

Terms and Conditions of Sale

I. General

1. The THEVA Dünnschichttechnik GmbH is hereinafter referred to as THEVA and the company, agency or individual to whom any proposal or quotation is made and/or from whom any purchase order is received is hereinafter referred to as the Customer.
2. All purchase orders by Customer, and the nature and quantity of the ordered merchandise and services therein are subject to final written acceptance by THEVA. All changes and supplements to the quotation of THEVA and these terms and conditions of sale must be approved and confirmed in writing by THEVA. The Customer is hereby notified in advance of THEVA's objection to any ex parte proposed additional or different terms or conditions.
3. Unless otherwise set forth in the details of a written quotation or proposal, all quotations are valid for a period of thirty (30) days from the date thereof.
4. With the purchase order Customer accepts the general terms and conditions of sale.

II. Pricing and terms of payment

1. All prices are F.O.B. THEVA's plant in Ismaning, Germany unless otherwise specified. Neither federal, state or other taxes nor custom duties and fees are included in the price quotation.
2. Prices are due without any subtraction within thirty (30) days after delivery and receipt of the invoice. This term applies also for partial or down payments.
3. In case of delayed payment interest rates of 3% above the discount rate of the Federal Bank of Germany or the European Central Bank will be applied as a late fee.
4. The Customer is not entitled to hold back or set off payments, even in case of a claim, unless there is a legal title or THEVA has accepted such claims in writing. In case of delayed payment THEVA is entitled to charge late interest (II.3), even without previous reminder.
5. Failure on the part of the Customer to make full payment on all sums due, as set forth in THEVA's quotation or in these standard terms and conditions of sale shall constitute a material breach of the contract by the Customer.
6. Sales in excess of ten thousand euro (€ 10,000) may be subject to special provisions for terms of payment as set forth in THEVA's quotation and may include payment at time of acceptance of purchase order, progress payment, payment prior to shipment or other terms as defined by THEVA.

III. Cancellation

Any request by the Customer for cancellation in total or in part of any purchase order accepted by THEVA must be issued in writing, stating the reasons therefore. The Customer shall be liable for the payment of the following charges to THEVA in the event of cancellation:

- a) All charges incurred (including overhead, G&A, and profit) prior to the date that notice of cancellation is received by THEVA for all parts peculiar to the Customer's requirements. Upon payment by the Customer of these charges such parts become the property of the Customer. THEVA will store said parts for a reasonable period of time pending receipt of the Customer's instructions for disposition. Such storage is at the Customer's risk and may be subject to storage charges if stored by THEVA for longer than thirty (30) days from the cancellation date.
- b) Charges to convert modified standard parts for return to THEVA's inventory.

IV. Delivery time

1. THEVA's delivery estimates in the quotation represent the best information available at that time and THEVA will make every reasonable effort to meet such dates. Unless there is a specific agreement in writing by THEVA, THEVA shall not be liable for any claims of damage by the Customer resulting from any delay in shipping dates from those quoted.
2. The delivery time starts with the date of the order confirmation, however, not before the Customer has supplied all necessary documents, permits, releases, and if applicable receipt of the agreed advance payments.
3. The observation of the delivery time presupposes the execution of the obligations of the contract by the Customer.
4. The delivery time is observed if at its expiration the ordered items have left THEVA's plant or if readiness for shipping has been notified.
5. If the Customer requests belated changes of the accepted purchase order, THEVA is entitled to adapt or extend the agreed delivery time adequately.
6. The delivery time is reasonably extended when shipping is delayed by circumstances beyond THEVA's control, i.e. force majeure, strikes, lockouts, embargoes etc. This regulation applies as well if these circumstances happen to sub-contractors.

V. Shipment and delivery

1. Unless explicitly agreed in writing otherwise, transfer of perils to the Customer happens at the moment the ordered items are handed over to the carrier for shipment. This also applies for partial shipments or in case THEVA performs additional services, e.g. installation and commissioning. THEVA is not liable for loss or damage after delivery to the carrier. The transfer of perils is also effective in case of delayed acceptance by Customer.
2. Partial shipping is allowed.
3. Unless explicitly designated otherwise by the Customer, THEVA will take out insurance for the shipping of all items at the expense of the Customer.
4. Title to items supplied on lease or consignment remains with THEVA, and the Customer is responsible for safeguarding same.

5. The Customer has to accept delivery, even in case of damages, without prejudice to § VII. In case of receipt of damaged goods it is the responsibility of the Customer to immediately file claims for any damages to content and to proceed on the following scheme:
 - a) Inspect the contents of the shipment and check the merchandise carefully.
 - b) If any damage is found, notify THEVA and the carrier and request to file a damage claim. Request immediate inspection by the carrier and THEVA.
 - c) Keep the container, all packing material, and invoice until the damage claim is settled.Failure to notify THEVA and the carrier and to file a claim results in Customer's liability and THEVA may decline any liability.

VI. Title retention

1. THEVA retains title to the delivered goods until full payment according to the purchase order has been received.
2. Title to items supplied on lease or consignment remains with THEVA. The Customer is responsible for safeguarding all such items.
3. In case of a material breach of the contract by the Customer, especially in case of delayed payment, THEVA is entitled to claim back all merchandise after reminder. The Customer is obliged to deliver such merchandise to THEVA. All shipping charges have to be covered by the Customer in this case. Enforcement of the title retention and garnishment of the delivered merchandise by THEVA, do not constitute a cancellation of the contract.

VII. Liability for defects, warranty, and limitations of remedies

1. THEVA warrants that all equipment manufactured by THEVA shall be free of defects in materials and workmanship under normal use and service for a period of twelve (12) months from date of shipment from THEVA's plant. This warranty is subject to THEVA's equipment being installed, maintained, and operated in accordance with the operating and maintenance instructions accompanying each item manufactured by THEVA. Warranty shall be void if THEVA's equipment is modified by the Customer or used in other than the recommended manner or applications.
2. Equipment or components purchased by THEVA from third parties and incorporated into any item supplied by THEVA will be covered by warranty of the original manufacturer (OEM). If required, this warranty can be assigned to the Customer without recourse to THEVA.
3. No warranty is provided by THEVA for products sold hereunder which are not manufactured or processed by THEVA, but the manufacturer's warranty for such products, shall be assigned to the Customer without recourse to THEVA.
4. THEVA will in its equitable discretion either repair or replace all those equipment or components free of charge, that within twelve (12) months after delivery exhibit defects or malfunctions that seriously affect its use, and having origin prior to the transfer of perils, especially due to defective design, inferior material, or poor workmanship. THEVA must be notified in writing immediately after discovery of such faults. Replaced parts become property of THEVA. If acceptance, installation or commissioning is delayed without THEVA's fault, THEVA's warranty and liability expires at the latest twelve (12) months after transfer of perils.
5. THEVA will not be liable for damages or defects as a consequence of one of the following reasons: inappropriate or unintended use, faulty mounting or commissioning by the customer or a third party, natural wear, faulty or careless handling or treatment, inappropriate operating materials or exchange parts, chemical, electrochemical, or electrical interference not caused by THEVA.
6. The warranty period for an exchanged part or the defect rectification is six (6) months; in any case, however, it will not expire before expiration of the original warranty period of the delivered item. The warranty period for the delivered item is extended by the term of the service interruption necessary for the rectification of the defect.
7. Deviating from the above conditions for the delivery of coated substrates the following rules apply:
 - a) The quoted film specifications are warranted for a period of 6 months after delivery.
 - b) In the case of warranty remedy is limited to the replacement of defective items with material conforming to the specifications.
 - c) In the case that substrates supplied by the Customer for deposition should be damaged or rendered useless under THEVA's responsibility, THEVA reserves the right to replace such substrates with identical material.
 - d) Excluded are any damages originating beyond THEVA's reasonable control, e.g. improper storage, handling, and transport. Warranty expires if the delivered material is modified (e.g. by processing).
8. Further claims of customer, especially those not referring to direct damages of the delivered merchandise itself are excluded. In no event will THEVA be liable for consequential damages.

VIII. Patents and rights

1. The equipment to be provided by THEVA under its quotation may include items for which a supplier or THEVA holds patent rights, or has patent rights pending, or has a license to manufacture under patent rights held by others. THEVA shall not be liable for any claims against the Customer arising from such patent or license rights.
2. The acceptance of a purchase order, submittal of quotation, or supply of products, services or equipment does not constitute an offer nor imply the obligation of THEVA to make any patents, patent rights, or license to manufacture available to the Customer or any third party having a contractual relationship with the Customer with respect to any item supplied by THEVA.
3. All drawings, plans, unique techniques and inventions made by THEVA, its agents or employees in the fulfillment of any contract shall be and remain the property of THEVA. The same shall hold for the copyrights for software products, operating instructions or other written documentation.

IX. Law and forum

Any and all legal relationships between THEVA and the Customer shall be subject exclusively to the pertinent laws of the Federal Republic of Germany. This shall also apply with respect to foreign business transactions. The application of the U.N. Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. The venue shall be the court at Munich, Germany. However, THEVA shall also be entitled to bring action to the Customer's primary domicile.

X. Severability Clause

If individual provisions of these Terms and Conditions of Sale and the additional agreement are or become invalid, the validity of the remaining conditions shall not be affected thereby. In that case, the invalid provision shall be replaced with a regulation that best approximates the economic goals of the original invalid provision, taking into consideration the interests of both parties. In case the invalidity is caused by a term or quantity, the legally valid term or quantity shall be applied.