

## General Trading Conditions

### **Terms and conditions**

All prices are excl. VAT.

Our prices are package prices and based on the quantity structure provided to us.

The prices correspond to the actual cost situation. If costs change until delivery/service, prices can be adjusted as long as they are affected of the change of costs.

We presuppose that all works can be done rapidly, without interruption and during our normal working time. Waiting periods that are not caused by us, as well as extra effort caused by problems that not were predictable when the contract was signed, we will charge additionally at list prices that are valid for us.

Additional work effort that is not included in the offer is charged at a rate of 160,- CHF per hour excl. expenses.

Work effort outside our working hours whose amount isn't caused by us is charged at an additional rate of 200,- CHF per hour.

Deliveries and services desired by you that go beyond the initial order are charged at list prices and hourly rates that are valid for us.

### **Time limit**

Unless otherwise indicated, our offer is valid for five work days.

### **Payment conditions**

The payment is made, unless otherwise agreed, 30 days after invoicing and if the material is delivered completely without discount.

From the 31st day on we will charge 5% default interest.

The following conditions are applicable:

Offer until 10'000 CHF:

- 100% after acceptance, at the latest two weeks after notification of the readiness of acceptance, plus the applicable VAT.

Offer between 10'000 and 20'000CHF:

- 40% after order;
- 60% after acceptance, at the latest two weeks after notification of the readiness of acceptance, plus the applicable VAT.

Offer over 20'000 CHF:

- 30% after order;
- 30% before delivery or start of workmanship;
- 30% after delivery or end of workmanship;
- Rest after acceptance, at the latest two weeks after notification of the readiness of acceptance, plus the applicable VAT.

For service, separate conditions are applicable.

### **Export conditions**

The fulfillment of a contract by Thurmatik GmbH is under the condition that there are no obstacles caused by national and international legislation, especially export control regulations.

### **Other conditions for delivery and services**

The client designates a responsible and competent project manager for the time of the project. He guarantees that all information and documents that are necessary for the realization of the project are provided on time and completely as well as necessary decisions are made on time.

### **General conditions**

#### **Deadlines for delivery; delay**

The observance of deadlines for delivery or workmanship presupposes the on-time-reception of all documents to be delivered by the client, especially plans, necessary author-

izations and admissions, as well as the observance of the agreed payment conditions and other obligations by the client. If those requirements aren't met, the deadlines extend appropriately. This isn't valid, if the contractor is responsible.

If the non-observance of deadlines is caused by force majeure such as mobilization, war, rebellion or similar events such as strike or lockout, the deadlines extend appropriately.

If the contractor is in default, the client, as long as he can prove a loss, can claim a compensation of 0,5% for every completed week, however, a maximum of 5%, on that part of the delivery that could not be put to the intended use due to the delay.

Claims for compensations of the client because of delay of delivery as well as claims for compensation of workmanship that go beyond the limits declared above, are, also after the deadline set to the contractor, excluded in all cases of delayed delivery. This isn't applicable in case of mandatory liability because of malice, gross negligence and injury to life, body or health. The client can only withdraw from the contract within the limits of statutory regulations if the delay is caused by the contractor.

A reversal of the burden of proof to the disfavor of the contractor is not connected with the regulations above.

### **Material defects**

The contractor isn't responsible for the following material defects:

- Material of third-party-suppliers. The third-party-supplier is liable for.
- Irrelevant deviation of the agreed property.
- Irrelevant impairment of usability.
- Normal abrasion.
- Defects after passing of risk caused by faulty or careless treatment, heavy duty, inappropriate equipment, deficient building work or inappropriate ground.
- Defects caused by outside influences that not presupposed in the contract.
- Non repeatable software errors.
- Inappropriate modifications or maintenance work made by the client or third party.
- All defects (also unseen) that already exist.

### **Supplementary performance**

Claims of the client on efforts that are necessary for supplementary performance, especially transport, travel, work and material costs, are excluded if the costs increase because the good was afterwards brought to another place than the branch of the client, expect the transfer corresponds to the intended use.

Place of the supplementary performance is the original delivery address of the goods. Additional travel costs and expenses are charged to the client.

For material defects, the contractor is responsible as follows: All parts or services that have a defect within the limitation period, without consideration of operating time, are at client's option either to improve for free or to replace as long as the defect was already existing at the passing of risk.

First, the possibility to improve within reasonable time has to be provided to the contractor. To do so, the client has to supply necessary external devices such as telephone or modem. If the improvement fails, the client can withdraw from the contract or reduce the payment.

## **Statute of limitation**

Claims for defects expire by limitation after 12 months. This doesn't apply if a longer statute of limitation is regulated by law or in case of malice, gross negligence and injury to life, body or health. Regulations about suspension of expiry or restart of terms is not affected by that.

## **Notice of defects**

Notices of defects have to be in writing.

In case of notices of defects payments of the client can be hold back in an amount that is in a reasonable proportion to the occurred defect. The client can only hold back payments if a notice of defects, on whose legitimacy are no doubts, is made. If the notice of defects is made without legitimacy, the contractor has the right to claim the caused expenses from the client.

A recourse of the client on the contractor is given only as the client hasn't agreed claims of defects that go beyond legal regulations with his customer. The amount of recourse of the client to the contractor is according to the paragraph above.

Further or other claims than regulated in this article, indifferent legal basis, against the contractor is excluded as long as he isn't liable because of malice, gross negligence, injury to life, body or health or warrant of the absence of a defect. Especially claims on loss of profit, costs for removal and reinstallation or other pure financial loss are excluded from liability. A reversal of the burden of proof to the disfavor of the contractor is not connected with the regulations above.

## **Amount guaranteed**

Thurmatik GmbH is liable for injury to life, body or health that it is responsible for with a maximum amount of 5'000'000 CHF. In case of damage of data mediums the duty of replacement doesn't include the effort to restore lost data and information.

Further damage or reimbursement of expenses claims of the client such as consequential damage or loss of production, indifferent legal basis, especially because of violation of duties of the obligation or civil offence, are excluded.

This isn't applicable in case of mandatory liability, e.g. according to the product liability law or in case of malice, gross negligence, fraudulent concealment of a defect or injury of fundamental contractual obligations. However, the damage claim for injury of fundamental contractual obligations is limited to a damage that is typical for the contract and predictable, as long as is isn't malice or gross negligence.

As long as the client has a damage claim according to this article, they expire by limitation together with the statute of limitation according to article statute of limitation. This isn't applicable in case of malice, gross negligence, injury to life, body or health, fraudulent concealment of a defect or in case of claims according to the product liability law.

A reversal of the burden of proof to the disfavor of the contractor is not connected with the regulations above.

## **Applicable law and jurisdiction**

Swiss law is applicable.

Jurisdiction is Märstetten/Switzerland.

## **Others**

Conditions of purchase are only valid as we confirm in writing.

Information received from us within the offer, as long as they aren't known generally or otherwise lawfully known by you, are not allowed to be shared with third party.

Märstetten, 17. March 2014

Version: V06