

**PURCHASE TERMS & CONDITIONS**  
**(AGB) of Tyco Thermal Controls GmbH - Germany**  
**Last update: January 2010**

**1. Scope**

Acceptance of any orders of goods and services is expressly limited to the following Purchase Terms. Any conflicting or varied terms proposed by Seller are rejected unless agreed to by us in writing. Even if we have knowledge of terms conflicting with or varying from our terms and conditions, our Purchase Terms shall apply when accepting goods or services without reservation. If a Seller is informed about our Purchase Terms during an ongoing business relationship, said Terms shall apply even when we place an order without expressly including our Purchase Terms.

the delivery dates which are binding. Delivery shall be deemed to have been made upon receipt of the goods by us.

- 3.2. If at any time Seller has reason to believe that the goods or services cannot be shipped or performed in whole or only in part or not by the date specified, Seller shall promptly notify us setting forth the causes and the anticipated delay. Seller will be held liable under applicable law for failure to provide goods or services within dates specified.

If Seller fails to notify us pursuant to Section 1 we may cancel the Contract and/or claim damages.

**2. Entire Contract**

- 2.1. All agreements made between us and Seller with respect to each Contract shall be based on our Purchase Order and the Purchase Terms herein. There are no oral understandings with respect hereto.

- 2.2. Our complete order data shall be set forth on a written confirmation of our Purchase Order. Should Seller fail to send the confirmation to us within 5 business days of receipt of order, we may cancel the Purchase Order.

- 2.3. Seller shall supply the applicable, complete documentation (EC Declaration of Conformity, manuals, service notes, etc.) with every delivery of goods (products, components etc.) that are subject to applicable EC directives &/or local law.

- 2.3.1 Units/components to be combined with explosion-proof (ATEX; IECEx or other) products (reference to order documentation) also require the manufacturer to furnish a declaration (CoC - Certificate of Conformity) with every delivery; Seller shall complete the CoC according to the requirements set forth in the standards ISO/IEC 17050 (formerly EN45014) and/or EN 13980.

If the goods comprise standard products of Seller's product range or DIN parts, Seller may furnish a CoC (at least) once a year without any prior request to do so. The goods receiving area may refuse to accept any deliveries without said documentation.

- 2.3.2 Seller shall supply, without any request to do so, material safety data sheets in the most current version for products, components etc. that are subject to specific environmental aspects and requirements. Any information required pursuant to REACH and RoHS regulations shall also be furnished, if required.

**3. Delivery time, time of performance**

- 3.1. The agreed delivery time or time of performance shall commence on the date of our Purchase Order. Seller shall strictly comply with

**4. Pricing**

- 4.1. Any price stated in the Purchase Order is a firm fixed-price and shall include any accessorial services required for the performance of the agreement (e.g. transportation, packing, insurance, inspection costs).

- 4.2. If there are no prices specified in the Purchase Order, the prices agreed upon in the last order for this item or service shall apply.

**5. Shipment of goods**

- 5.1. Unless otherwise agreed, delivery of goods will be made to our address.

- 5.2. Seller shall state our complete order data on bills of lading, package addresses, delivery notes and invoices.

- 5.3. Seller shall ensure that proper and secure packaging is used for the merchandise, giving due account to the Packaging Ordinance, and mark the goods to the extent that environmental and safety aspects need to be observed.

**6. Insurance**

- 6.1. Seller shall be obliged to take out a transportation insurance providing sufficient coverage and to furnish proof of such insurance at our request.

- 6.2. Seller shall take out at its own cost a liability insurance with adequate coverage for damage caused by Seller, its employees, its agents or by the goods. Seller shall inform us, at our request, about the minimum limit per occurrence.

**7. Claims resulting from defects and period of limitation**

- 7.1. In the event of defects we may exercise any right resulting from a defect we may have at law. In particular when purchasing goods we may demand, at our option, that Seller remedy the defect or supply a replacement. In the event of reperformance due to defective goods or defective services, all costs arising out of the removal of defects, or the supply of replacements or new goods shall be assumed by Seller.

We expressly reserve the right to claim damages.

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7.2. Unless specifically agreed otherwise in a Quality Assurance Agreement with Seller, we shall be obliged to inspect the goods within 2 weeks for quality defects. This period of 2 weeks shall not commence until the goods have been delivered to the specified destination.

7.3. Any notice of defect shall be deemed to have been filed in due time if sent within 2 weeks following the delivery of goods to the destination specified by us or, in the case of latent defects, if sent to Seller within 2 weeks after the defect was discovered.

If Seller has fraudulently concealed defects in the goods, it may not refer to the absence of a notice of defects.

7.4. Should Seller default in its obligation to remedy the defect, or to supply a replacement or new goods within 2 weeks following receipt of our notice of defects, we may reduce the purchase price or remuneration, or rescind the Agreement and claim damages or a reimbursement for our wasted expenses.

If Seller is obliged to remedy the defects, supply replacement or new goods under a contract for work and services and should Seller fail to perform within the period specified in Section 1, we may remedy the defect and claim from Seller reimbursement for the incurred expenses.

7.5. The claims we may assert due to defects are subject to a period of limitation of 3 years following the delivery of goods or acceptance of work performed.

7.6. Seller shall take appropriate quality assurance measures and furnish proof of such measures at our request.

**8. Third party rights, industrial property rights, confidentiality**

8.1. Seller shall be liable for ensuring that the delivered goods or performed work are free from third party rights and in particular shall not infringe upon industrial property rights.

Seller shall be obliged to indemnify us, at our first written request, against any claims asserted against us by a third party for such reason.

8.2. Should there be any third party rights with regard to the performed work, we may exercise any rights or remedies available under law against Seller.

8.3. Seller undertakes to keep strictly confidential all confidential information, especially contract terms, technical and business information, samples, drawings etc. Such confidential information may not be copied or disclosed to third parties without our prior written consent.

This provision shall not apply if such information is known to the general public or was or will be lawfully disclosed to Seller by third parties.

Seller may use confidential information only in performance of the order and shall, at our option, return or destroy such information immediately after having completed the order. Above all, Seller may not use the information we provided to file applications to register its own industrial property rights, or for any other economic purposes.

8.4. In the event of Seller's breach of its obligations under Section 8.3, Seller shall be held liable for the damage arising for us out of such breach and we may terminate the Contract in whole or in part.

**9. Invoice and payment**

9.1. After the completion of delivery or work invoices shall be sent to us in triplicate specifying our complete order data.

9.2. Unless otherwise provided, payment due dates will be computed from date of receipt of goods or services – in the case of a contract for work and services the date of acceptance of goods or services – and the date of receipt of the correct invoice.

9.3. Regarding parts subject to acceptance (e.g. initial sample inspection prior to serial production or single item production) Seller's services shall be deemed performed as soon as we have received both the delivered goods and the required documentation (company certificates, test requirements etc.).

No payment shall be due and payable until Seller has completed the aforementioned delivery and services.

9.4. Payment of invoice shall not constitute acceptance of conditions or prices, or of the fact that the goods or services are free from defects.

9.5. Unless expressly agreed otherwise, payment of invoices shall be made, at our option, within 2 weeks with a 3% cash discount or net within 30 days.

**10. Force Majeure**

In case of Force Majeure and any unforeseen business disruptions, including, but not restricted to, lock-outs, strikes, shortage of raw materials or fuel, acts of any government or any other circumstances or events beyond our control causing limited or disrupted operations, we may delay performance of our obligations for a reasonable period of time and terminate the Contract in whole or in part thereafter without incurring liability.

**11. Applicable law, jurisdiction**

11.1. This agreement shall be governed exclusively by German law, to the exclusion of the United Nations Convention on International Sale of Goods (CISG).

11.2. The venue for resolving disputes between the parties shall be Heidelberg.

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