

General Terms and Conditions Thermico GmbH & Co. KG

These General Terms are provided on our website www.thermico.de.

1. General

The English version is translated from the German original. In cases of doubt or contradictions, as well as for any contract interpretation, the original German version of these GENERAL TERMS shall prevail over any translation in other languages including this English version. This shall be valid to the extent permitted by German Law.

1.1. Definitions

„EX WORKS“ means ex works in accordance with Incoterms 2000 or, after replacement, the actual valid Incoterms

„GENERAL TERMS“ means these general terms and conditions of Thermico GmbH & Co KG.

„ORDER CONFIRMATION“ means the document that THERMICO GMBH & CO. KG sends the CLIENT in answer to its PURCHASE ORDER by e-mail, facsimile, or in writing.

„COATING AND MACHINING SERVICES“ means services made at goods provided by CLIENT

„PURCHASE ORDER“ means the purchase order issued by the CLIENT and confirmed by THERMICO GMBH & CO. KG, in the version stipulated in the ORDER CONFIRMATION. In the case of contradictions between the documents, the ORDER CONFIRMATION shall be deemed as valid version, unless the CLIENT files an objection within three (3) working days after receipt of ORDER CONFIRMATION by e-mail, facsimile, or in writing.

„ENGINEERING SERVICES“ means work performed by engineers or technicians, that are not part of a CONTRACT about delivery of a SYSTEM.

„FINAL ACCEPTANCE“ means the document issued by the CLIENT or end-user at beginning of the warranty period or, if no FINAL ACCEPTANCE document is foreseen in the CONTRACT, that document valid as proof of delivery of the goods or completion of services. For consignment goods the FINAL ACCEPTANCE happens with transfer of title date and at place of consumption.

„DEVELOPMENT“ means the services performed by THERMICO GmbH & Co KG, Individually made for one particular CLIENT based on a problem that CLIENT asked to solve. A development agreement is submit to an individual contract, that stipulates the kind of development, the effort to perform for achieving the aim, the compensation payable by the CLIENT, as well as the aim definition.

„SPARE PARTS“ means wear and tear parts.

„MAINTENANCE / REPAIR / INSTALLATION SERVICES“ means services, that are not related to delivery of a SYSTEM and are different to COATING AND MACHINING SERVICES.

„COMPONENTS“ means goods, that are neither SYSTEM nor SPARE PARTS.

„CLIENT“ means the contract party, signing the CONTRACT documents as a contract partner to THERMICO GMBH & CO. KG.

„DELIVERY ITEM“ means goods and/or services including COATING AND MACHINING SERVICES, ENGINEERING SERVICES, COMPONENTS, MATERIALS, SPARE PARTS, SYSTEMS, TRAININGS, as well as the relating documentation to perform according to the ORDER CONFIRMATION in the form as explicitly agreed and specified.

„MATERIALS“ means consumables (e.g. powder, wires), that are used in the coating process, except spare parts.

„TRAINING“ means educational support performed by or on behalf of THERMICO GMBH & CO. KG.

„SYSTEM“ means coating system or a part of inclusive engineering works delivered with or without installation or commissioning.

„CONTRACT“ means the order in form of order confirmation inclusive all documents referred to in the ORDER CONFIRMATION.

1.2. These GENERAL TERMS are valid for all deliveries of THERMICO GMBH & CO. KG. Deviations have to be agreed upon in a document signed by both parties. The GENERAL TERMS are valid exclusively; contradicting or different terms by CLIENT are only valid after explicit written confirmation by THERMICO GMBH & CO. KG.

1.3. The delivery comprises the DELIVERY ITEM and is effected EX WORKS.

1.4. In the case of contractions between different CONTRACT documents, the following priority of documents is valid:

- a) ORDER CONFIRMATION in answer to the purchase order
- b) PURCHASE ORDER or other negotiated, agreed and signed documents, including all documents relating to those particular document and signed by both parties
- c) The offer made by THERMICO GMBH & CO. KG
- d) This GENERAL TERMS
- e) The CLIENT's request for quotation
- f) The CLIENT's terms and conditions of purchase

1.5 THERMICO GMBH & CO. KG's sales staff and technical employees are not allowed to confirm or agree to indemnification and remuneration demands.

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1.6 All information and data in brochures, price lists, homepage, are binding only to the extent as explicitly related to and mentioned in the CONTRACT.

1.7 All documents that are part of the CONTRACT can only be amended in writing, and in form of duly signed documents by both parties.

In the case that the CLIENT may wish amendments in the course of the contract performance, a separate additional contract has to be concluded for these changes. One-sided change requests are generally insignificant. In these cases the original CONTRACT is valid.

2. Delivery date

2.1. THERMICO GMBH & CO. KG shall deliver the DELIVERY ITEM at the dates specified in the PURCHASE ORDER and confirmed in the ORDER CONFIRMATION. The delivery period shall commence at the date of ORDER CONFIRMATION by THERMICO GMBH & CO. KG, or, if an initial down-payment has been agreed upon, five days after date of receipt of such down-payment.

2.2. In case of late delivery for reasons for which THERMICO GMBH & CO. KG or its sub-suppliers are directly responsible, the warranty period shall be adjusted in accordance to paragraph 6.10. in these General Terms and Conditions.

2.3. If in exceptional cases CLIENT requests to return MATERIALS, the MATERIALS should be in their original packaging, sealed and unopened. Original invoices and lot numbers should match. A restocking fee amounting to fifteen percent (15%) of the value of the returned MATERIALS will be charged. The acceptance of such returns will be at the sole discretion of THERMICO GMBH & CO. KG. Returns of other DELIVERY ITEMS than MATERIALS will not be accepted.

3. Price and Payment

3.1. The prices for the DELIVERY ITEM are those stated in the PURCHASE ORDER. For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the ORDER CONFIRMATION. If no agreement on hourly rates has been made, the hourly rate applied by THERMICO GMBH & CO. KG for other customers and comparable work shall apply. All prices are exclusive of sales or excise duties, VAT, sales taxes or similar taxes and duties. Unless a lower price has been offered by THERMICO GMBH & CO. KG in writing, THERMICO GMBH & CO. KG shall be entitled to charge a minimal invoice amount of € 150 plus VAT. If no other terms were agreed, the following payment conditions shall be valid:

3.2. Payment terms for SYSTEMS: 30 % at PURCHASE ORDER date, 30 % within 2 months after PURCHASE ORDER date, 30 % before shipment, 10 % after FINAL

ACCEPTANCE but not later than 90 days after announcement of readiness for shipment. Above payments shall be made within ten (10) days after invoice date. Shipment will be effected after receipt of full payment for all invoices due.

3.3. Payment terms for all other DELIVERY ITEMS: 100 % within ten (10) days after invoice date.

3.4. Payments for prices calculated on a time basis shall be invoiced on a monthly basis or after completion of the work, whichever occurs first.

Payment shall be made immediately after receipt of invoice, without deduction.

3.5. If the CLIENT does not comply with the agreed dates of payment, CLIENT shall be liable, without reminder, for interest with effect from the agreed date on which payment was due, at a rate depending on the normal interest conditions at THERMICO's domicile, but not less than five percentage points (5 %) above the three months' LIBOR (London Interbank Offered Rate) applicable at the due date of the delayed payment, and under condition that allowed under applicable law. This shall not affect the right to claim further compensation.

3.6. All payments shall be made without any deductions in the currency stated in the CONTRACT.

3.7. In case of late payment, THERMICO GMBH & CO. KG may suspend its performance of the DELIVERY ITEM until the open and due invoices have been paid. The CLIENT shall have no right to claim remedies in these cases.

3.8. If CLIENT and THERMICO GMBH & CO. KG agreed on issuing a Letter of Credit by CLIENT in favor of THERMICO GMBH & CO. KG, such Letter of Credit shall be irrevocable, extendable, and confirmed by a first class worldwide active bank. Withdrawal of the money shall be against invoice and bill of lading or warehouse receipt.

4. Intellectual Property

4.1. CLIENT shall provide the technical documentation (e.g. up-to-date drawings, descriptions, charts, instructions) which is necessary for the delivery of the DELIVERY ITEM and is specified in the CONTRACT. CLIENT confirms that CLIENT is fully authorized to use (or have used) the technical documentation provided to THERMICO GMBH & CO. KG for the performance of the DELIVERY ITEM by THERMICO GMBH & CO. KG or its sub-suppliers, respectively. In case CLIENT would not be authorized to order said performance from THERMICO GMBH & CO. KG without violation of intellectual property rights of third parties, or if such right should be challenged, CLIENT shall inform THERMICO GMBH & CO. KG without any delay. In this case, THERMICO GMBH & CO. KG shall stop the work until the approvals needed for the performance have been obtained.

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4.2. THERMICO GMBH & CO. KG shall not use technical documentation received from CLIENT for any purpose other than to fulfill the CONTRACT.

4.3. Any know-how, inventions, patents or copyrights or the like belonging to or provided by THERMICO GMBH & CO. KG and used for or developed in the course of the fulfillment of the CONTRACT by THERMICO GMBH & CO. KG shall remain THERMICO GMBH & CO. KG'S property, and no ownership shall be transferred to CLIENT with respect to such know-how, inventions, patents and copyrights, independent of the hardware on which such know-how, inventions, patents or copyrights is made available (machinery, paper, electronic medium, etc.). However, CLIENT shall be granted a limited right to use such know-how, invention, patents, copyright or the like for the operation, maintenance and repair of the DELIVERY ITEM on a non-exclusive basis, which right shall not include the use of the said intellectual property for the reproduction of the DELIVERY ITEM or parts thereof. If the DELIVERY ITEM consists of ENGINEERING SERVICES, CLIENT shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the PURCHASE ORDER. In case of doubt, ENGINEERING SERVICES provided for the development of a SYSTEM or COATING AND MACHINING SERVICES shall be deemed to be made available for the procurement of such goods or services from THERMICO GMBH & CO. KG.

4.4. a) THERMICO GMBH & CO. KG warrants that the DELIVERY ITEM and any part thereof, in the particular form sold by THERMICO GMBH & CO. KG, shall not infringe any intellectual property rights of third parties. In the event of any patent infringement relating to the said DELIVERY ITEM, THERMICO GMBH & CO. KG may, to its sole discretion, procure the right to use the DELIVERY ITEM without impairing its suitability, or modify or replace it so that it is rendered non-infringing. The obligations of THERMICO GMBH & CO. KG set forth herein are contingent upon (i) THERMICO GMBH & CO. KG receiving prompt written notice from CLIENT of such infringement; (ii) THERMICO GMBH & CO. KG receiving assistance from CLIENT in the defense; and (iii) the right of THERMICO GMBH & CO. KG to settle or defend.

b) This obligation of THERMICO GMBH & CO. KG shall not apply to (i) the DELIVERY ITEM or part thereof which has been manufactured according to CLIENT'S design, (ii) services performed by using CLIENT'S documentation, (iii) the use of the DELIVERY ITEM or any part thereof in conjunction with any other product in a combination not furnished by THERMICO GMBH & CO. KG as part of the DELIVERY ITEM, (iv) products fabricated by using the DELIVERY ITEM. As to any such equipment, service, product, part or use in such combination, THERMICO GMBH & CO. KG assumes

no liability whatsoever for infringement of intellectual property rights of third parties, and CLIENT shall indemnify THERMICO GMBH & CO. KG against any respective infringement claims. THERMICO GMBH & CO. KG shall co-operate with CLIENT in the same manner as required by THERMICO GMBH & CO. KG under 4.4 a) (i) to (iii) herein above.

4.5. CLIENT is not allowed to copy any material from THERMICO GMBH & CO. KG which is protected by copyright except for archiving purposes or to replace a defective copy.

5. Installation and site Preparation

5.1. If installation services are a part of the DELIVERY ITEM, it is the responsibility of the CLIENT to prepare the site environmentally and to provide the required services, electrical wiring and conduit, dry compressed air and piping, gas supply and piping, tools for installation, water drain, permits, including work permits, licenses, approvals, etc. as well as whatever is required to uncrate and move the equipment into its location.

5.2. CLIENT also undertakes to maintain the facilities, upon which THERMICO GMBH & CO. KG'S personnel maybe required to enter, in a safe condition, and to comply with all applicable laws, statutes and regulations governing workplace health and safety, and to give THERMICO GMBH & CO. KG'S personnel all instructions necessary. THERMICO GMBH & CO. KG shall make sure that its personnel will follow all instructions reasonably made by CLIENT. The same applies vice versa in case CLIENT'S personnel have to enter upon THERMICO GMBH & CO. KG'S facilities.

5.3. CLIENT'S failure to comply with the obligations stated in Articles 5.1 and 5.2 above shall entitle THERMICO GMBH & CO. KG to either stop rendering its services, and/or postpone the delivery terms, and/or ask for additional charges for the lost time of its service personnel, such time to be calculated and charged in accordance with Articles 3.1 and 3.3 herein above.

6. Warranty

Articles 6.1 through 6.7 contain specific warranties referring to various DELIVERY ITEMS. Only the warranty provision(s) referring to a specific DELIVERY ITEM shall apply.

6.1. COATING AND MACHINING SERVICES

THERMICO GMBH & CO. KG shall remedy any defect resulting from not using the materials specified, or from faulty workmanship. THERMICO GMBH & CO. KG assumes no warranty or representation regarding the fitness of the coating or machining applied for the purpose for which the coated goods are intended to be used. If requested to do so by CLIENT in writing,

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THERMICO GMBH & CO. KG shall at its sole option repair the defective coating or machining or remove and reprocess it. The CLIENT's right for appropriate reduction of the Contract Price is not affected. These remedies shall be provided for the defects notified to THERMICO GMBH & CO. KG during the warranty period under the conditions defined in Article 6.9 herein below and are granted for twelve (12) months. In the case that the anticipated or agreed coating or machining life period is shorter than twelve (12) months, the shorter period shall be the valid warranty period. Additional rights are excluded unless expressly stipulated under the applicable law.

6.2. ENGINEERING SERVICES

In cases of doubt the right for service contracts shall apply for ENGINEERING SERVICES. THERMICO GMBH & CO. KG'S obligations consist of using proper care and skill in performing the work described in the CONTRACT. However, THERMICO GMBH & CO. KG does not provide any warranty for successfully achieving the results planned in the CONTRACT. If requested to do so by CLIENT in writing within six (6) months from delivery at the latest, THERMICO GMBH & CO. KG shall re-do any faulty service work at its own cost. Further rights are excluded to the extent as the applicable law allows. In the exceptional case that not service law has to be applied, the warranty of twelve (12) months after delivery is valid. Apart from that the stipulations defined in section 1 apply to the extend applicable law allows.

6.3. SPARE PARTS

THERMICO GMBH & CO. KG shall remedy any defect resulting from faulty materials or faulty workmanship. If requested to do so by CLIENT in writing, THERMICO GMBH & CO. KG agrees to, at its sole option, either repair or replace the faulty SPARE PARTS, or supply CLIENT with non-defective SPARE PARTS. The CLIENT's right for appropriate reduction of the Contract Price is not affected. These rights shall be valid for the defects notified to THERMICO GMBH & CO. KG during the warranty period under the conditions defined in Article 6.9 herein below and are granted for a period of twelve (12) months except as otherwise agreed upon in the CONTRACT or as can normally be expected for such types of SPARE PARTS and the specific use, whichever time period is the shortest. Additional rights are excluded unless expressly stipulated under the applicable law.

6.4. DEVELOPMENT AGREEMENTS

Development Agreements are not submit to neither the warranty obligations defined in service right nor purchase right. The CLIENT accepts, that problems might occur during the DEVELOPMENT process, that the aimed solution target cannot be met, as well as the product might partially or in full be different from the CLIENT's expectations. THERMICO GMBH & CO. KG warrants to

take appropriate care during the development process, and to treat provided items with care.

6.5. MAINTENANCE / REPAIR / INSTALLATION SERVICES

THERMICO GMBH & CO. KG'S obligations consist of using proper care and skill in performing the work described in the CONTRACT and, if parts (SPARE PARTS or other parts) are supplied by THERMICO GMBH & CO. KG in connection with such SERVICES, to deliver parts, which are free of defects. If requested to do so by CLIENT in writing, THERMICO GMBH & CO. KG shall re-do any faulty service work at its own cost. Defects resulting from insufficient or inappropriate documentation delivered by CLIENT shall be remedied at CLIENT'S cost. The CLIENT's right for appropriate reduction of the Contract Price is not affected. These remedies shall be provided for the defects notified to THERMICO GMBH & CO. KG during the warranty period under the conditions defined in Article 6.9 herein below and are granted for a period of twelve (12) months, except as otherwise agreed upon in the CONTRACT or as can normally be expected for such types of SERVICES or REPAIRS and the specific use, whichever time period is the shortest. Additional rights are excluded unless expressly stipulated under the applicable law.

6.6. MATERIALS

THERMICO GMBH & CO. KG warrants that when dispatched from THERMICO GMBH & CO. KG's factory, all MATERIALS meet the specifications described in the respective product data sheet. If requested to do so by CLIENT in writing, THERMICO GMBH & CO. KG agrees to replace, at THERMICO GMBH & CO. KG'S own cost, any MATERIALS which do not meet the specifications described in the said product data sheet or which have been specifically agreed upon in the CONTRACT. The CLIENT's right for appropriate reduction of the Contract Price is not affected.

These remedies shall be provided for the defects notified to THERMICO GMBH & CO. KG during the warranty period under the conditions defined in Article 6.9 herein below and are granted for a period of twelve (12) months, except as otherwise agreed upon in the CONTRACT or as can normally be expected for such types of MATERIALS and the specific use, whichever time period is the shortest. Additional rights are excluded unless expressly stipulated under the applicable law.

6.7. TRAINING

The right for Service Contracts applies for TRAININGS. THERMICO GMBH & CO. KG'S obligations consist of using proper care and skill in performing the training. THERMICO GMBH & CO. KG shall assume liability regarding correctness of the content communicated, orally or in writing, only to the extent that damages resulting from TRAINING are based on THERMICO GMBH & CO. KG'S gross negligence or willful misconduct. In cases of slight negligence the liability is limited to the

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reimbursement for the typical, predictable average damage.

6.8. SYSTEMS and COMPONENTS

THERMICO GMBH & CO. KG shall remedy any defect resulting from faulty materials or faulty workmanship. To the extent THERMICO GMBH & CO. KG is responsible for the design the same obligation applies to defects resulting from faulty design. If requested to do so by CLIENT in writing, THERMICO GMBH & CO. KG agrees to, at its sole option, either repair or replace the faulty parts of the DELIVERY ITEM, or supply CLIENT with non-defective DELIVERY ITEM or part thereof. The CLIENT's right for appropriate reduction of the Contract Price is not affected. These remedies shall be provided for the defects notified to THERMICO GMBH & CO. KG during the warranty period under the conditions defined in Article 6.9 herein below and are granted for a period of twelve (12) months. Additional rights are excluded unless expressly stipulated under the applicable law.

6.9. Performance Guarantee

Unless explicitly specified in the CONTRACT, THERMICO GMBH & CO. KG does not provide performance guarantees. In the case that a performance guarantee has been agreed upon, it shall be fulfilled if the stipulated values have been achieved in a performance test, or, if no such test has been agreed upon, as soon as the DELIVERY ITEM goes into commercial operation. THERMICO GMBH & CO. KG's liability for not reaching the specified values, although the pre-conditions under CLIENT's or the end-user's responsibility have been provided correctly, shall be limited to liquidated damages in the amount of maximum five percent (5 %) of the CONTRACT price for the delivery of SYSTEMS, respectively for all other DELIVERY ITEM to maximum ten percent (10%).

6.10. General Conditions applicable to THERMICO GMBH & CO. KG'S Warranty

a) Place where Warranty Work is executed

THERMICO GMBH & CO. KG reserves the right to require that the CLIENT or the end-user returns the DELIVERY ITEM or parts thereof to THERMICO's production facility to provide proper warranty service. Regarding SYSTEMS, THERMICO GMBH & CO. KG shall use its best efforts to perform the warranty work at CLIENT'S or end-user's facility, and as soon as reasonably practicable after receipt of written notification by the CLIENT or the end-user. In case THERMICO GMBH & CO. KG requires that the CLIENT or end-user returns the SYSTEM or part thereof to THERMICO's facilities, THERMICO GMBH & CO. KG shall reimburse CLIENT or end-user solely the costs paid for sea or land transportation, with the exclusion of any internal costs. Regarding COATING AND MACHINING SERVICES, THERMICO GMBH & CO. KG shall bear the costs for the corresponding repair or reprocessing work which occurs outside its works if it is

not possible to carry out such repairs or reprocessing work in THERMICO GMBH & CO. KG'S works, or if this would involve unreasonable expenses. Such costs shall be borne to the extent that they are reasonable under the circumstances prevailing, and provided CLIENT or end-user has obtained THERMICO GMBH & CO. KG'S prior written approval.

b) Start of Warranty Period

Unless otherwise agreed upon in writing, the warranty period for SYSTEMS, COMPONENTS, and MAINTENANCE / REPAIR / INSTALLATION SERVICES starts at the date of FINAL ACCEPTANCE of the respective DELIVERY ITEM, in any case not later than 90 days after announcement of readiness for shipment, or completion of the services. FINAL ACCEPTANCE shall not be deferred due to minor defects. As soon as the CLIENT or end-user operates the DELIVERY ITEM, it shall be deemed accepted. For MATERIALS, COATING AND MACHINING SERVICES as well as SPARE PARTS the warranty period begins at the date of delivery EX WORKS of the equipment.

c) Early termination of Warranty Period

The warranty periods stipulated in 6.1 through 6.7 above shall terminate if CLIENT or a third party undertakes inappropriate or improper modification or repairs, or if the CLIENT, in case of a defect, does not as soon as reasonably possible take all appropriate steps to mitigate damages. The CLIENT or the end-user is obliged to check the DELIVERY ITEM and to notify THERMICO GMBH & CO. KG in writing immediately, within one week after delivery at the latest, and hidden defects within one week after recognition. The warranty claim becomes void if the CLIENT or enduser do not check the DELIVERY ITEM and notify THERMICO of its obligation to remedy such defect.

d) Maximum Warranty Period

Any warranty period (including but not limited to new warranty periods for replaced, or repaired goods, or repeated services, and including cases when commencement of the warranty period is deferred, etc.) shall expire after adding half of the number of months of the original warranty period.

e) Exclusion from THERMICO GMBH & CO. KG'S Warranty

Excluded from THERMICO GMBH & CO. KG'S warranty and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design (if applicable), or poor workmanship, e.g. for deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions or deficiencies resulting from other reasons beyond THERMICO GMBH & CO. KG'S control, including damages caused by erosion, corrosion or cavitation. Replaced parts shall become the property of THERMICO GMBH & CO. KG. The CLIENT or end-user shall at its own expense arrange for any dismantling and reassembly of

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equipment other than the dismantling and reassembly of the equipment pertaining to the DELIVERY ITEM, to the extent that this is necessary to remedy the defect. THERMICO GMBH & CO. KG MAKES NO WARRANTY OR REPRESENTATION TO THE DELIVERY ITEM OTHER THAN AS SPECIFIED IN THIS SECTION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

6.11 Hazard Warning Responsibility

CLIENT and THERMICO GMBH & CO. KG acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning DELIVERY ITEM. CLIENT is familiar with the DELIVERY ITEM and acknowledges its separate and independent knowledge of such risks, which are known in CLIENT'S industry. CLIENT shall maintain compliance with all safety and health related governmental requirements concerning DELIVERY ITEM and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, agents, contractors, and customers with all hazards associated therewith, including handling, shipment, storage, use, and disposal. CLIENT assumes as to its employees, independent contractors, and subsequent purchasers of the DELIVERY ITEM sold hereunder, all responsibility for all such necessary warnings or other precautionary measures. CLIENT shall defend at its own expense, indemnify fully and hold harmless THERMICO GMBH & CO. KG and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, attorney's fees and related costs) arising out of or in any manner related to CLIENT'S failure to provide necessary warnings or other precautionary measures in connection with the DELIVERY ITEM sold hereunder.

7. Overall Limitation of Liability

7.1. For damages, not caused to the DELIVERY ITEM itself, THERMICO GMBH & CO. KG is liable – for whatever legal reason - only

- a) in cases of intent
- b) for gross negligence by the managing owner, institutions, or executive employees of THERMICO GMBH & CO. KG
- c) in the event of culpable injury to life, body and health
- d) for fraudulent concealment of defects or defects
- e) in case of defect DELIVERY ITEM, provided and in so far as liable for personal damage and property damage

for private used materials according to product liability law

7.2. In the event of culpable, essential breaches of contractual obligations, that means obligations mandatory to perform and achieve the contract purpose, in that the CLIENT can therefore trust in their adherence, THERMICO GMBH & CO. KG is also liable for gross negligence by non-executive staff, as well as slight negligence in cases of contract-typical, reasonably foreseeable damages only.

7.3. Further claims are excluded. Any disclaimer and any liability limit are also valid for the personal liability relevant to THERMICO GMBH & CO. KG'S staff, employee, consultant, representative, non-executive and executive employee.

8. Export Documents and other Documents required by law

8.1. THERMICO GMBH & CO. KG undertakes to provide the documents required by the authorities at THERMICO GMBH & CO. KG'S place for the manufacturing and transportation EX WORKS of the DELIVERY ITEM.

8.2. CLIENT undertakes to provide all other documents required, e.g. documents required by an authority at CLIENT'S or CLIENT'S customer's place, or the place where the DELIVERY ITEM will be used.

8.3. THERMICO GMBH & CO. KG, CLIENT and CLIENT'S customer shall support each other without undue delay if one party needs information or documentation required by any authority, if such information or documentation can be delivered easier by one of the other parties than the required party.

8.4. The CLIENT hereby represents and warrants that it is, and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include, but are not limited to obtaining all required authorizations or licenses for the export or reexport of any controlled item, product, article, commodity, software or technology. Without limiting the generality of the foregoing, the CLIENT hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, reexporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. The CLIENT agrees to indemnify and hold harmless. THERMICO GMBH & CO. KG from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

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Dipl.-Ing. Götz Matthäus
Gerichtsstand: Dortmund
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USt.IdNr.: DE812801857
St.-Nr.: 315 5817 1364

9. Force Majeure

9.1. THERMICO GMBH & CO. KG shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labor difficulty, governmental acts such as but not limited to trade restrictions including embargoes, Acts of God, acts of the CLIENT or its customer, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of THERMICO GMBH & CO. KG. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than six (6) months, either THERMICO GMBH & CO. KG or CLIENT may terminate the CONTRACT upon seven (7) days written notice to the other party.

9.2. THERMICO GMBH & CO. KG shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. CLIENT shall be entitled to receive the work and supplies for which he has paid.

10. Free Issue Materials

Materials supplied by CLIENT to THERMICO GMBH & CO. KG (e.g. parts to be coated or machined, materials to be used for implementation in the DELIVERY ITEM, etc.) shall at all times remain the property of CLIENT. Subject to Article 6 and 7 hereinabove, THERMICO GMBH & CO. KG shall be solely liable for damages caused negligently to such materials.

11. Miscellaneous

11.1. Applicable Laws and Jurisdiction

The CONTRACT is subject to and shall be interpreted in accordance with the laws of Federal Republic of Germany, to the exclusion of conflict-of-laws rules and other regulations set out in Private International Law. In case of a dispute, the parties shall make their best endeavors to solve such dispute amicably. If this should not be possible, the courts at the place of business of THERMICO GMBH & CO. KG shall be exclusively responsible. THERMICO GMBH & CO. KG reserves the right to file a claim at the CLIENT's place of business. All disputes have to be solved in accordance with the stipulations of CONTRACT and the relating documents.

11.2. Assignment

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void. THERMICO GMBH & CO. KG'S affiliated companies shall not be considered third parties for this purpose.

11.3. Waiver of Rights

THERMICO GMBH & CO. KG'S or CLIENT'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

11.4. Severability

If a provision of the CONTRACT is determined to be void or unenforceable, this finding shall not render other provision void or unenforceable, and THERMICO GMBH & CO. KG and CLIENT shall make their best endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.

11.5 Retention of Title

THERMICO GMBH & CO. KG reserves the title for the DELIVERY ITEM until full payment is received. CLIENT is not allowed to sell, pledge, or assign for security. In case of pledge, confiscation or other disposition by third party, the CLIENT is obligated to inform THERMICO GMBH & CO. KG immediately. In case of behavior contrary to CONTRACT, in particular default in payment, THERMICO GMBH & CO. KG is entitled to redemption, and the CLIENT has to return the DELIVERY ITEM. Based on this retention of title THERMICO GMBH & CO. KG is entitled to demand the return only after withdraw from the contract. The initiation of insolvency proceedings qualifies THERMICO GMBH & CO. KG to withdraw from CONTRACT and to demand the immediate return of the DELIVERY ITEM.

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