

THERMATRAS B.V. – GENERAL TERMS AND CONDITIONS OF DELIVERY

This is a translation of the authentic Dutch text, which is lodged with the Chamber of Commerce in Rotterdam under number 24329162

Article 1 – Definitions and scope of application

- 1.1. For the purposes of these terms and conditions the following words shall bear the meanings assigned to them
 - a. terms and conditions – these terms and conditions;
 - b. contractor – Thermatras B.V. of Oud-Beijerland, the Netherlands;
 - c. customer – any person acting pursuant to an occupation or a business to whom the contractor presents an offer, with whom the latter enters into an agreement, anyone to whom a consignment is or has been delivered by the contractor or on his behalf, or for whom one or more services is or are, or has or have been performed by the contractor or on his behalf.
- 1.2. These terms and conditions shall apply to any offer made by the contractor, to any agreement into which he enters, and to any agreement which may result therefrom, as well as any legal transaction performed by the customer or on his behalf.
- 1.3. The customer's general terms and conditions shall not apply and are expressly rejected. Any provision to the contrary shall only apply in so far as it is agreed in writing and even then only in respect of the commission which has been agreed. These terms and conditions shall remain in effect in all other respects.
- 1.4. These terms and conditions are translated from Dutch into English. Only the Dutch version of these terms and conditions shall be regarded as authentic text, even if all other documents between contractor and customer are in the English or any other language.

Article 2 – Offers and conclusion of agreements

- 2.1. Any offer made by the contractor shall be deemed to be an invitation to present an offer. Nevertheless, should an offer be referred to as an offer or if it can be regarded as such, it shall be deemed to have been made free of obligation unless otherwise agreed in writing.
- 2.2. An agreement between the contractor and the customer shall be concluded where and once the contractor has sent the customer a written confirmation of the commission provided by the latter, if any other document provides evidence of such a transaction involving multiple parties, or where the work in question has actually commenced.
- 2.3. Any supplement to, amendment or further arrangements in relation to the agreement referred to in Clause (2) of this article, irrespective of who is responsible therefor, shall only be deemed to constitute part of such agreement if confirmed in writing by the authorised representatives of the contractor and the customer.
- 2.4. Where the customer provides the contractor with data, drawings and so forth, the latter shall be entitled to assume that they are accurate and he shall base his offer thereon.
- 2.5. In the event that his offer is not accepted, the contractor shall be entitled to charge the customer for any costs he has had to incur in order to present this offer.

Article 3 – Intellectual property rights

- 3.1. Unless otherwise agreed, the contractor shall retain copyright and all industrial property rights to any offer he makes or design, illustration, drawing, model, prototype, software and so forth which he provides.
- 3.2. The rights to the items referred to in Clause (1) shall remain vested in the contractor irrespective of whether or not the customer has been charged for the costs involved in producing them. It shall not be permissible to copy, use or disclose these items to a third party without the contractor's express permission. In the event of any contravention of this provision, the customer shall be liable to pay the contractor a penalty amounting to EUR 25,000.00. This penalty shall be payable in addition to any compensation pursuant to the law.
- 3.3. The contractor shall have a duty to return any items referred to in Clause (1) which have been supplied to him, within the term specified for this purpose by the contractor. In the event of any contravention of this provision, the customer shall be liable to pay the contractor a penalty amounting to EUR 1,000.00 per day. This penalty shall be payable in addition to any compensation pursuant to the law.

Article 4 – Advice, designs and materials

- 4.1. The customer shall not be entitled to derive any rights from advice or information which he receives from the contractor, if it does not have any immediate bearing on the commission in question.
- 4.2. The customer shall be responsible for any drawings or calculations produced by him or on his behalf, and for ensuring the suitability of any materials for the purpose in question which are prescribed by him or on his behalf.
- 4.3. The customer shall indemnify the contractor against any claim made by a third party in relation to the use of any drawing, calculations, sample, model or the like provided by the customer or on his behalf.
- 4.4. The customer shall be entitled to take any materials which the contractor intends to use, and to examine them or have this done at his own expense. The customer shall be liable in respect of any harm suffered by the contractor as a result.

Article 5 – Delivery times

- 5.1. Under no circumstances shall it be permissible to deem any delivery time which the contractor may specify, as material, unless expressly agreed otherwise.
- 5.2. When determining delivery times, the contractor assumes that he is capable of executing the relevant commission in the circumstances prevailing at that point in time as he is aware of them.
- 5.3. The period during which delivery may be effected, shall commence once agreement is reached on all the relevant technical details, all required information, final drawings and so forth are in the contractor's possession, the agreed payment or instalment has been received, and all the requisite conditions have been met for the execution of the commission in question.
- 5.4.
 - a. In the event that circumstances occur other than those of which the contractor was aware when he set the delivery time, the contractor shall be entitled to postpone delivery by the amount of time required to execute the relevant commission in the prevailing circumstances. If the contractor's schedule cannot accommodate the work concerned, the latter shall be completed as soon as his schedule permits this.
 - b. Where additional work is required, delivery shall be postponed by the amount of time required to deliver the materials and parts or have this done, and to perform the additional work in question. If the contractor's schedule cannot accommodate this additional work, the latter shall be completed as soon as his schedule permits this.
 - c. In the event that the contractor's duties are suspended, delivery shall be postponed by an amount of time equal to the duration of such suspension. If the contractor's schedule cannot accommodate the resumption of the work concerned, the latter shall be completed as soon as his schedule permits this.
 - d. Where the weather renders it impossible to perform the relevant work, delivery shall be suspended by an amount of time equal to that during which it was impossible to work as a result.
- 5.5. Failure to meet the delivery time agreed shall under no circumstances entitle one to compensation, unless this has been agreed in writing.

Article 6 – Delivery and the transfer of risk

The relevant materials shall be delivered free of charge using the mode of transport used to convey the goods to their destination as agreed. Thereafter the customer shall bear any risk involved.

Article 7 – Prices and their amendment

- 7.1. Any price which the contractor charges the customer, shall be based on those of the relevant materials, transport costs, salaries and wages, insurance premiums, taxes, import duties and any other levy concerned, as well as any other factors that determine prices, which are current on the date of the offer in question.
- 7.2. In the event that four months elapse following the date on which the relevant agreement has been concluded, and the contractor has still not fulfilled all his duties pursuant thereto, it shall be permissible to pass on any factors to the customer which determine prices.
- 7.3. Payment of any price increase referred to in Clause (2) shall be effected simultaneously with that of the principle sum or the final instalment.
- 7.4. Where the customer supplies any goods and the contractor is prepared to use them, the latter shall be entitled to charge the customer no more than 20% of the market price of the goods that are supplied.

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Article 8 – Impossibility of executing a commission

- 8.1. The contractor shall be entitled to suspend the fulfilment of his duties, if he is temporarily prevented from doing so due to circumstances which could not have been expected when the relevant agreement was concluded, and which are beyond his control.
- 8.2. Circumstances which the contractor could not have expected and which are beyond his control, shall be deemed to include, amongst other things, the fact that any of the contractor's suppliers and/or subcontractors fail to perform his duties or fail to do so on time, the weather, earthquakes, fire, the loss or theft of equipment, the loss of any materials due to be processed, road blockages, strikes or any other disruption of work, and restrictions on imports or commerce.
- 8.3. Subject to the provisions of the foregoing clauses of this article, the contractor shall be entitled to seek payment from the customer for any performance he had effected for the purposes of executing the agreement that had been concluded, before any of the circumstances described in the foregoing clauses of this article, occurred.
- 8.4. In the event that the contractor is still unable to effect performance after having suspended compliance with his undertakings due to any of the circumstances referred to in the foregoing clauses of this article, he shall be entitled to cancel the agreement in question (or part thereof if necessary) by means of a written notice to this effect addressed to the customer but this shall in no way render him liable for any compensation.

Article 9 – Scope of the work and duty to disclose information

- 9.1. The customer shall have a duty to ensure that all permits, exemptions and any other authorisation that is needed to ensure that the work is performed, is obtained on time.
- 9.2. In so far as the contractor is required – for the purposes of executing his commission – to take into account any directions governing security and/or use, or at least any other instructions or specifications which are or could be relevant in respect of the durability or quality of the goods which the contractor is to deliver and/or the work he is to perform, the customer shall be required to notify the contractor in writing accordingly as soon as possible but no later than prior to the commencement of the relevant work by the contractor.

Article 10 – Variation of the work

- 10.1. Any variation of the relevant work shall at any rate result in additional or less work where:
 - a. an amendment is made to the design or specifications;
 - b. the information provided by the customer does not coincide with the actual situation.
- 10.2. Additional work shall be charged on the basis of the value of any factors that determine price, at the time when such additional work is performed. The parties shall preclude the application of the terms of Section 1646 of the Civil Code, Vol. 7A. Any reduction in the amount of work shall be settled on the basis of the value of any factors that determine price, at the time when the agreement in question is concluded.
- 10.3. Where the balance of any reduced work exceeds that of any additional work, the contractor shall be entitled to charge the customer 10% of the difference between the two balances when the final payment is made. This provision shall not apply in the case of any reduction of work pursuant to a request on the part of the contractor.
- 10.4. In the event that any materials which are required for the execution of the relevant agreement, are not available, the contractor shall be entitled to use replacement materials, in which case a written statement of the latter shall be presented to the customer.

Article 11 – Performance of work

- 11.1. When an agreement is executed, the customer shall have a duty to supply the contractor with all the necessary facilities free of charge, including power, lighting, scaffolding, water, compressed air and also any of the items referred to in the *Arbeidsomstandighedenwet* [Working Conditions Act].
- 11.2. The customer shall ensure the undisturbed and unimpeded performance of the relevant work by the contractor by, amongst other things, ensuring adequate access to the work site, and that the latter is suitable to accommodate any stay there and that it is also possible to store materials.
- 11.3. The contractor shall be entitled to charge the customer for any harm suffered as a result of the latter's failure to fulfil his duties pursuant to the provisions of this article or to do so properly, subject to the contractor's right to suspend his duties under the terms of this agreement.
- 11.4. The customer shall be liable for any harm suffered as a result of theft, fire or damage to equipment, materials and any other items belonging to the contractor which are located at the site where the relevant work is performed.

Article 12 – Handover following completion of work

- 12.1. Handover following the completion of the relevant work shall be deemed to have occurred where:
 - a. the customer has approved the work in question;
 - b. the customer has started to use what the relevant work has produced. Where the customer starts to use part of what the relevant work has produced, such part shall be deemed to have been handed over;
 - c. the contractor has notified the customer in writing that the work concerned has been completed and the customer fails to specify in writing within fourteen days of such notification that this work has or has not been approved;
 - d. the customer fails to approve the work due to minor shortcomings or missing sections which can be remedied or supplied within thirty days, and which does not prevent him from starting to use what the relevant work has produced.
- 12.2. Where the customer fails to approve the work, he shall have a duty to notify the contractor accordingly in writing stating his reasons.
- 12.3. In the event that the customer fails to approve the work, he shall afford the contractor the opportunity to present the outcome of the work for handover again. In this case the provisions of this article shall apply again.

Article 13 – Liability

- 13.1. The contractor shall only be liable for any harm that the customer suffers, which is solely and directly due to attributable default on the part of the contractor in connection with the work performed by the latter.
- 13.2. At all times any liability on the part of the contractor shall be limited to direct damages and shall at all times be limited to the sum paid by the contractor's insurance company (covering assembly or otherwise) in the case in question. A copy of the aforementioned policy shall be available for inspection on the contractor's premises. In so far as the contractor is not insured pursuant to his insurance covering assembly, or at least in so far as no disbursement is effected pursuant to such insurance policy, the contractor's liability shall at all times be limited to the net sum of the invoice for the commission in question.
- 13.3. Subject to the foregoing, the following shall not qualify for compensation:
 - a. business losses including, for example, those due to a halt in operations and loss of earnings;
 - b. damage to work in progress. This damage shall be deemed to include, amongst other things, any harm caused to any item upon which work is being performed or which is located in the vicinity of the work site by or during the performance of the contracted work;
 - c. harm caused by a deliberate act or omission or conscious recklessness on the part of any assistant;
 - d. any harm caused directly or at least indirectly by the fact that the customer had failed to comply with his duty of disclosure as referred to in Article 9.2 of the terms and conditions, or had failed to do so fully.
- 13.4. The customer shall indemnify the contractor against any claim made by a third party on the grounds of product liability as a result of a defect in a product which the customer has supplied to a third party and which was completely or partially produced using products and/or materials supplied by the contractor.

Article 14 – Warranty

- 14.1. Having regard to the limitations stipulated below, the contractor warrants the proper performance of the work and the soundness and quality of any goods he supplies in the sense that he undertakes to remedy free of charge any defect in any of the goods he supplies or the items he hands over upon completion of the relevant work, which the customer can show has occurred within twelve months after delivery or hand-over by the contractor, which is solely or largely the direct result of poor workmanship on the part of the contractor in their construction or assembly, or the use of inferior materials, and which is not due to a method prescribed for the contractor pursuant to any provision of the law. The provisions of Article 11 shall apply.
- 14.2. Where the customer has supplied any item to the contractor for use or processing, or has recommended same, the warranty referred to in Clause (1) of this article shall only cover the proper performance of the contracted work.
- 14.3. In the case of any goods which the contractor sources from a third party, the customer shall not be given a warranty which extends beyond that provided by such third party to the contractor.
- 14.4. Where the contractor replaces any item in order to comply with his duties pursuant to the warranty, he shall acquire ownership of the goods that are replaced.
- 14.5. The customer shall not be entitled to suspend his duties towards the contractor or to treat them as lapsed by relying on the alleged failure of the contractor to fulfil his duties pursuant to the warranty.
- 14.6. The contractor shall be entitled to suspend his duties towards the customer pursuant to the warranty in the event that the latter fails to comply with his commitments pursuant to the relevant agreement or any which arise pursuant thereto, or if he fails to do so properly or on time.
- 14.7. Furthermore, the contractor shall be entitled to suspend his duties towards the customer pursuant to the warranty if, after entering into the relevant agreement, he learns of circumstances which give him good reason to fear that the customer will fail to fulfil his duties towards him.
- 14.8. Where the contractor fulfils his duties pursuant to the warranty outside the Netherlands in respect of work or a service originally performed or provided respectively in this country, he shall be entitled to charge the customer for any travel and accommodation expenses incurred by those involved in the work performed under warranty, as well as the costs of transporting any items required.
- 14.9. The customer shall only be entitled to claim under warranty once he has fulfilled all his duties towards the contractor.

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- 14.10.
- a. No warranty shall be provided in respect of any defects which are due to:
 - normal wear and tear;
 - improper use;
 - a failure to perform maintenance, or improperly performed maintenance;
 - installation, assembly, alterations or repairs performed by the customer or a third party.
 - b. No warranty shall be granted in respect of any goods supplied, which were not new at the time they were delivered.
 - c. No warranty shall be provided in respect of work performed on, around or up against any object (machinery, gas or other exhaust systems and the like) which causes or is at least subject to vibrations, unless otherwise expressly agreed in writing.
- 14.11. Under no circumstances shall it be permissible for the costs incurred pursuant to the warranty to exceed the agreed price.

Article 15 – Complaints

- 15.1. The customer shall be required to notify the contractor of any complaint about a deficiency in respect of the performance of work or a delivery by means of a registered letter stating his grounds for doing so, in the absence of which the customer shall be deemed to have received the item in question in good condition. In the event of a hidden defect which is not visible at the time of delivery, the customer shall be required to notify the contractor accordingly by means of a registered letter stating his grounds for doing so within eight days after such defect is discovered but, in the same manner, no later than four months following the date of delivery. Should the customer fail to meet the deadlines stipulated in this article, any right he has to complain shall lapse, except in the case of gross culpability or negligence on the part of the contractor.
- 15.2. The right of the customer referred to in the foregoing clause shall lapse where any item supplied by the contractor is partly or fully used, treated, processed or delivered to a third party by the customer or on his behalf.

Article 16 – Failure to collect items

In the event that an item is not collected following the expiry of the relevant delivery time, it shall remain at the customer's disposal. Any item which is not collected, shall be stored at the customer's risk and expense. The contractor shall at all times be entitled to avail himself of the powers conferred on him by Section 90 of the Civil Code, Vol. 6.

Article 17 – Payment

- 17.1. Payment shall be effected at the contractor's registered office or by depositing it into an account designated by the contractor.
- 17.2. The contractor shall invoice the customer for the agreed price as follows: 30% upon the conclusion of the agreement, 30% upon commencement of the work and 40% upon handover.
- 17.3. The customer shall be required to pay every invoice in its entirety within thirty days of the date specified on it. Under no circumstances shall the customer be entitled to rely on a discount or setoff. Contrary to the foregoing, the customer shall be required to effect full payment to the contractor of the price in respect of which he is invoiced following the conclusion of the agreement in question, prior to the commencement of the work concerned. Both terms of payment referred to in this clause shall be deemed to be of a material nature.
- 17.4. In the event that the customer fails to effect full and timely payment within the term stipulated by the contractor pursuant to these terms and conditions, the customer shall be in default by operation of the law, the full outstanding amount shall be immediately payable to the contractor and furthermore the customer shall be required to pay the contractor interest amounting to 1.5% of the agreed price per month or part thereof for as long as he continues to fail to fulfil all his duties towards the contractor, subject to the latter's right to suspend his undertakings pursuant to the agreement in question.
- 17.5. The provisions of Clause (3) of this article shall also apply subject to the proviso, that the contractor's claim shall be immediately payable in full and that the customer shall immediately be in default if:
- a. he files an application for a suspension of payments, is declared bankrupt or assigns his estate;
 - b. all or part of his assets are attached;
 - c. he ceases, alienates or pursues in some other manner his entire, or a substantial part of, his business.
- 17.6. Notwithstanding the agreed terms of payment, when first requested to do so by the contractor, the customer shall have a duty to tender security for payment amounting to what the contractor deems adequate. Should the customer fail to do so within the specified term, he shall immediately be in default. In this case the contractor shall be entitled to cancel the agreement in question and to recover any loss he has suffered from the customer.
- 17.7. Any extrajudicial expenses which the contractor reasonably needs to incur in order to secure payment by the customer once the latter is in default, shall be borne by the customer and shall be calculated on the basis of the collection rates of the *Nederlandse Orde van Advocaten* [Netherlands Bar Association], subject to a minimum amount of EUR 200.00 in the case of each invoice which has not been paid in full.
- 17.8. Any payment made by the customer shall first serve to pay off any costs, loss or interest, and thereafter to discharge the oldest outstanding debt, even if the customer states that the relevant payment covers a subsequent invoice.
- 17.9. In the event that the court finds for the contractor in any legal proceedings, all the costs which the latter incurs in respect of such proceedings, shall be borne by the customer.

Article 18 – Retention of title and pledge

- 18.1. Following delivery, the contractor shall retain title to the goods delivered as long as the customer:
- a. fails or will fail to fulfil his duties pursuant to the relevant agreement or any similar one;
 - b. fails to pay or has given any indication that it will not pay for any work that has been or is still to be performed pursuant to any such agreement;
 - c. fails to pay any debt arising pursuant to his failure to comply with any of the aforementioned agreements, such as compensation, a penalty, interest or costs.
- 18.2. As long as any goods that have been delivered, are subject to retention of title, the customer shall not be entitled to encumber them outside his normal business operations.
- 18.3. In the event that the customer is in default, the contractor shall be entitled to remove the goods that have been delivered, from the customer's premises and/or those of his custodian(s), or to have this done. Should the customer fail to assist with this after being called upon to do so in writing, he shall be liable to pay the contractor an immediately payable penalty of EUR 500.00 per day including any part thereof.
- 18.4. Where the contractor is unable to enforce the retention of his title, because the goods that have been delivered, have been combined, transformed or affected by accession, the customer shall have a duty to pledge the newly created items to the contractor.

Article 19 – Cancellation

Should the customer wish to cancel an agreement even though there is no default on the part of the contractor and the latter agrees to this, it shall be cancelled with mutual consent. In this case the contractor shall be entitled to compensation for all financial loss, such as any loss he suffers, loss of earnings and costs incurred.

Article 20 – Governing law and choice of jurisdiction

- 20.1. Any dispute between the parties in respect of any agreement which they conclude and these general terms and conditions, shall be solely governed by and construed in accordance with the law of the Netherlands.
- 20.2. The Vienna Covenant on Contracts of Sale shall not apply, nor shall any other legal regime whose exclusion is permitted.
- 20.3. Only a civil court of law with jurisdiction in the place where the contractor has his registered office, shall be entitled to hear any dispute, unless this contravenes mandatory law. The contractor shall be entitled to deviate from these provisions and abide by those rules of law governing jurisdiction.
- 20.4. The parties shall be entitled to agree on a different form of dispute resolution, such as arbitration or mediation.