the extent that these do not adversely affect the goods, the works, the price or the delivery period.

2. price

2.1 Unless otherwise stipulated in writing by the Seller, all prices shall be:

- a. excluding VAT, costs and/or other charges or taxes;

Theuma Group General Terms and Conditions

b. based on a delivery EXW (Ex Works-Incoterms 2010) at the Seller's warehouse in Bekkevoort (Belgium) or Nijkerk (The Netherlands), excluding costs of delivery, transport and insurance.

c. inclusive of the costs of packaging.

2.2 In the event that after the offer of the Seller or after the conclusion of the agreement the costs for the Seller to deliver the goods and/or services or to carry out the works increase as a result of an increase in wages, social charges, labour costs, commodity prices, transport costs or changes in legislation (including taxes), provided the Buyer is given one month's notice, the Seller is entitled to increase the agreed price proportionally in relation to the increase in the cost price and to make this charge in the next invoice or at the next payment instalment.

2.3 Settlement for additions to or deductions from the work will take place in the event of changes to the agreement or to statutory provisions or government regulations, deviations from the amounts of provisional sums or of deductible amounts, and this shall also apply if settlement for additions to or deductions from the work has not been agreed.

2.4 Furthermore, the Seller shall be entitled to charge additional fees if these are due to circumstances which could not have foreseen when the agreement was concluded, for which the Seller cannot be held responsible and which are substantial relative to the price of the delivery.

Included in any event in such cost-increasing circumstances are frost or abnormal water levels.

If the Seller considers that such cost-increasing conditions have come into effect, it shall notify the Buyer thereof as soon as possible. In that case, the Parties will consult with each other at short notice to check whether indeed such cost-increasing conditions have come to pass, and if so, how the cost increase shall be reasonably and fairly reimbursed.

2.5 If the Buyer cancels a confirmed order, it shall be charged a fixed and irreducible indemnity of 25 % of the total sales and installation or implementation price, without prejudice to the right of the Seller to demand a higher indemnity for damages if it proves those higher damages.

3. Delivery and force majeure

3.1 Although the seller will make all reasonable efforts that are commercially feasible to achieve the agreed dates or deadlines for delivery or implementation, these dates are indicative and do not constitute a commitment as to result. Exceeded deadlines or delays in the delivery or implementation cannot give rise to compensation, unless the Seller has explicitly and in writing declared its agreement to this in advance. The amount of such compensation can never exceed 10% of the invoice price of the relevant goods, services or works.

The Seller reserves the right to make partial deliveries.

3.2 If any delay or postponement in the delivery and/or installation of the goods or services or the implementation of works is due to the Buyer, for whatever reason, the Buyer shall reimburse all resulting additional costs, such as for example storage costs, to the Seller. Where appropriate, the delivery will be

regarded as performed at the moment when the goods are placed in storage, and at that moment the risk for the goods shall pass to the Buyer and the latter shall pay the Seller.

3.3 The Buyer shall inspect the delivered goods immediately after receipt or installation and inspect the works carried out immediately after implementation. Complaints about quantities, about incorrect delivery, non-conformity or visible defects, can only validly be invoked by the Buyer at the moment of delivery on the transportation documents.

3.4 The Seller shall not be liable for any loss or damage that the Buyer may suffer as a direct or indirect consequence of facts or circumstances that prevent or postpone the delivery or installation of the goods or implementation of works, or make it impossible or considerably more difficult, expensive or uneconomical due to unforeseen circumstances or events beyond the reasonable control of the Seller.

The Seller shall then be entitled either to rescind the agreement in whole or in part outside of court, without being obliged to pay any compensation to the Buyer, and with retention of the right to payment in proportion to the part of the assignment performed, or to adjust the agreement out of court in a manner least burdensome to the Buyer so that performance is still possible. Before proceeding to this extrajudicial rescission or adjustment, the Parties will nevertheless at the written request of the Seller first ascertain what changes may be required to the contractual terms and conditions in order to ensure that the disadvantage referred to in this article may be limited or avoided, taking into account the interests of each of the Parties.

4. Ownership and risk

4.1 The goods will be delivered EXW (Ex Works-Incoterms 2010) at the Seller's warehouse in Bekkevoort (Belgium) or Nijkerk (The Netherlands), unless the Parties have agreed otherwise in writing. The risk of loss, damage and theft shall pass to the Buyer at the moment of delivery, which also includes the moment of making of the goods available for installation purposes, as well as the risk of the offer for sale of goods which, without legal reason, are not removed by the buyer.

In the event that the Buyer remains in default with respect to collection or removal of the goods, the Seller shall be entitled to store the goods at the Buyer's risk and expense in its own warehouses or with a third party, and the Seller shall be entitled, at its sole discretion either to immediately invoice the goods sold including storage costs, or to rescind the agreement and claim compensation for damages.

4.2 The goods remain the property of the Seller until full and final payment of the price, including any transportation costs, taxes and interest on overdue payments. During this retention of title, the Buyer shall not transfer ownership of the goods or encumber them with rights of third parties, except in the context of its normal business operations. The Buyer shall also make sure that goods sold with retention of title shall always recognizably remain the property of the Seller. If accordingly the Buyer sells or pledges the goods before the transfer of ownership, it must indicate to the third party that the goods are subject to the retention of title by the Seller, and that the Seller retains the option to demand payment of the amount corresponding to the value of the goods resold. In this case, the Buyer shall at the same time transfer its claims arising from the resale of the goods sold to the Seller, who hereby accepts this transfer.

4.3 If the Buyer continues to be in default with a payment obligation, the Seller can take back from the Buyer all the goods which are subject to retention of title. The Buyer hereby already authorises the Seller to have all the relevant goods returned at Buyer's expense and to have access for that purpose to the company premises, warehouses, factories, construction sites, etc. in order to enter them for the exercise of this right.

5. Guarantees and liability

5.1 Without prejudice to the other provisions of these General Terms and Conditions, the Seller guarantees that the goods delivered and works executed will meet the agreed specifications and are state of the art, and will be free of visible and hidden defects. Any other guarantees are expressly excluded. Thus, inter alia, no guarantees are given about the fitness for a particular use, unless expressly given in advance and in writing by an authorised representative of the Seller.

5.2 The Buyer must notify the Seller in writing of any complaints about quantities or visible defects – i.e. before removing the transport packaging – within a period of forty-eight hours after the delivery, or else they become inadmissible.

All other complaints are subject to the terms as described in:

“Theuma Group General Warranty Terms and Conditions”,

“Installation, Maintenance and Overcoating Instructions and Assessment Criteria” of the Theuma Group, Chapter 8.

This guarantee shall not be given unless the Buyer has stored the goods expertly and handled them in accordance with the accepted practice (including having protected them from moisture and heat). The duty of providing this evidence lies with the Buyer.

Provided that the Buyer has communicated the complaint in timely fashion and that it is covered by the guarantee and within the guarantee period, the Seller shall at its option and to the full and exclusive satisfaction of the Buyer, restore, improve or replace the defective goods, or refund the portion of the price of the order that is related to the defective part. If the Buyer neglects to give the written notice within the applicable term, this will be considered as an absolute and unconditional waiver of its complaints or claims with respect to such defects.

5.3 If the Seller also carries out assembly work, it is no longer liable for shortcomings in the work as soon as the work has been provisionally delivered to the Buyer, except to the extent of there being a shortcoming that is attributable to the Seller which could not have been reasonably discovered by the Buyer during the implementation or at the time of provisional delivery.

6. Invoicing and payment

6.1 For every customer, a file is opened with a credit insurer. If the file is approved, the terms of payment (unless otherwise provided by the Seller) are 30 days from invoice date net.

If a file is not approved, the payment must be made as follows:

Theuma Group General Terms and Conditions

- If the order is less than 10,000 EUR, the whole order amount must be paid before submission of the order;
- If the order is greater than EUR 10,000, half of the order amount must be paid before submission of the order; the remaining half must be paid before delivery of the goods.

6.2 If the Buyer neglects to pay the Seller's invoices on the due date, the Seller shall be entitled to rescind the agreement or to suspend further implementation of it, always without being obliged to pay any compensation, and with reservation of all other legal remedies, including claiming the outstanding payments and the claim to compensation.

6.3 Any amount due by the Buyer to the Seller that has not been paid on the due date, will be legally liable without notice of default to interest on arrears at the special interest rate determined by the Act of 2 August 2002 on combating late payment in commercial transactions. Furthermore, on top of the interest and the judicial recovery costs, a fixed fee shall automatically be payable, equal to 15 % of the amount due. The Seller expressly reserves the right to demand reimbursement of additional damage and recovery costs provided that it proves this higher damage.

6.4 If, in the Seller's opinion, the creditworthiness of the Buyer has deteriorated before the delivery of the goods or services or implementation of the works, the Seller may demand that the price be paid in whole or in part before the delivery or implementation or that a security be provided for payment by the Buyer in a form acceptable to the Seller.

6.5 The Buyer must pay all amounts owed by it fully and on time, without the possibility of any postponement, any suspension, any compensation or the bringing of a counterclaim against the Seller, whether on the basis of breach of contract, fault (including negligence), breach of legal obligations or any other reason whatsoever.

6.6 if the Buyer is declared bankrupt or in liquidation, or its bankruptcy or liquidation is applied for or demanded, or if a provisional administrator is appointed for the Buyer, or the latter becomes notoriously insolvent, the Seller has the right to immediately rescind the agreement in whole or in part and to take back goods that have been delivered and not yet paid for, without prejudice to its right to damages.

6.7 In the event of non-payment of an invoice on the due date, all other outstanding invoices become due and payable immediately and automatically, even if they relate to other sites.

6.8 If the Buyer must first give approval before the Seller may draw up an invoice, then the term 'invoice' hereinabove may be read as 'block invoice' or 'instalment invoice'.

7. Limitation of liability

7.1 Notwithstanding any other provision of these General Terms and Conditions, the Seller shall never in any way be liable on the basis of these General Terms and Conditions (or the underlying agreement) for any indirect, or consequential damages including (i) loss of income, or of actual or hoped-for profits or savings, (ii) loss of business or contracts, or of clientele or damage to reputation, (iii) claims of customers of the Buyer or of third parties. This limitation applies in any event and irrespective of the way in which

such damage or losses were caused: predictable or not, contractual or tort, negligence, breach of a statutory provision, strict liability, infringement of intellectual property rights, misrepresentation of facts, or otherwise.

7.2 Nothing in these General Terms and Conditions, however, will exclude or limit the liability of the Seller for its fraud or wilful misconduct, or for damage caused by death or personal injury caused by its negligence.

8. Intellectual property rights and confidentiality

8.1 All intellectual property rights (including trade marks, drawings and models, copyrights, know-how, database rights) relating to the goods or services or executed works or their preparation sold by the Seller (for example, sketches, drawings, descriptions, models, and calculations) remain the property of the Seller, save in the event of written agreement to the contrary.

Without prior written consent, the Buyer may not disclose or reproduce these data or works in any way whatsoever, whether or not in modified form.

8.2 Neither will the Buyer use, reproduce, display or disclose to third parties information about the methods for manufacturing or construction employed by the Seller, except to the extent that is strictly necessary for the relevant work or with the express prior permission of the Seller.

9. Privacy

With regard to your personal data, we refer to our privacy policy which you will find on our website www.theuma.com

10. Applicable law and disputes

These General Terms and Conditions and the underlying agreement are subject to Belgian law, to the exclusion of the Vienna Sales Convention.

All disputes relating to the origination, implementation or validity of these General Terms and Conditions or the underlying agreement, including extra-contractual or pre-contractual disputes, come under the exclusive jurisdiction of the courts of the judicial district in which the registered office of the Seller is located. Except that in addition the Seller retains the option at its sole discretion to initiate the dispute before a court with jurisdiction according to Belgian common law.