

General Business Terms and Conditions for Supply and Services

as of 1 January 2006

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§ 1 Scope of Applicability

1.1 Thermo Electron (Erlangen) GmbH (hereinafter, "Thermo Electron") supplies its clients with goods on the basis of sales contracts and renders services on the basis of contracts for work and services. The legal relationships between Thermo Electron and its clients, including future legal relationships, shall be exclusively in accordance with these General Terms and Conditions. In the event Thermo Electron amends these General Terms and Conditions in the future, the General Terms and Conditions currently applicable at the time of the conclusion of the relevant contract shall apply.

1.2 These General Terms and Conditions shall only apply to clients not classified as consumers within the meaning of §13 of the German Civil Code.

§ 2 Conclusion of Contracts

2.1 Thermo Electron's offers are non-binding and without obligation unless they are expressly specified as binding or are given for a limited time. A contract shall only be deemed to have come into force when it has been confirmed in writing by Thermo Electron or when Thermo Electron has performed it. Changes to services after the conclusion of the contracts are permitted as long as they are customary in the trade, reasonable or necessary to satisfy amended legal requirements.

2.2 Quantity, quality and description of the goods and services shall be in accordance with the offer or Thermo Electron's confirmation of order. Specifications of the client shall only become part of the content of the contract with the express written confirmation of Thermo Electron.

2.3 Thermo Electron does not check the accuracy of the information or specifications provided by the client underlying the offer or the confirmation of order.

2.4 Unless otherwise expressly confirmed by Thermo Electron in writing, Thermo Electron supplies goods and renders services within the tolerances permitted by the technical standards currently applicable in Germany (DIN, VDE, etc.).

2.5 In the event Thermo Electron delivers supplies and services in accordance with requirements and specifications of the client, the client shall indemnify Thermo Electron and hold it harmless from damage claims raised against Thermo Electron based on infringement of copyright or industrial property rights.

2.6 Information concerning quantities, descriptions, illustrations, quality specifications and advertising statements, etc., shall not constitute guarantees unless Thermo Electron provides such guarantee expressly and in writing.

§ 3 Prices

3.1 Unless otherwise specified in an offer, in the confirmation of order or in price lists, all prices shall be understood to be "ex works", thus EXW in terms of Incoterms 2000. The relevant VAT applicable in each case will be added to the prices specified in the price lists as defined above. If Thermo Electron delivers the goods to another place, the client shall bear the costs for transport, packaging, insurance, export, import, customs and any other applicable charges.

3.2 Thermo Electron shall generally provide services, depending on the work involved, in the form of daily rates according to Thermo Electron's usual rates.

3.3 Travel and overnight costs shall be billed for services provided by Thermo Electron at a place other than its registered place of business. Expenses for travel by car shall be calculated on the basis of the current prices in each case, travel by public transportation and overnight costs according to expenses incurred. Expenses for meals shall be included in the daily rates.

§ 4 Terms of Payment

4.1 Unless otherwise specified in the confirmation of order or offer from Thermo Electron, invoices shall be payable immediately without deduction. Remuneration for customer services shall become due without deduction immediately upon receipt of the invoice and formal acceptance of the services. The decisive date for determining whether payment has been made in due time is the date as of which Thermo Electron has the money at its disposal. All payments must be made by means of bank transfer.

4.2 Thermo Electron reserves the right to require other payment terms in individual cases, in particular, down payments or advance payment. Payments shall be made by way of transfer to Thermo Electron's account without cost to Thermo Electron. Checks or bills of exchange shall only be accepted on account of performance. The acceptance of bills of exchange shall require prior written approval and shall not be a deferment unless otherwise expressly affirmed.

4.3 Should the client default on payment, Thermo Electron shall be entitled to demand default interest at a rate of 8 percent above the applicable base interest rate and to immediately call in all still outstanding debts and all receivables that become due prior to the full settlement. The right to assert claims for higher damages or a higher interest rate shall remain unaffected.

4.4 The client may only set off undisputed or finally adjudicated counterclaims against Thermo Electron's claims. The client shall only be entitled to a right of retention or the defense of non-performance of contract if Thermo Electron itself committed a material breach of contract or has already received, for a defective service, the part of the remuneration equivalent to the value of the service, or if the counterclaim of the customer underlying the assertion of the right of retention or the defense of non-performance of contract is undisputed or has been finally adjudicated..

§ 5 Delivery

5.1 The delivery of the goods shall be understood to mean that the client shall pick them up at Thermo Electron's premises as soon as Thermo Electron has notified the client that the goods are available for pick-up (EXW, Incoterms 2000). In the event another place of delivery was agreed upon with Thermo Electron, the goods shall be delivered to such place. Packaging may not be returned.

5.2 Unless otherwise agreed, deadlines for deliveries and services are approximate deadlines. The date of the transfer of risk shall be relevant to determine whether deadlines have been met (see Article 6). All contracts and delivery dates shall be subject to correct and timely delivery to Thermo Electron unless Thermo Electron is responsible for not having received supplies from its upstream suppliers. A delivery period shall begin to run when all of the documents, materials and information to be provided by the client and necessary for the performance of the contract as well as all possibly required approvals or permits were handed over to Thermo Electron in due time with the necessary contents and/or in the agreed condition.

5.3 Deadlines for deliveries and services shall be extended by any period for which Thermo Electron proves having been prevented by industrial action, *force majeure* or any other unforeseeable events from procuring, producing or delivering goods or rendering services, and by a reasonable start-up period after the end of the disturbance. Deadlines for deliveries and services shall also be extended by any period in which the client does not fulfill the duties to cooperate that are necessary for the performance of this contract. This shall also apply if such events take place at a time when Thermo Electron is already in default.

5.4 Reminders and the setting of deadlines must be in writing to be valid.

5.5 If the client delays taking delivery (*mora accipiendi*), the client must pay the price. In the case of deliveries, Thermo Electron shall store the goods at the risk and expense of the client.

5.6 Thermo Electron shall be entitled to make partial deliveries to a reasonable extent. Deliveries shall be made within the country cleared through customs and taxed, and abroad not cleared through customs and untaxed.

5.7 Should Thermo Electron cause a delay by its own slight negligence or the slight negligence of its legal representative or vicarious agents, Thermo Electron shall not be obligated to pay compensation for any losses incurred by the delay.

§ 6 Transfer of Risk

6.1 The risk of damage and loss of goods shall transfer to the client:

- 1) If the goods are handed over on Thermo Electron's premises (EXW, Incoterms 2000), at the time Thermo Electron notifies the client that the goods are ready to be picked up.
- 2) If the goods are not handed over on Thermo Electron's premises, when they are surrendered to the freight carrier or to the person the client specifies for the transport.

6.2 In the event Thermo Electron selects the method of shipping, the shipping route or the freight carrier, Thermo Electron shall only be liable for a fault in selection.

6.3 Unless otherwise agreed in writing, it is the responsibility of the client to take out insurance for the transport of the goods at its own expense. In this respect, Thermo Electron shall not take any action on its own behalf or on behalf of the client.

§ 7 Reservation of Title

7.1 The delivered goods (goods under reservation of title) shall not become the property of the client until all of the receivables to which Thermo Electron is entitled on the basis of the business relationship with the client (including ancillary receivables, default interest and rights to compensation for losses) have been satisfied.

7.2 The client shall be entitled to resell the goods under reservation of title in the course of usual business prior to the full settlement of the receivables specified under 7.1 unless it has been or is agreed with third parties that the receivables assigned to Thermo Electron under 7.3 in advance may not be assigned.

7.3 When reselling to its customers, the client shall reserve title to the goods under reservation of title until payment of the purchase price has been made in full. For security purposes, the client herewith assigns all claims based on such sales in the amount of the invoice for the goods under reservation of title (plus VAT) to Thermo Electron. The client shall remain authorized pursuant to 7.4 to collect the assigned receivables. The client shall not be entitled to pledge the goods under reservation of title, nor to deposit them as collateral security.

7.4 The client may collect the receivables assigned in advance as set out in 7.3 in the course of ordinary business operations. This right to collect the receivables shall also empower the client to collect the receivables by way of direct debit if the client has ensured by reaching agreements with the bank that the money credited to the account is not subject to banks' lien and that the client will at all times be able to meet its duty to pay Thermo Electron. If the client is in default of payment of its commitments to Thermo Electron, this right to collect shall expire. Upon the expiration of this right, Thermo Electron shall be entitled to disclose the assignments and to request from the client all information and documents necessary to exercise its rights.

7.5 The client may use and process the goods under reservation of title in the ordinary course of business. Thermo Electron shall be deemed the manufacturer of the goods under §950 of the German Civil Code. If the goods are processed using items not belonging to Thermo Electron, Thermo Electron shall acquire co-ownership of the processed item. This shall also apply if the goods under reservation of title are inextricably mixed with other items. Such reservation of title and authorization for resale shall also apply to the processed item.

7.6 In the event of seizure by third parties, the client shall call attention to Thermo Electron's ownership of the goods under reservation of title and notify Thermo Electron without undue delay to enable Thermo Electron to raise a claim pursuant to §771 of the German Code of Civil Procedure. In the event the client does not meet this obligation, the client shall be liable of any losses incurred.

7.7 In the event the client is in default of payment, Thermo Electron may repossess the goods under reservation of title from the client or from third parties at the expense of the client; the client hereby transfers its rights against such third party for the surrender of the goods to Thermo Electron for this purpose.

7.8 In the event the realizable value of the securities due to Thermo Electron exceeds Thermo Electron's secured claims by more than 10 percent solely on the basis of this reservation of title or together with other securities, Thermo Electron shall be obligated to release collateral at its discretion if requested to do so by the client.

§ 8 Lien

8.1 The client and Thermo Electron agree that Thermo Electron shall be entitled to a lien with respect to items owned by the client that come into Thermo Electron's possession in connection with the performance of the contract for any claims of Thermo Electron against the client currently existing or arising in the future based on the same legal relationship. This shall also apply with respect to an expectant right of the client to acquire ownership.

8.2 The client and Thermo Electron also agree that Thermo Electron is entitled to a lien with regard to the client's claims against Thermo Electron based on the contracts previously concluded and to be concluded in the future for Thermo Electron's claims against the client arising from this Agreement.

8.3 A threat to sell including a deadline may be sent to the most recent known address of the client if no new address can be established by enquiries to the Residents' Registration Office (*Einwohnermeldeamt*). Thermo Electron may sell the pledged item on the open market and charge the client for the costs of the sale.

8.4 In the event the realizable value of the securities due to Thermo Electron exceeds the secured claims by more than 10 percent solely on the basis of this lien or together with other securities, Thermo Electron shall be obligated to release collateral at its discretion if requested to do so by the client.

§ 9 Warranty Regarding Quality Defects and Defects of Title

9.1 Thermo Electron warrants that the goods will be free of quality defects having more than merely marginal adverse effect on the contractual use of the goods and that third-party rights will not adversely affect the contractual use of the delivered products by the client.

9.2 Thermo Electron shall perform this warranty by way of subsequent remedy; to do so, Thermo Electron shall choose whether to remedy the defect or deliver a defect-free product. In the event such subsequent remedy is not performed even after the expiration of a grace period to be set by the client in writing, which must give Thermo Electron the opportunity to remedy the defect at least twice, the client may rescind the contract or demand a reduction of the remuneration; such requirement to set a deadline shall not apply if this is required by statutory law. Thermo Electron shall pay compensation for losses or expenses incurred to no avail owing to defects in accordance with statutory provisions, but limited by the exclusions and limitations of liability set out in Article 10. All other warranty claims shall be excluded.

9.3 A prerequisite for the warranty is that the client has examined the goods and services without undue delay after receipt with regard to their contractual condition and points out deviations and defects without undue delay in writing, including an exact description (see §377 of the German Commercial Code). A written report must be requested from the freight carrier, and after immediately contacting Thermo Electron, a claims agent must be instructed to issue a damage certificate, if required.

9.4 The client shall assist Thermo Electron to remove the defects by providing the necessary time and opportunity to inspect and remove the defects and, if necessary, making it possible for Thermo Electron to carry out the repair at its own plant. Only in the event of *periculum in mora* for the operational safety and to prevent disproportionately great loss may the client involve third parties or demand that Thermo Electron pay the costs for preventive measures. For this to apply, the client must have informed Thermo Electron without undue delay.

9.5 The client shall bear any excess costs caused by the fact that the object in question has been taken to another place than the place where the client has its registered office at the time the contract was concluded or has been taken to the place at which the object was supposed to be used in accordance with the provisions, which was recognizable for Thermo Electron, that the removal of the defects was complicated by unprofessional modifications to the object or that the cause of the defect is based on a specification of the client. This warranty shall not cover defects or damage caused by premature consumption, operational or natural wear and tear, glass breakage, improper treatment, excessive use, inappropriate equipment, operating errors, inappropriate power sources, operation with the wrong type of power, defective repairs by third parties or *force majeure*.

9.6 In the event third parties assert copyright or other intellectual property rights against the client, the client shall notify Thermo Electron in writing without undue delay. Thermo Electron shall be authorized to defend the client against the claims of third parties at the expense of Thermo Electron. In such case, the client shall inform Thermo Electron of its own defense measures and any possible litigation to a reasonable extent and not impede any defense against the claims (e.g., by recognizing the third party's claims); the client shall have this obligation if Thermo Electron indemnifies the client and protects it from the disadvantages and risks arising from the third-party claims.

9.7 The limitation period for warranty claims based on defects shall be one year; in the event of defects hidden with malicious intent or of defects of title owing to third-party rights in rem on the basis of which a third party can demand the surrender of the delivered goods or service, the statutory limitation period shall apply. Thermo Electron shall be entitled to the right set out in 6 at its own discretion even after the expiration of the limitation period with regard to its liability for defects of title.

§ 10 Liability

10.1 Thermo Electron shall be liable under the contract and outside the contract only to the following extent:

Thermo Electron shall pay compensation for loss to the extent provided for by statutory law in the event of willful or grossly negligent breach of duty during the contract negotiations or the performance of the contractual services or in the event of breach of contractual duties to secure traffic, duties of care or ancillary duties.

In the event Thermo Electron's breach of duty concretely puts the achievement of the purpose of the contract or the client's life and limb at risk, Thermo Electron shall be liable in the event of simple negligence for insurable damage up to the amount that could be expected in the ordinary course of affairs. Losses incurred by the client owing to standstills and machine failure, as well as any lost profits, shall not be compensated for in the event of simple negligence. Under no circumstances shall contractual penalties that the client has to pay to third parties be reimbursed.

Thermo Electron shall be liable to the above-mentioned extent also for actions of its legal representatives or vicarious agents. The liability set out above is exhaustive.

No further damage claims can be raised against Thermo Electron. This shall also apply to any tortious liability of Thermo Electron. Claims under the Product Liability Act (Produkthaftungsgesetz) of 15 December 1989 shall, however, remain unaffected.

10.2 All claims against Thermo Electron for compensation for losses or reimbursement of expenses incurred to no avail based on contractual or non-contractual liability shall become time-barred – with the exception of physical injury or in cases of intent – in one year. The limitation period shall begin at the end of the year in which the claim arises and the client gains knowledge of the circumstances giving rise to the claim and the responsibility of Thermo Electron or should have gained such knowledge without having been grossly negligent and shall at the latest expire on the end of the maximum periods provided for in §199(3) and (4) of the German Civil Code. The provision providing for the time limitation of claims based on quality defects and defects of title (8.7) shall remain unaffected.

§ 11 Copyright and Utilization Rights

11.1 In principle, Thermo Electron is entitled to all copyrights and intellectual property rights to the goods and services. Thermo Electron shall grant the client a non-exclusive right, unlimited in terms of time, to use the goods and services for its own purposes and in the scope stipulated in the contract. The client may, unless otherwise stipulated in the contract, install software only in the random access memory and on the hard drive of one computer and use it only at one workstation (individual license).

11.2 The client shall be provided with software in object code and without development documentation. No change or blacking out of any copyright data, other reservations of rights, serial numbers and other identification data contained in the goods or in the services shall be permitted.

§ 12 Work and Services

12.1 The client shall notify Thermo Electron of any requests for modification and expansion (changes) in writing. Thermo Electron shall only be required to carry out changes after a written agreement has been reached that, in particular, can include altered deadlines for deliveries and services and an additional remuneration. If no agreement is reached, Thermo Electron shall perform the contract without the changes. Thermo Electron may also demand remuneration according to time spent on checking the changes and preparing the change order offer.

12.2 Unless otherwise agreed in writing, Thermo Electron shall run agreed or statutory acceptance tests and agreed operational tests within ten days upon delivery in cooperation with the client. During such tests, the client and Thermo Electron shall draw up a report together showing the cases tested and the resulting data, what function tests were carried out and what errors were found.

12.3 The errors discovered during the tests shall be classified as follows:

- 1) Category 1: Errors preventing operation; the processed or improved goods cannot be used.
- 2) Category 2: Error interfering with operation; the use of the processed or improved goods is affected; it can, however, essentially be used. The error can be circumvented by using organizational and other economically justifiable aids.
- 3) Category 3: Other errors; no significant influence on functionality and usability of the processed or improved goods.

The client and Thermo Electron shall classify the errors in the error categories by common accord. The client shall formally accept or take the goods into operation if no Category 1 error has occurred. If possible, Category 2 errors shall be remedied during the tests. Any Category 2 and 3 errors remaining after the formal acceptance or after the goods have been taken into operation shall be remedied in the scope of the warranty.

12.4 Formal acceptance or beginning of operation shall be deemed effected if the client has genuinely used the modification or the goods longer than one month or expresses its approval in another manner or if, despite the fact that the modification or goods have been available for the acceptance procedure and a reasonable grace period has been set, the client does not formally accept the modification or the goods within the grace period or refuses acceptance, although there is no Category 1 error.

12.5 Thermo Electron may request that the acceptance procedure be carried out for parts of the work that have been finished. In such case, the entire work or goods shall be deemed to have been accepted when the final acceptance procedure has been carried out. Partial acceptance shall not be affected by the success of the final acceptance procedure.

§ 13 Cooperation of the Client

13.1 The client shall provide Thermo Electron in due time with all information necessary for the performance of the contract.

13.2 To the extent necessary or useful for the performance of the contract, the client shall support Thermo Electron in its contractual performance without charge by providing in due time and to the extent necessary, for example, employees, places to work, appropriate data processing environment, telecommunications installations and data and cooperating with regard to specifications, tests, acceptance procedures, etc.

13.3 The client shall generally be responsible for setting up and assembling the goods and processed or improved goods. In particular, the client shall carry out installation and other work outside the normal scope of Thermo Electron's business and provide the equipment required for assembly and start-up, as well as power. Furthermore, the client shall be responsible for safety and protective equipment as long as this is not a part of the goods or services.

§ 14 Confidentiality

14.1 The client shall treat all information it obtains in the course of the initiation and performance of the contract from Thermo Election as confidential, even if such information is not protected by law (e.g., under copyright law). This shall apply, in particular, to technical information (e.g., drawings, descriptions of materials, calculations), sales documents (e.g., specifications and price lists) or to other commercial information (e.g., supply capacity). Thermo Electron shall retain ownership of cost estimates, offers, drawings and other documents. Upon request, the client shall return all documents to Thermo Electron.

14.2 This confidentiality obligation shall not apply if the information was made public by Thermo Electron, if the client was provided the information by third parties who were authorized to do so or if the client is required to provide such information to authorities or courts.

14.3 This confidentiality obligation shall also apply when the contract has been performed or did not come into force.

§ 15 Setoff - Retention

15.1 The client may only set off undisputed or finally adjudicated counterclaims against Thermo Electron's claims.

15.2 The client shall only be entitled to rights of retention under §273 of the German Civil Code and §§369 et seq. of the German Commercial Code to the extent that the claim underlying these rights is based on the same legal relationship as Thermo Electron's claim. This restriction shall not be applicable if the client's counterclaims are undisputed or finally adjudicated. The client shall not be entitled to a right of satisfaction under §371 of the German Commercial Code.

§ 16 End of Contract

Each contracting party may terminate a contract for good cause or revoke the acceptance of an order. A good cause is present, in particular, if one of the following events occurs:

- 1) Bankruptcy proceedings are commenced or rejected owing to a lack of assets or an out-of-court composition procedure takes place.
- 2) Claims of the other contracting party are distrained and the distraintment is not lifted within two weeks.
- 3) The client violates the provision concerning copyrights and rights of use (Article 11).

Termination for good cause must be preceded by a written warning containing the threat of termination, the reason for termination and a deadline unless it would be unreasonable to expect the terminating party to accept such a delay.

§ 17 Export Regulations

Under no circumstances may the client take or export the deliveries and services to a country for which there is a U.S. embargo. They may also not be made accessible to persons, companies and institutions that are on special, specified lists of the American authorities. The same reservation applies also to export regulations of the European Union and the Federal Republic of Germany.

§ 18 Miscellaneous Provisions

18.1 Amendments, additions, collateral agreements and deadlines, terminations and the assumption of guarantees must always be in writing to be valid. This written form requirement may be satisfied by the contracting parties also by sending documents via fax or via email; this shall also apply in all cases not mentioned in sentence 1 for which the written form is required. Attached schedules constitute an integral part of the contract.

18.2 If one or more provisions of these General Terms and Conditions should be or become invalid in whole or in part, this shall not affect the validity of the other provisions.

18.3 Data of the client that becomes available in the course of the contractual relations may be stored and processed electronically by Thermo Electron for internal purposes and for the purpose of performance of the contract.

18.4 These General Terms and Conditions shall replace all previous agreements between the contracting parties.

18.5 All legal relations between the contracting parties shall be governed by German law excluding the United Nations Convention on Contracts for the International Sale of Goods. Place of performance and place of jurisdiction for all disputes shall be the place where Thermo Electron's registered office is located. Thermo Electron shall also be entitled to sue the client at the client's place of jurisdiction or at any other place of jurisdiction under national or international law.