

# General Terms and Conditions of Sales and Delivery of

## Therminon BV, Therminon International B.V. en JVB Industries B.V.

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### 1. General

- 1.1. In the text below, the following definitions shall apply  
'Therminon': Therminon BV, Therminon International BV and/or JVB Industries BV, All Therminon-companies;  
'Customer': the party to whom Therminon makes an offer for the supply of goods;  
'Agreement': any agreement to which these terms and conditions have been declared applicable;  
'Therminon products': all products manufactured or purchased by Therminon for the purpose of selling them to third parties.
- 1.2. Unless agreed differently, these terms and conditions are applicable to all offers, agreements and deliveries of goods made by Therminon to the customer, as well as to all agreements relating to this and all transactions associated with this of both a preparatory and executive nature.
- 1.3. Deviating terms and conditions will only apply in so far as these have been accepted by Therminon in writing.
- 1.4. If any of the provisions laid down in these General Terms and Conditions are deemed to be invalid for any reason whatsoever, the remaining terms and conditions will remain in full force and effect.

### 2. Prices

- 2.1. All prices are in euro's and exclusive of value added tax (VAT), exclusive of any other levies that may be imposed by the authorities, exclusive of packaging costs apart from light packaging in cardboard etc., transport costs and export duties, unless delivery carriage paid has been agreed in writing.
- 2.2. The prices quoted in the offer are valid for up to a maximum of 30 days.
- 2.3. Therminon reserves the right to increase its prices if the prices and/or tariffs of price-determining factors such as wages, materials, raw materials or exchange rate differences go up for any reason whatsoever.
- 2.4. If the prices of raw materials or other price-determining factors go up after a quote has been issued or an agreement has been entered into, Therminon reserves the right to increase the agreed price accordingly, even if such increases were foreseeable at the time the agreement was entered into.
- 2.5. Any third party costs that arise during the execution of the agreement are payable by the customer.

### 3. Offer

- 3.1 All offers provided by Therminon are without obligation.
- 3.2 All information provided by Therminon and contained in samples, models, price lists and brochures and the specifications with regard to sizes, weights, quantities and other technical data is as accurate as possible and

only binding, if and in so far as, it has been explicitly guaranteed by Therminon in writing. Therminon is not bound to an offer if the Customer can reasonably understand that the offer or any part thereof contains an obvious mistake or error.

- 3.3 Therminon reserves the right to use similar or better raw materials for its products and to introduce construction improvements to its products.
- 3.4 The dispatch of offers, documentation, etc. does not put Therminon under any obligation to deliver.
- 3.5 Therminon at all times reserves the right to refuse an order, to deliver it subject to deviating financial conditions, i.e. an advance payment or cash on delivery, without stating any reasons for doing so.

### 4. Agreement

The contract is concluded by acceptance of the offer by the Customer. Acceptance is preferably, and where possible written or by e-mail. In case of electronic acceptance by the Customer, Therminon electronically confirms the receipt of the order to the Customer. If the Customer accepts the offer verbally, Therminon confirms the agreement preferably in writing or by e-mail.

### 5. Payment

- 5.1 Except when explicitly deviated from by Therminon, the payment term for the invoices is: **thirty (30) calendar days after the date on the invoice**. If payment is received within eight (8) calendar days after the date on the invoice, a payment discount of 2% may be deducted.
- 5.2 If payment is not received within the agreed term, the Customer will be in default by operation of law. Therminon shall then be entitled to charge the Customer interest at a rate of 3 points above the statutory interest applicable in the Netherlands, as referred to in Article 6:119a and Article 6:120 paragraph 2 of the Netherlands Civil Code, from the date on which payment was due as well as any judicial and extrajudicial costs to the amount of 15% of the claim applicable to its claim, without any notice of default being required.
- 5.3 Any amounts that have not yet become payable shall become immediately payable in full if:
  - the Customer is declared bankrupt.
  - assets are seized.
  - the company goes into liquidation, is shut down or is wholly or partially transferred to a third party.
  - the Customer applies for a suspension of payments or admission to debt restructuring ("wettelijke schuldsaneringsregeling natuurlijke personen").
  - the Customer (if it is a private individual) becomes subject to a guardianship order, receives a custodial sentence or dies.

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### 6. Delivery

- 6.1 The delivery dates quoted by Therminon are not binding under any circumstances and are purely indicative and approximately.
- 6.2 Partial deliveries are only possible if agreed in writing and may be invoiced separately and involve additional costs.
- 6.3 Exceeding the delivery time by Therminon, will not give any right to the Customer to full or partial cancellation of the contract, suspension of payment or refusal to the other obligations.
- 6.4 If Therminon fails to meet the agreements reached with respect to delivery, or fails to meet these properly or on time due to circumstances within the Customer's control, Therminon reserves the right to dissolve the agreement after giving notice of default, where applicable, without prejudice to its right to claim compensation for any damage suffered by it.
- 6.5 In the case of call-off orders, Therminon shall impose an obligation on its Customer to effectively call off or take delivery within the agreed period. If the customer fails to comply with this obligation, Therminon reserves the right to invoice the goods in question and to store the goods at the Customer's account and risk.

### 7. Delivery and returns

- 7.1 The Customer is obliged to cooperate in the delivery as well as to take receipt of the goods to be delivered. If the Customer fails to take delivery of the goods, Therminon reserves the right to charge any costs associated with this to the Customer.
- 7.2 The Customer is obliged to immediately inspect the materials delivered. If any defects are identified, the Customer is obliged to report the nature of these defects to Therminon in writing no later than on the 7<sup>th</sup> day after delivery.
- 7.3 Goods delivered may only be returned after prior written notice has been given to Therminon and Therminon has given its approval. Any goods returned will be subjected to a full technical inspection. If goods that were returned became unfit for use or became partially unfit for use within the agreed warranty period due to causes attributable to the Customer or the Customer's end user all rights to warranty claims will automatically cease.
- 7.4 When Therminon declares the complaint unfounded and does not accept the return for any reason whatsoever, Therminon is authorized to charge the costs that are incurred by this control to the Customer.
- 7.5 Returning the goods does not give the Customer the right to suspend its obligations in anticipation to Therminon or not to comply.

### 8. Transport and transfer of risk

- 8.1 The goods to be delivered will be packaged with the utmost of care and in accordance with high standards.
- 8.2 Unless delivery carriage paid has been agreed, transport shall take place at the customer's account and risk. The mode of transport used shall be the cheapest option available to Therminon, if no other instructions have been received from the Customer.
- 8.3 The risk of the goods in question shall rest on the Customer as soon as these leave the Therminon warehouse, irrespective of the mode of transport used and irrespective of who arranged/contracted out the transport.

### 9. Liability

- 9.1 Therminon's liability towards the Customer is limited to fulfilling the warranty. As a result Therminon is not liable for any damage caused by the Customer, though exclusively for damage caused on the side of Therminon through fraud or wilful misconduct. Therminon shall not in any way be liable for loss of profits or loss of production, environmental damage or any other consequential loss or indirect damage, of any nature whatsoever, suffered by the Customer. Therminon is furthermore not liable for any damage caused by its agents or sub-contractors (including damage caused through fraud, wilful misconduct or gross negligence).
- 9.2. Therminon is not liable for any delays in performance or the non-fulfilment of its obligations as a result of circumstances outside its normal control, including, though not limited to, production stops, supply problems, shortages of raw materials, manpower, energy or transport, or delays in transport, strikes, lock-outs, walkouts or other collective labour disputes that affect Therminon or its suppliers, irrespective of whether such events could have been foreseen.

### 10. Warranty

- 10.1 In the event of a timely and valid complaint concerning a faulty delivery, Therminon shall, at its discretion:
  - (i) replace or repair the goods in question free of charge, (ii) supply equivalent goods, or
  - (iii) in so far as this is reasonable, credit the amount invoiced to the Customer in respect of the goods in question either in part or in full.
- 10.2. Unless determined otherwise in specific warranties offered by Therminon, any complaints about a shortcoming, defect or non-conformity (collectively to

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be referred to as a 'defect') to the goods supplied shall only be valid if these have been communicated to Therminon in writing, as soon as possible after delivery and no later than: (i) three working days after the goods were delivered, when it comes to defects that are immediately visible and (ii) three working days after the date on which the defect was discovered or the date on which the defect could in all reasonableness have been discovered, when it comes to all other defects, however, in any event no later than within three (3) months after delivery of the defective goods.

**10.3.** Unless determined otherwise in specific warranties issued by Therminon, a complaint by virtue of provision 9 is only valid if:

- (i) the complaint is submitted within the deadlines laid down in provision 9, after which the Customer shall be deemed to have waived all rights vis-à-vis Therminon with respect to a defect to the goods or the way in which Therminon fulfilled its delivery obligations, and
- (ii) the goods supplied are still in the state as when they were first delivered, and
- (iii) the goods supplied have been used properly and in accordance with the agreed or standard use, and
- (iv) the Customer has fulfilled all his obligations towards Therminon.

## **11. Retention of title**

**11.1** All goods supplied by Therminon shall remain the property of Therminon until full settlement of all outstanding claims of Therminon by the Customer including those referred to in Art. 3:92 par 2 Dutch Civil Code as interest and extrajudicial and judicial costs, has taken place.

**11.2** The Customer reserves the right to sell the goods supplied on to third parties. He will however at all times continue to be obliged to pay Therminon.

**11.3** If the Customer produces new goods with the goods supplied by Therminon, the Customer acts on behalf of Therminon and will own the goods on behalf of Therminon until all outstanding claims of Therminon towards the Customer are fulfilled by the Customer.

## **12. Origin**

**12.1** The Customer or a third party is under no circumstances allowed to introduce any changes to the goods supplied by Therminon or to apply any branding to these and thus create the impression that they originate from him.

**12.2** Non-compliance with the provision laid down in paragraph 1 above may result in an obligation to fulfil a claim for damages.

## **13. Force majeure**

**13.1** 'Force majeure' is taken to mean the following:

Any circumstance that is beyond Therminon's control (including ones that may have been foreseen at the time the agreement was entered into), that temporarily or permanently stops the execution of the agreement, as well as, if not already covered by this, war, risk of war, terrorism, civil war, civil unrest, strikes, exclusion of workers, transport problems, fire and serious disruptions of the operations of Therminon or its suppliers.

**13.2** In the event of force majeure as referred to in paragraph 1, Therminon reserves the right to suspend the (execution of the) agreement without any consequences or to cancel it altogether.

## **14. Disputes and applicable law**

**14.1** All agreements entered into with Therminon are governed by the laws of the Netherlands.

**14.2** Any disputes arising from or relating to an agreement entered into with Therminon will exclusively be presented to the competent court of the Court of Oost-Nederland in 's-Hertogenbosch.

This text has been translated from Dutch into English. In the event of a dispute concerning the interpretation of this agreement and the English translation thereof, the Dutch text will prevail.