

General terms and conditions of Heinz Thumm GmbH

General conditions

1.1 Our offers, services and deliveries are carried out exclusively on the basis of the following conditions. We are not under obligation to adhere to the terms and conditions of the client and the buyer; we explicitly disagree with those.

Offer and conclusion of the contract

2.1 Our offers are non-binding and without obligation. Declarations of acceptance require our written confirmation in order to be legally valid. The same is applicable for additions, amendments or collateral agreements.

2.2 The measurements, technical details and any other specifications provided in drawings, sketches and any other attachments to the offer are only approximately decisive and also without obligation.

2.3 All the offer documents are explicitly subject to our property and copyright law. They may not be made accessible to third parties without our explicit consent.

2.4 The same is also applicable for the sample devices that have been produced on the order of the buyer, provided no explicit property release has been made by us.

2.5. The contractor shall be at liberty to send an invoice for his services either by post or electronically via email.

Prices

Our prices are in Euros ex works, and do not include packaging, but include free loading on to the mode of transport.

3.1 The statutory value added tax is additionally applied.

3.2 The prices are subject to change. We reserve the right to prior sale of goods that are in storage.

3.3 Packaging material and packaging costs shall be charged to the account of the buyer. The packing can be returned only in case of a special agreement.

3.3 Surcharges and subsequent charges on the agreed payment are permissible in case extraordinary circumstances such as wage increases, strikes, lockout, increase in public charges, taxes, customs, etc. compel us to do so.

Terms of payment

4.1 Unless otherwise agreed upon, payment must be made, for complete as well as partial services, within 30 days from the notification of delivery and dispatch by us or from the date of invoice excluding compensation in cash without cash discount deduction. Compensation is possible only with legally titled claims.

4.2 We accept bills of exchange and cheques only in case of an explicit agreement with value on the date on which we are able to access the equivalent value, on account of payment and on the condition that a discount is possible for us. If this is not the case, we are entitled to demand immediate cash payment. Subsequently, the return of bill of exchange takes place after the cash payment.

4.3 Stamp duty, discount charges, collection charges and interest are due immediately.

4.4 Following any arrears of payment, amounts owed shall be subject to interest at a rate of at least 4% or the respective discount rate of the Federal Bank.

4.5 If circumstances that affect the creditworthiness of the buyer become known after the conclusion of the contract, all our receivables will be due for immediate payment, regardless of the term of the accepted bills of exchange. In this case, we are entitled to perform outstanding deliveries only against cash in advance. We are further entitled to prohibit the resale of goods already delivered, to take delivered, unpaid goods into our direct power of disposition and to sell the items on the most favourable terms available after the expiry of a further reasonable period of payment.

Delivery period

5.1 The delivery period shall be determined by us. It begins with the time at which the contract has entered into force through the acknowledgement (order confirmation).

5.2 The delivery deadline shall be deemed met if the delivery has left our plant before its expiry. It is also considered as met upon timely notification of the readiness for the shipment and even if the dispatch is impossible without our fault.

5.3 The adherence to the delivery period requires the fulfilment of the obligations of the buyer.

5.4 If any circumstances occur in our plant or on the subcontractor's that disturb, hamper or disable the production process, we are entitled to demand a reasonable extension or commencement of a new delivery period.

5.5 Events of force majeure release us from the adherence to the delivery periods without limitation of the right to subsequent delivery within reasonable time after elimination of the disturbance in service and delivery.

5.6 Insofar as the delivery period is extended in accordance with the preceding provisions, the buyer cannot derive any rights against us from the delay in delivery.

Transfer of risk

6.1 The risk passes to the buyer upon delivery to the buyer, collector or authorised haulier, but at the latest upon leaving the plant. This also applies when partial deliveries are made and additional services, such as delivery and installation, have been contractually undertaken by us.

6.2 Transport insurance is provided by us only upon express request. In each case, the costs of such insurance shall be borne by the buyer. The delivered goods must be accepted irrespective of any warranty claims even if they are slightly defective.

Reservation of proprietary rights

7.1 All the goods delivered by us remain our property until all the receivables from the business relationship are completely settled. This is applicable even for receivables from the repair services and spare parts delivery.

7.2 As long as our reservation of proprietary rights exists, the resale or the transfer of use based on other legal grounds, even in case of modified condition, is only permitted provided that all claims from the resale or transfer to third parties amounting to our receivables shall be considered as assigned to us, without requiring a special declaration of assignment in the individual case.

7.3 Handling and processing of the goods delivered by us is carried out for us excluding the acquisition of property according to § 950 German Civil Code (BGB), without any obligation on our part. The processed goods act as security for our pending claims. In case of processing or connection with other goods, we are entitled to co-ownership of the new item, and in the ratio of the value of the reserved goods to the processed goods at the time of processing.

7.4 In the event that goods delivered by us but have not yet been paid for, are sold by the buyer, the assignment of the purchase price claim amounting at the price invoiced by us or in the amount of the value of a processed good shall be considered as agreed.

7.5 The buyer must immediately notify us of any sale, execution or other impairment of the goods delivered by us. The costs of lien release to be carried out shall be borne by the buyer.

7.6 The buyer is obliged - as long as receivables are outstanding - to provide all information without restrictions at any time and to provide all documents that are necessary to secure our claims, including substitute claims.

Warranty of Thumm products

8.1 For defects in material or for processing errors, we accept liability with the exclusion of further claims and rights of the buyer, regardless of the legal grounds, from the day of the goods leaving our plant. If no start date has been communicated to us, the delivery date is considered ex works by Thumm.

8.1.1 Guarantee period: Thumm grants a warranty period on its product that it is free from defects with respect to materials and processing for a period of 24 months from the date of commissioning to the first user, but not longer than 30 months from the date of purchase by the contractual partner.

Parts that have been repaired or replaced under a warranty in the above mentioned agreement by Thumm or its contractual partner are granted a warranty period under conditions of normal and correct use, storage, service and maintenance for processing and materials, for a period of twelve (12) months from the date of repair or modification or expiry of the product warranty, whichever is valid for a longer period.

Thumm original spare parts are warranted to be free from defects in terms of materials and processing for a period of three (3) months from the date of purchase. Products restored in the factory are warranted to be free from defects in terms of materials and processing for a period of twelve (12) months from the date of purchase.

8.1 Complaints about defects must be made immediately and in writing and within a period of two weeks after receipt of the delivery at the destination. The two-week period also applies to defects that cannot be detected despite careful checking during delivery, and in this case, the period begins with the date of discovery of the defect.

8.2 The assertion of warranty claims assumes that the buyer has fulfilled his obligations and has followed operating instructions. No liability exists for defects and damages that arise due to improper or careless handling or excessive use. Liability shall also be ruled out when defects occur due to handling or processing of the goods outside our factory.

8.3 In the case of timely assertion of a justified complaint, we are either entitled to eliminate existing errors and defects or to provide free replacement of the original delivery goods or to issue a credit note for the calculated value or partial value.

8.4 For products from external sources or processed parts delivered by us, we are liable only to the extent to which our subcontractor has to fulfil warranty claims.

8.5 After the complaint has been made, we must be granted unrestricted access to the defective item, both for the purpose of checking the complaint and for the purpose of rectification of the defect. If a defect can only be rectified in our factory, the defective good must be made available to us. If the complaint involves a conveyable part, the same must be sent to us upon request.

8.6 If the buyer requests the rectification of the defect, which is not recognised by us as a defect covered by the warranty, we are entitled to make the correction conditional on the prior deposit of the expected costs.

8.7 Exclusion: The guarantee is not applicable for wear and tear parts. In addition, neither Thumm GmbH nor its contractual partners are obliged to carry out repairs or replacements that become necessary due to normal wear and tear or that are caused in whole or in part by destruction, fault or negligence or improper installation, storage, use, service or repair of the products, or from the use of the product in a manner for which it has not been developed or due to external influence on the product.

In addition to the above, the warranty/guarantee period does not include the loss of income caused due to downtime, damage due to misuse or misapplication, negligence, accidents, alterations, routine maintenance or normal wear and tear.

Any parts that are missing after the date of the first commissioning are not covered under the warranty/guarantee.

Lubricating the product according to our operating instructions, tightening loose fittings or hoses is considered to be part of the maintenance, which is why any hydraulic leaks that have been caused due to loose fittings are not covered under the warranty/guarantee.

8.8 Warranty/guarantee procedure: If a product is alleged to have a defect in material or within the warranty/guarantee period, the buyer must immediately contact Thumm in order to determine whether the buyer will either send the product (a) directly to Thumm, (b) to a service centre, or (c) make the product accessible at the buyer's location (or another location) for inspection by Thumm. The costs and risk of transporting the allegedly defective product to Thumm shall be borne by the buyer and the transport costs of the repaired product back to the buyer shall be borne by Thumm. (If the allegedly defective product, which the buyer sends back to Thumm, is not defective, then the buyer shall also bear the costs for the return transport of the product to the buyer.)

If the inspection by Thumm or its contractual partner proves that the product is defective in terms of processing or material, the product shall be repaired or replaced (or credited) free of charge according to the area of application and limitations of the guarantee. If such inspection proves that the product is not defective in terms of processing or materials (for example, if the product is defective due to improper use and service, or alterations, modification or use of parts), such repair or replacement, if any, shall be carried out by Thumm or its contractual partner at the normal service fees charged to the buyer plus the transport costs.

Return shipments

9.1 Return of delivered goods may only be made with our explicit, written consent and our approval, whereby we reserve the right on a case-by-case basis to confirm the amount of the credit to be granted after deduction of the costs to be borne by the buyer.

Place of performance and place of jurisdiction

10.1 The place of performance for the services to be rendered by both the parties is our registered office.

10.2 If the buyer is a registered trader, our registered office is the place of jurisdiction, but we are entitled to sue the buyer at his domicile as well. The law applicable at the place of performance is decisive for the contractual relationship.

Obligation of the terms and conditions and of the contract: Should a provision from these general terms and conditions or from this contract be or become legally invalid, this shall not affect the validity of the remaining provisions of the general terms and conditions or of the contract.

Severability clause: The contractual partners undertake to replace the invalid provision by an effective provision that comes as close as possible to this provision.