# General Terms and Conditions

Version 10/2024

J. D. Theile GmbH & Co. KG, Letmather Strasse 26, 58239 Schwerte / Germany

**1. Exclusive validity and acceptance of our General Terms and Conditions, definitions**

1.1 Our deliveries, services and quotations are based exclusively on our General Terms and Conditions. General terms and conditions stipulated by the Customer or third parties and regulations deviating from our General Terms and Conditions shall not apply, even if we have not separately objected to their validity on an individual basis. Even if we refer to a letter that contains the terms and conditions stipulated by the Customer or a third party or refers to such, this does not constitute any agreement with the validity of those terms and conditions.

1.2 Agreements deviating from our GTCs are only valid if they have been expressly confirmed by us in writing.

1.3 Legally relevant declarations and notifications relating to the supply contract shall always be submitted in writing. Writing for the purposes of these General Terms and Conditions of Purchase includes written and text form (e.g. letter, email, fax). Statutory formal requirements for further forms of evidence, particularly in case of doubt regarding the legitimation of the declaring party, remain unaffected.

1.4 Our GTCs equally apply – even without specifically referring to them – to all follow-up business between us and the Customer. By fulfilling an order or accepting services, the Customer recognises the validity of our General Terms and Conditions not only for the transaction in question, but also for all future transactions. If there are ongoing business relationships between us and the Customer, changes or revised versions of our General Terms and Conditions shall become part of the contract when the order confirmation is sent, if they are not immediately objected to in writing.

1.5 Our General Terms and Conditions apply solely to businesses, legal entities under public law and special funds under public law in accordance with Section 310 Para. 1 of the German Civil Code.

**2. Quotations – Ancillary agreements – Contract contents**

2.1 Our quotations are subject to change in the sense that a contract only comes into being if we accept the purchase order within 4 weeks of its receipt with our order confirmation.

2.2 The information in our catalogues and technical documents are non-binding processing instructions, not to be understood as warranties or guarantees, however. Warranties or guarantees about characteristics or the usability of the goods only exist if we expressly designate them as such in writing.

2.3 We only perform an assembly and/or machine installation if expressly agreed in writing. The order confirmation contains the conclusive and comprehensive description of the services to be provided by us, and in particular is the basis of the technical performance characteristics, the technical and commercial details as well as the application and safety conditions.

**3. Documents – Samples – Drawings**

3.1 If we enclose documents such as drawings, specifications, materials, samples, tools, models and the like with our quotations or order confirmations, we retain the property rights and copyrights to these.

3.2 We reserve the right to make design modifications and other changes to technical data and performance characteristics, as long as they serve the purpose of technical progress.

3.3 Obvious mistakes, printing, arithmetical, spelling and costing errors in our illustrations, drawings, costings and other documents are non-binding for us.

3.4 Subject to any property rights and copyrights, we provide the Customer with the necessary details and drawings that enable the Customer to put the delivered item into operation and use it. We are not obliged, however, to procure workshop drawings for the deliver item or spare parts.

3.5 Illustrations, drawings, costings and other documents, to which we retain the property rights and copyrights, must not be made accessible to third parties. This applies in particular to such written documents that are marked as “confidential”; the Customer requires our prior written consent to pass them onto third parties. On our request, these items must be returned to us in their entirety and any copies made of them must be destroyed, if they are no longer needed by it in the proper course of business or if negotiations do not result in the conclusion of a contract.

3.6 Any documents handed over to us by the Customer remain its property. We are not entitled to make use of these without its consent, unless for the preparation of the quotation, for the development, construction, assembly and commissioning of the contractual object.

**4. Reservation of right of withdrawal**

We have the right to withdraw from the contract if its performance comes up against, at no fault of our own, technical difficulties or cases of force majeure, which are insurmountable or which would require an unreasonably high effort compared to the value of the performance to be provided by us in order to overcome them. This applies in particular to operational disruptions, industrial action, shortages or abnormal price increases to raw materials, means of transport or the workforce. Furthermore, we reserve the right to withdraw from the contract if the ordered goods are not correctly made available to us or not in good time by our own Supplier at no fault of our own. We shall inform the Customer immediately if such an event occurs and immediately refund any counter-performance rendered by it.

## 5. Prices – Terms and Conditions of Payment

5.1 Our prices are valid, unless otherwise agreed, for an “ex works” delivery without packaging as well as for all services excluding insurance and statutory turnover tax. The statutory turnover tax is charged in addition by us in any case at the tax rate applicable on the day of performance.

5.2 If the delivery is only expected to be made more than 4 months after concluding the contract, we reserve the right to increase our prices accordingly if cost increases occur, particularly due to wage agreements or material price increases after conclusion of the contract. Evidence of this shall be provided to the Customer on request. If the price increase exceeds twice the increase in the cost of living, the Customer can withdraw from the contract within a week of notifying the price increase by means of a written statement.

5.3 Additional costs, which are incurred by the Customer’s requests for modifications after conclusion of the contract, are to be borne by the Customer. In particular, the Customer must pay for costs arising due to deviations of templates requested by it based on the outlay involved.

5.4 If we produce samples or production materials (tools, moulds, templates etc.) to carry out or prepare the order at the Customer’s request, the Customer must pay the manufacturing costs on request, even if the order is not fulfilled.

5.5 We are entitled to invoice our deliveries and services once we have advised their readiness for delivery or, if the goods are despatched, from the time of despatch. The same applies to self-contained partial performances and deliveries. We are entitled to ask for reasonable advance payments, particularly for material costs incurred. All invoices shall be paid within 10 days of their date without deductions to one of our accounts at our registered office. In case of payment within 7 days of the invoice date, a 2 % cash discount is granted, as long as the Customer is not in arrears with other payables. We only accept bills of exchange and cheques after agreement and only on account of payment; bills of exchange, incidentally, only if they are made payable in Schwerte. The Customer shall bear the costs of discounting and collection.

5.6 It is only possible to offset our claims with undisputed or legally binding counter-claims. Rights of retention on the part of the Customer are excluded, unless it enforces these based on an undisputed or legally binding claim.

5.7 If the Customer gets into arrears with its payment, the contractor can demand interest at 9 percentage points above the base interest rate pursuant to Section 247 of the German Civil Code, whereby the Seller’s other rights remain unaffected.

5.8 In case of late payment by the Customer, we are furthermore entitled to declare all other outstanding receivables from the relevant contractual relationship (including from other individual orders to which the same framework contract applies) immediately due for payment. We are entitled, for the duration of the payment delay, to make our further performance dependent on the advance payment to the value of the work performed. We may stop working on the order and make continuing with it dependent on the Customer providing a security amounting to the entire order value. For this purpose we shall set the Customer a reasonable deadline, with the statement that we shall decline fulfilment or performance once the period has elapsed without remedy and demand compensation for damages and/or withdraw from the contract.

5.9 The provisions stipulated in Section 5.8 also apply if, after concluding the contract, we become aware that the Customer has stopped making its payments or if its financial circumstances have become significantly worse, which puts our payment claim at serious risk.

## 6. Delivery obligations - Despatch - Transfer of risk

6.1 Our obligation to delivery arises from the order confirmation. Standard excess or short deliveries of up to 5 % of the total order value are permitted.

6.2 We only have to use raw materials suggested by the Customer if expressly agreed.

6.3 As long as we do not deviate from instructions given to us, we are not obliged to check whether orders carried out by us infringe third party rights (particularly copyrights). The Customer must indemnify us from a claim.

6.4 We are allowed to have orders executed by third parties. We may also deliver in parts if the partial delivery can be used by the Customer for the contractual purpose and no considerable extra work or additional costs are incurred by the client due to this (unless we expressly declare we are prepared to take on these costs).

6.5 We only insure goods deliveries against transport risks if expressly instructed to do so and at the expense of the Customer.

6.6 If we do not receive any particular shipping instructions, we send the goods on what we consider to be the most cost-effective transport route. The goods are insured on the account of and at the risk of the Customer. If, in individual cases, we have expressly agreed a freight-paid delivery, we bear the costs to the destination specified in the order confirmation. If the Customer prescribes a particular shipping method, then the difference is invoiced to the Customer.

6.7 The risk of loss and the deterioration of the goods, for which we are not responsible, passes to the Customer when shipped ex works or from the distribution warehouse or, if the goods cannot or should not be despatched, once the notification of our readiness to deliver is received or the Customer becomes aware of this fact.

6.8 On request we shall assign claims to the Customer to which we are entitled from a transport company instructed by us.

6.9 If the Customer falls behind with the call-off, acceptance or collection of the goods or if the Customer is responsible for a delay to the shipment or its notification of suspension, then we are entitled, without prejudice to further claims, after setting a reasonable extension period without remedy

a) to withdraw from the contract to the level of the quantities not accepted or

b) to store the goods at the Customer's expense and risk at our premises or a third party and to charge the Customer, subject to providing evidence of a lower amount, warehousing costs amounting to at least 0.5 % of the invoice amount for the quantities not accepted for each commenced week of storage - altogether, however, at the most up to 5 % of the invoice value of the deliveries and services affected by the delay - or

c) to sell the quantity not accepted elsewhere at the best price possible (Section 254 of the German Civil Code).

**7. Delivery dates and deadlines**

7.1 Delivery dates and deadlines are only deemed to be approximate unless a set deadline or date has been expressly promised or agreed. The delivery deadlines start on the date of our order confirmation, but not before complete clarification of all the order details and the procurement of any required domestic and foreign official certificates. The day of despatch ex works counts as the day of delivery, in case of agreed collection by the Customer or possibility to despatch, the day the notification of readiness for despatch is sent.

7.2 Delivery dates and deadlines are under the condition that we ourselves are delivered to correctly and on time.

7.3 If contractual changes are subsequently agreed, a new delivery date and delivery deadline shall be agreed at the same time. Complying with deadlines requires that the Customer fully meets its contractual obligations on time, particularly its payment obligation. Otherwise an agreed deadline will be extended by a period corresponding to the delay.

7.4 Force majeure, riots, strikes, lock-outs and operational disruptions beyond our control will change delivery dates and deadlines by the duration of the interferences to performance caused by these circumstances, as long as these hindrances can be shown to have a significant influence on the completion of the delivery item.

7.5 After a non-binding delivery date or non-binding delivery deadline has been exceeded by 1 week, the Customer can demand that we deliver within an appropriate period, but at least 2 weeks. Once this period has elapsed without remedy, the Customer is entitled to withdraw from the contract or demand compensation for damages according to the regulations under Section 9 by submitting a written statement.

7.6 If partial deliveries have already been made, the right to withdrawal and the assertion of claims for compensation for damages are limited according to the regulations under Section 9 to the outstanding delivery, unless the partial delivery is of no interest to the Customer overall. This section also applies to the case in which the outstanding performance becomes impossible for us. If the outstanding delivery becomes impossible for us during our delay, we are nevertheless liable according to this section, unless the loss or damage would have occurred even if the delivery had been made on time.

7.7 In case of delivery contracts on call, if nothing else is agreed, binding quantities shall be notified to us at least 2 months before the delivery date by submitting a call-off. Additional costs, which are caused by the Customer due to a delayed call-off or subsequent changes to the call-off in terms of time or quantity, shall be charged to the Customer.

**8. Warranty**

8.1 The warranty period is one year from delivery or, if an acceptance is necessary, from the acceptance date. This does not apply to claims due to a defect to buildings, to materials for buildings and / or to planning or monitoring services relating to buildings (Sections 438 Para. 1 No. 2, 634a Para. 1 No. 2 of the German Civil Code).

8.2 The delivered items shall be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer or after completion of an assembly process carried out by us. With regard to obvious defects or other defects, which would have been detectable during an immediate, careful inspection, they are deemed to be approved by the Customer if we do not receive a written notification of defects within seven working days after delivery or completion of an assembly process carried out by us. With regard to other defects, the items are deemed to be approved by the Customer if the notification of defects is not received by us within seven working days from the point in time that the defect became apparent; if the defect was already noticeable to the Customer under normal use at an earlier point in time, this earlier point in time is decisive for the start of the period for notifying a defect, however.

8.3 We shall be given the opportunity to establish the notified defect on site by ourselves or by a representative appointed by us. If the Customer gives us no opportunity to see the defect for ourselves, all claims for defects shall be dropped.

8.4 In case of material defects to the delivered items, we shall initially be obliged and entitled to carry out a repair or make a replacement delivery at our discretion within a reasonable period. In order to carry out all the repairs and replacement deliveries that appear necessary at our reasonable discretion, we shall be given the required time and opportunity. Replaced parts become our property. In the event of failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Customer can withdraw from the contract or reduce the sales price appropriately.

8.5 Of the costs immediately incurred by the repair or replacement delivery, we shall bear – if the complaint turns out to be justified – the costs of the replaced item as well as the reasonable costs of dismantling and installation. Otherwise the Customer shall bear the costs. Replaced parts become our property.

8.6 For replacement parts or repairs, a warranty is given in the same way as for the delivery item.

8.7 If a defect is based on fault on our side, the Customer can demand compensation for damages under the provisions set out in Section 9.

8.8 In case of defects to components made by other manufacturers, which we are unable to remedy due to licensing rights or factual reasons, we shall, at our discretion, assert our warranty claims against the Manufacturer and Suppliers for the account of the Customer or assign them to the Customer. Warranty claims against us in case of such defects under other conditions and according to these General Delivery Conditions only exist if the legal enforcement of the aforementioned claims against the Manufacturer and Supplier was unsuccessful or, for example due to an insolvency, is futile. For the duration of the legal dispute, the statute of limitations is suspended for the Customer's relevant warranty claims against us.

8.9 The warranty lapses if the Customer modifies the delivery item or has it modified by a third party without our consent, thus making it impossible or unreasonably difficult to remedy the defect. In any case, the Customer must bear the additional costs for remedying the defect incurred by the modification.

8.10 We do not assume any liability for defects or damages that have occurred due to insufficient suitability of materials delivered by the Customer or a design prescribed by it, failure to observe the operating regulations, unsuitable or improper use or storage, faulty assembly or commissioning by the Customer or third parties, independent attempts to make repairs or modifications, natural wear, faulty or negligent treatment, excessive use, unsuitable operating and substitute materials, inadequate construction work, chemical, electrochemical or electrical influences, as long as they cannot be shown to be attributable to our own fault.

8.11 Furthermore, we provide no warranty for detriments that result from demands being placed on the delivery item, about which we were not or not adequately informed.

8.12 A delivery of used items agreed in an individual case with the Customer is made under exclusion of any warranty for material defects.

**9. Claims for compensation for damages**

9.1 The seller's liability for compensation for damages, for whatever legal reason, in particular due to impossibility, delay, faulty or incorrect delivery, breach of contract, breach of obligations during contract negotiations and action in tort is, in so far as there is a question of blame in each case, limited in accordance with this Section 9.

9.2 In case of material damage and financial loss caused by simple negligence, we are only liable if a key contractual obligation is breached. Key contractual obligations are those whose fulfilment characterises the contract and on which the Customer may rely on, in particular the obligation to deliver on time and install the delivery item, its freedom from defects that impair its functionality or fitness for use more than just insignificantly, as well as obligations to provide advice, protection and exercise care, which are intended to enable the Customer to use the delivery item according to the contract or are designed to protect the life and limb of the Customer's personnel or to protect its property from considerable damage.

9.3 Insofar as we are liable for compensation for damages pursuant to Section 9.2, this liability is limited to damages that we anticipated when concluding the contract as a possible consequence of a breach of contract or that we ought to have anticipated by applying due care and attention. Indirect damage and consequential damage, which result from defects to the delivery item, are only subject to compensation in so far as such damage is typically to be expected when using the delivery item as intended.

9.4 The above liability exclusions and limitations apply to the same extent in favour of for bodies, legal representatives, employees and other vicarious agents acting for the seller.

9.5 In so far as we provide technical information or act as an adviser and this information or advice is not part of the contractually agreed scope of services owed by us, this is done free of charge and with the exclusion of any liability.

9.6 The limitations of this Section 9 do not apply to our liability on account of wilful misconduct or gross negligence, for guaranteed characteristics, on account of injury to life, limb or health or according to the product liability law.

**10. Retention of title**

10.1 The following retention of title serves to secure all currently existing and future claims on our part against the Customer resulting from the supply relationship that exists between us as contractual partners including balance claims from a current account relationship restricted to this supply relationship.

10.2 The goods supplied from us to the Customer remain our property until full payment of all secured claims. The goods and those covered by the retention of title that take their place under this clause are hereinafter referred to reserved goods.

10.3 The Customer keeps the reserved goods for us free of charge. It must insure them against fire, theft and water damage.

10.4 The Customer is entitled to process and sell the reserved goods in the normal course of business until the time of enforcement (Section 10.9). Pledges and security transfers of title are not permitted.

10.5 If the reserved goods are processed, it is agreed that processing is done on our behalf and on our account as the manufacturer and that we directly acquire ownership or – if processing takes place using materials belonging to several owners or the value of the processed item is higher than that of the reserved goods – co-ownership (fractional ownership) to the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership occurs in our favour, the Customer here and now transfers its future ownership or – in the above-mentioned ratio – co-ownership of the newly created item to us for security purposes. If the reserved goods are combined or inseparably mixed with other items to make a uniform item and if one of the other items is seen as the main item, then the Customer transfers, if the main item belongs to it, co-ownership of the uniform item to us pro rata in the ratio mentioned in Clause 1.

10.6 If the reserved goods are resold, the Customer here and now assigns the receivables from the buyer arising from this – if we have co-ownership to the reserved goods, pro rata according to the co-ownership share – to us. The same applies to other receivables that take the place of the reserved goods or arise otherwise with regard to the reserved goods, such as insurance claims or claims from an unlawful act in the event of loss or destruction. We revocably authorise the Customer to collect the receivables assigned to us on its own behalf. We may only revoke this collection authorisation in case of enforcement.

10.7 If third parties seize the reserved goods, particularly through distraint, the Customer shall immediately point out our ownership to them and notify us about this to enable us to assert our property rights. As long as the third party is not in a position to reimburse the legal or extrajudicial costs to us in this context, the Customer is liable to us for these.

10.8 We shall release the reserved goods as well as the items or receivables taking their place on request at our discretion if their value exceeds the amount of the secured claims by more than 20 %.

10.9 If we withdraw from the contract ("enforcement act") in the event that the Customer acts contrary to the contract – particularly in case of payment delay – we are entitled to demand the return of the reserved goods.

**11. Special provisions for the cessation of software**

11.1 For software that is transferred or ceded in connection with other deliveries and services or solely to the Customer, the provisions of these General Terms and Conditions of Delivery and Service apply, unless otherwise stipulated below.

11.2 The cessation and transfer of software is done in accordance with Section 69 a et seq. of the German Copyright Act (UrhG.). Unless otherwise expressly agreed, we do not transfer any rights of use and exploitation to the Customer that go beyond the use of the software package received in the deliveries and services provided by us. The Customer can make unlimited use of the software's existing functions and adjust them to its operational needs. Any kind of programming that goes beyond the permissions under Section 69 a et seq. UrhG, such as further data technology adaptation of the software to the Customer's purposes as well as further development of the software shall be carried out solely by the software manufacturer.

11.3 The Customer may only sell the software on to third parties with our express, written consent.

11.4 Unless otherwise expressly agreed, the Customer shall not be entitled to receive the source code of the software.

11.5 Rights of use and exploitation under copyright law, which are granted in perpetuity (ongoing software licence for a one-off fee), are freely revocable until full payment of the purchase price, the licence fee and, if applicable, other claims arising against us from the purchase order and the entire business relationship. Subject to 11.3, the Customer is entitled to sell the software on in the normal course of business. In this case, the Customer is authorised to grant the buyer those rights of use and exploitation to which the Customer would have been entitled on full payment of the purchase price, the licence fee and the claims against us arising from the business relationship. The Customer here and now assigns all receivables accruing to it against its buyer from the resale and does so depending on whether the delivered goods have been sold on without or after processing. The Customer remains authorised to collect these receivables even after their assignment. Otherwise the provisions under Section 10 apply accordingly.

11.6 The Customer is aware that complete freedom from errors cannot be achieved with software programmes. With regard to the supply of the software, we assume no liability that the software will work without interruptions and errors in every respect and that the functions contained therein will be able to be executed in all conceivable combinations, as long as the fitness of the software for normal or contractually required use is only insignificantly impaired by these restrictions. In case of software errors that only impair its use under the contract to an insignificant degree, the defects can also be dealt with by providing information on rectifying or avoiding the effects of the error. The warranty does not cover the rectification of errors resulting from external influences, handling or maintenance errors.

11.7 We are not liable for damage caused to the software and to the other delivery and service items occurring due to modifications to or processing of the source code or the software itself carried out by a third party instructed by the Customer or one not instructed by us.

## 12. Take-back obligation according to the Electrical and Electronic Equipment Act (ElektroG)

12.1 If a take-back and disposal obligation can be derived from the German Electrical and Electronic Equipment Act (ElektroG) for the delivered products, the following applies:

12.2 The Customer assumes the obligation to dispose of the delivered goods properly at its own expense according to the statutory regulations after the end of their usage.

12.3 The Customer releases us from the obligations according to Section 19 ElektroG (take-back by the manufacturer) and from third party claims relating to these.

12.4 If the Customer fails to contractually oblige third parties, to whom it passes on the delivered goods, to assume the obligation to dispose of the goods and to impose a corresponding obligation, then the Customer is obliged to take back the delivered goods after the end of their usage at its own expense and to dispose of them properly according to the statutory regulations.

12.5 Our entitlement to assumption/release by the Customer shall not become time-barred before two years has elapsed after the final end of the use of the goods. This period starts at the earliest on receipt by us of a written notification from the Customer about the end of usage.

## 13. Other copyrights and rights of use

13.1 Drafts and templates produced by us are protected by copyright and belong to us. They may not be reproduced nor made available to third parties unless this is indispensable for the execution of the order.

13.2 The Customer is responsible for ensuring that the reports, plans, designs, drawings, installations, analyses and calculations produced by us as part of the order are only used for its own and the contractually intended purposes and are not published other than as envisaged under the contract. If a copyright can be applied to work results, we remain the originator.

13.3 If our deliveries and services include the granting of rights of exploitation and use, these are only granted insofar as this is necessary for the specific use of the work created by us, unless otherwise expressly agreed.

13.4 Insofar as third party work results and performances are used for our deliveries and services, we shall acquire their rights or use to the extent described in the above paragraph and transfer them to the customer if this is required for the purchase order. If acquiring the rights of use to this extent is not possible or if there are existing restrictions to the rights of use or other third party rights, then we shall inform the Customer about these. The Customer must take these restrictions into account. For services and works that the Customer provides, and for services and deliveries that are produced using drawings, models or other information from the Customer, we are obliged to ensure the rights of use and exploitation, and we are not liable for the infringement of third party property rights. In this respect, the Customer is obliged to indemnify us from third party claims.

## 14. Confidentiality

The Customer is obliged to treat all information, know-how and other business secrets, which it has found out from or through us, strictly confidentially and not pass on any information, documents/documentation, programme descriptions, drawings, sketches or other paperwork to third parties or otherwise make them accessible.

## 15. Place of performance, jurisdiction and applicable law

15.1 The place of performance for all obligations resulting from the contractual relationship is our registered office in Schwerte.

15.2 The place of jurisdiction for all disputes arising from the contractual relationship, including for proceedings relating to bills of exchange and cheques, is Hagen. We are, however, entitled to bring legal action against the Customer at another place of jurisdiction applicable to the Customer.

15.3 German law applies to the contractual relationship, not the regulations of the UN sales law, however.