

Theuma Group

General Terms & Conditions



Theuma Group General terms and conditions for B2B transactions

1 Applicability

1.1 These general terms and conditions (hereinafter referred to as “General Terms and Conditions”) apply to all purchase, sale and/or work contracting agreements concluded between the seller and the buyer (hereinafter referred to as the “Agreement”). These General Terms and Conditions form an integral part of the Agreement.

The seller is defined as the party that is delivering goods and/or carrying out work. Depending on the circumstances, this party (hereinafter referred to as the “Seller”) may be:

- Theuma NV, with registered offices at Zandstraat 10, 3460 Bekkevoort, Belgium, and registered in the Belgian Crossroads Bank for Enterprises database under number 0440 316 949 (“Theuma”);
- Theuma DoorSystems NV, with registered offices at Zandstraat 10, 3460 Bekkevoort, Belgium, and registered in the Belgian Crossroads Bank for Enterprises database under number 0422 748 071 (“Theuma DoorSystems NV”);
- Thura Machinefinanciering BV, with registered offices at Sluiswachter 10, 3861SN Nijkerk, The Netherlands, and registered with the Dutch Chamber of Commerce under number 28098694 (“Thura Machinefinanciering”);
- Theuma Metal Industries BV, with registered offices at Sluiswachter 10, 3861SN Nijkerk, The Netherlands, and registered with the Dutch Chamber of Commerce under number 31037795 (“Theuma Metal Industries”); or
- Theuma DoorSystems BV, with registered offices at Sluiswachter 10, 3861SN Nijkerk, The Netherlands, and registered with the Dutch Chamber of Commerce under number 32101833 (“Theuma DoorSystems BV”).

The buyer is defined as the customer purchasing the goods or ordering completion of the work (hereinafter referred to as the “Buyer”).

The Seller and the Buyer are referred to collectively as the “Parties”.

1.2 The Buyer shall issue a contract offer to the Seller using the order form received from the Seller (hereinafter referred to as the “Order Form”).

The Agreement is concluded only when the Seller accepts the Buyer’s offer by responding with written confirmation of the order/confirmation of the work (hereinafter referred to as the “Order Confirmation”).

Quotations issued by the Seller shall not under any circumstances be considered as offers that will automatically result in the conclusion of an Agreement between the Parties following acceptance by the Buyer.

The Buyer must inform the Seller of any errors in the Order Confirmation, including any discrepancies between the Order Form and the Order Confirmation, in writing and within 24 hours of receipt of the Order Confirmation. The Buyer may notify the Seller of such errors via e-mail. If the Buyer fails to notify the Seller of any errors, an Agreement shall automatically be concluded between the Parties for the delivery of the goods and/or the performance of the work as described in the Order Confirmation.

2 Price

2.1 Unless otherwise agreed, all prices are:

- a. exclusive of VAT, costs and/or other fees and taxes;
- b. based on DAP delivery (Delivered At Place; Incoterms 2020);
- c. inclusive of the cost price of packaging.

2.2 In the event of any change in circumstances after the conclusion of the Agreement, article 5.74 of the Belgian Civil Code shall apply.

The Parties shall consider the following situations to be a change in circumstances as referred to in article 5.74 of the Belgian Civil Code:

- A significant increase in salary costs, social insurance contributions, labour costs, raw material costs or transport costs;
- A change in the regulations that apply to the Parties, including regulations relating to tax, which have a significant impact on the performance of the Agreement; and
- Increased costs as a result of frost or abnormal water levels.

3 Delivery dates and other deadlines

3.1 The Seller's obligation to deliver goods on a specific date, or to complete work before a set deadline, is a best efforts obligation. This means that the Seller must make reasonable efforts to respect the aforementioned deadlines, but that the Seller cannot be held liable simply for failing to deliver goods and/or complete work on time.

The Seller shall under no circumstances be liable to the Buyer for late delivery/completion if the delay can be attributed to circumstances outside of the Seller's control. This is considered to be the case if, for example, the Seller encounters delays in receiving deliveries from its suppliers.

3.2 The Seller reserves the right to make partial deliveries.

3.3 If any delay in the delivery of goods and/or the completion of work can be attributed to the Buyer, the Seller shall charge all of the resulting additional costs incurred – such as storage costs – to the Buyer.

4 Ownership and risk

4.1 Unless otherwise agreed, the risk of the loss of the goods is transferred to the Buyer on EXW delivery (Ex Works; Incoterms 2010) at the warehouse of the Seller in Bekkevoort (Belgium) or Nijkerk (The Netherlands).

4.2 Ownership of the goods shall be transferred to the Buyer only upon payment of the invoice amount plus any applicable interest and fixed sums of compensation owed in the event of late payment on the part of the Buyer.

For the duration of this period of retention of ownership, the Buyer shall not transfer ownership of the goods to third parties or otherwise allow a third party to encumber the goods under any commercial rights or commercial collateral arrangement. The Buyer shall also ensure that goods sold subject to retention of ownership remain visibly marked as the property of the Seller at all times. If the Buyer fails to pay the invoice amount, the Seller reserves the right to request that the Buyer returns all goods delivered subject to the retention of ownership arrangement. The Buyer shall return the goods, at its own cost, to the Seller's warehouse in Bekkevoort (Belgium) or Nijkerk (The Netherlands).

5 General liability clause

5.1 The Parties shall in no way be held liable for any indirect or consequential damage, including (i) loss of income, or actual or projected profits or savings, (ii) loss of turnover or contracts, loss of clients or reputational damage, (iii) claims made by customers of the Buyer or by third parties. This limitation shall apply in all cases and irrespective of the cause of any such damage or losses, whether or not the damage or loss could have been predicted, or was caused by a contractual or unlawful action, negligence, a breach of the law, objective liability, a breach of intellectual property rights, inaccurate information, or any other reason.

5.2 The amount for which the Parties can be held liable shall under no circumstances be higher than the invoice amount.

5.3 None of the provisions of these General Terms and Conditions shall release the Seller from liability in the event of:

- Deliberate action on the part of the Seller or a person acting on its behalf;
- A serious mistake on the part of the Seller or a person acting on its behalf;
- A mistake on the part of the Seller or a person acting on its behalf, where this mistake threatens or affects the life or physical integrity of another person.

5.4 Article 6.3 of the Belgian Civil Code is hereby expressly excluded, which rules out any form of extra-contractual liability in relation to the Agreements between the Parties, unless the damage arises as a result of physical or psychological harm or as a result of a mistake made deliberately, with the intention of causing damage. Remedies for damages caused by a failure to fulfil a contractual obligation that exists between the Parties shall be exclusively handled, within the

framework provided by law, under the rules of contract law, even when the event that caused the damage is considered an illegal act. The Buyer hereby rejects and excludes all extra-contractual liability claims relating to the present Agreement against employees, managers, directors, agents, delegates, sub-delegates or subcontractors of the Seller, with the exception of extra-contractual liability claims for damage arising as a result of physical or psychological harm or for damage that was caused by deliberate action.

6 Liability for delivered goods

6.1 This article sets out the Seller's liability for delivered goods, and therefore applies when the Seller delivers goods to the Buyer. This article applies without prejudice to article 5 of these General Terms and Conditions.

6.2 The Buyer shall inspect the goods for any visible defects at the time of delivery. The Buyer shall also check that the goods and the quantities delivered correspond to the information provided in the Order Confirmation.

The Seller shall only be required to provide a remedy to the Buyer for visible defects and incorrect deliveries if the Buyer informs the Seller of any such issues by registered letter within two working days of delivery.

6.3 The Seller shall only be required to provide a remedy to the Buyer for hidden defects if the Buyer informs the Seller of any such issues within 180 calendar days of delivery and within five (5) working days of the Buyer's discovery of the hidden defect. When notifying the Seller, the Buyer shall provide evidence in support of the claim. This article applies without prejudice to the Buyer's obligation to initiate any claims relating to hidden defects within a short period of time, in accordance with article 1648 of the old Belgian Civil Code.

6.4 If the Seller is required to provide a remedy to the Buyer in accordance with article 6.3, the Buyer shall initially only demand that the Seller repair the affected goods. The Buyer may only have the goods repaired by a third party after obtaining express written permission from the Seller. If such permission is not provided, the Seller will not reimburse the repair costs.

If the goods cannot be repaired or if the cost price of the repair is higher than the invoice amount, the Buyer may demand the replacement of the goods.

If the goods cannot be replaced or if the cost of the replacement is higher than the invoice amount, the Buyer may demand the dissolution of the Agreement or a reduction in price in accordance with general law.

6.5 The remedy requirement set out in article 6.3 shall not apply if the defects arose as a result of the Buyer's failure to store the goods correctly, or if the goods have not been handled appropriately (including protecting them against moisture and heat) by the Buyer. In such cases, the Buyer is responsible for the costs of any damage. The Buyer must prove that the goods were stored and handled appropriately by the Buyer.

6.6 The remedy requirement set out in article 6.3 applies only in the event of hidden defects that are considered to be of a serious nature. Damage that is solely aesthetic is not considered to be a hidden defect for which the Seller is required to offer a remedy to the Buyer.

6.7 The Seller cannot be held liable for any damage that occurs as a result of the installation of the goods by the Buyer at its customers' premises. The Buyer is responsible for ensuring that the goods are suitable for installation at its customers' premises. The Buyer shall indemnify the Seller against any such claims submitted against the Seller by customers of the Buyer.

7 Liability for contracting of work

7.1 This article explains the Seller's liability when it carries out certain works (contracting of work).

If the Seller delivers goods that are subsequently installed by the Seller at the Buyer's premises or at a location specified by the Buyer, the Agreement is considered a contracting agreement. In such cases, articles 5 and 7 of these General Terms and Conditions apply with regard to the liability of the Seller.

7.2 The Buyer shall inspect the work for visible defects at the time of provisional handover (i.e. when the work is deemed complete). If the Buyer does not have any comments at this point, the work is deemed to have been accepted by the Buyer; as a result, the Seller shall under no circumstances be required to remedy any visible defects identified in the future.

7.3 The Seller shall only be required to provide a remedy to the Buyer for hidden defects if the Buyer informs the Seller of any such issues within 90 calendar days of the provisional handover and within five (5) working days of the Buyer's discovery of the hidden defect. When notifying the Seller, the Buyer shall provide evidence in support of the claim.

This article applies without prejudice to the Buyer's obligation to initiate any claims relating to hidden defects within a reasonable period of time from when it becomes aware of, or could reasonably be expected to have been aware of, the defect.

7.4 If the Seller is required to provide a remedy to the Buyer in accordance with article 7.3, the Buyer shall initially only demand that the Seller repair the defect. The Buyer may only have the goods repaired by a third party after obtaining express written permission from the Seller. If such permission is not provided, the Seller will not reimburse the repair costs.

If the goods cannot be repaired or if the cost price of the repair is higher than the invoice amount, the Buyer may demand replacement of the goods.

If the goods cannot be replaced or if the cost of the replacement is higher than the invoice amount, the Buyer may demand the dissolution of the Agreement or a reduction in price in accordance with general law.

7.5 The remedy requirement set out in article 7.3 applies only in the event of hidden defects that are considered to be of a serious nature. Damage that is solely aesthetic is not considered to be a hidden defect for which the Seller is required to offer a remedy to the Buyer.

7.6 The remedy requirement set out in article 7.3 only applies if the work is performed by the Seller or another party working on the Seller's behalf. The Seller cannot be held liable for any damage that occurs as a result of work performed by the Buyer or a third party. The Buyer shall indemnify the Seller against any such claims submitted against the Seller by customers of the Buyer.

8 Invoicing and payment

8.1 Unless otherwise stated, all invoices issued by the Seller must be paid within 30 calendar days of the invoice date. If the Seller and the Buyer agree on advance payment, half of the price is paid as an advance when the order is logged and the other half is paid on delivery.

8.2 If the Buyer fails to pay the Seller's invoices by the payment due date, the Seller reserves the right to dissolve the Agreement or suspend the further performance of the Agreement, without being required to pay any form of compensation and while retaining all other legal rights, including the right to demand payment of unpaid sums and claim compensation for damages.

8.3 All amounts owed to the Seller that remain unpaid by the Buyer on the payment due date shall, without further notice being issued to the Buyer, incur statutory interest at the special base rate as specified in the Act of 2 August 2002 on combating late payment in commercial transactions. Furthermore, a fixed amount of compensation, equal to 15% of the amount owed, shall be charged to the Buyer on top of the interest and legal debt collection costs, as provided for by law. The Seller reserves the right to claim compensation for additional damage and debt collection costs, if it can be proven that these higher costs have been incurred.

8.4 The Buyer must pay all sums owed in full and on time, without recourse to any postponement, suspension, compensation or counter-action against the Seller, whether on the basis of breach of contract, errors (including negligence), violation of legal obligations or any other reason.

8.5 If the Buyer is declared bankrupt or becomes subject to a legal reorganisation or liquidation order, or if bankruptcy or legal reorganisation or liquidation is claimed or requested, or if an interim administrator is appointed for the Buyer, or if the Buyer is declared insolvent, the Seller reserves the right to immediately dissolve the Agreement, either fully or in part, and to repossess delivered goods that have not yet been paid for, without prejudice to its right to claim compensation for damages.

8.6 If an invoice is not paid by the payment due date, all other outstanding invoice amounts shall automatically become due immediately, even where such invoices relate to other orders.

9 Intellectual property rights and confidentiality

9.1 All intellectual property rights (including brands, drawings and models, copyrights, expertise and database rights) relating to goods or services sold by the Seller, or work performed or prepared by the Seller (such as sketches, drawings, descriptions, models and calculations) remain the property of the Seller, unless otherwise agreed in writing.

The Buyer may not publish or duplicate this information or work in any way, whether in the original or a modified format, without the prior written permission of the Seller.

9.2 The Buyer shall also refrain from using, reproducing or disclosing to third parties any information relating to the Seller's manufacturing or construction methods, unless strictly necessary for the performance of the work in question or after obtaining the express written permission of the Seller.

10 Applicable law and disputes

10.1 These General Terms and Conditions and the underlying Agreement are subject to Belgian law, to the exclusion of Belgian international civil law and the United Nations Convention on Contracts for the International Sale of Goods ("Vienna Convention").

10.2 All disputes in relation to the conclusion, performance or validity of the Agreement, including extra-contractual or pre-contractual disputes, shall fall under the exclusive jurisdiction of the courts of the legal district of Antwerp.

11 Notices

All notices exchanged between the Parties must be sent via registered letter, with proof of receipt, to the registered offices of the Party receiving the notice, unless expressly indicated and otherwise agreed between the Parties.

If the Agreement and/or the General Terms and Conditions state that notices may be exchanged via e-mail, the Buyer must use the following e-mail addresses as appropriate:

- Theuma NV: info@theuma.be;
- Theuma DoorSystems NV: info@theuma.be;
- Thura Machinefinanciering: info@theuma.nl;
- Theuma Metal Industries: info@theuma.nl; and
- Theuma DoorSystems BV: info@theuma.nl.

The Seller shall use the e-mail address held in its records for the Buyer.

Depending on the circumstances, notices will be deemed to have been received one working day after notification of receipt, or one working day after the date on which the e-mail was sent.

The Parties must share any changes to their address in accordance with this provision.

12 Other important clauses

12.1 The Agreement, and the rights and obligations that result from it for the Buyer and the Seller, are, unless otherwise agreed, non-transferable, whether directly or indirectly, without the prior written permission of the other Party.

12.2 The Agreement represents the full extent of the agreement between the Parties in relation to the object of the Agreement, and replaces all previous negotiations and agreements between the Buyer and the Seller in relation to the same object. If a previous agreement between the Parties applies to the present Agreement, this will be expressly indicated.

12.3 Unless otherwise stated in the Agreement, the Agreement may only be modified or amended via a further written agreement signed by appropriately authorised representatives of both Parties.

12.4 The Parties believe that all aspects of the Agreement are binding and valid.

However, if one or more provisions of the Agreement are found to be ineffective or invalid, the validity of the other provisions and the rest of the Agreement shall remain unaffected.

Provisions found to be ineffective or invalid shall remain binding insofar as legally permissible.

In such cases, the Parties undertake to replace the provisions that have been found to be ineffective or invalid with valid provisions that achieve the original intention of the Parties as closely as possible.

12.5 Even if the Parties are delayed in enacting the Agreement, the Parties may still enact the Agreement at a later stage. The Parties shall not view any delay in the enactment of the Agreement as the other Party waiving the rights granted under the Agreement.

12.6 The Agreement is exclusively subject to these General Terms and Conditions. The general terms and conditions of the Buyer shall not apply unless the Seller expressly accepts such terms and conditions in writing.

12.7 The Agreement has been compiled in a fair and balanced way and reflects the will of the Parties. The Buyer and the Seller declare that none of the provisions of the Agreement create an obvious imbalance between the rights and obligations of the Parties.

12.8 Unless otherwise stated, the term “working day” in these General Terms and Conditions is defined as: all calendar days except Saturdays, Sundays and days designated as statutory public holidays in Belgium.

12.9 In the event of any discrepancy between versions of these General Terms and Conditions published in different languages, the version in the Dutch language shall prevail.