

THELEICO Schleiftechnik GmbH & Co. KG
-hereinafter referred to as THELEICO -

General Terms and Conditions of Delivery and Payment

§ 1 General

THELEICO's Conditions of Sale shall apply exclusively. *Any terms, conditions and provisions of the Purchaser that are contradictory or deviating shall be rejected, even if THELEICO does not expressly contradict. THELEICO's silence means rejecting the terms and conditions of the Purchaser .*

§ 2 Contract Conclusion

THELEICO shall be entitled to accept the order within two weeks. Acceptance may either be made in writing or by delivery of the goods to the Purchaser . The scope of delivery shall be governed exclusively by THELEICO's order confirmation. Subsequent amendments or modifications require THELEICO's confirmation in writing to be effective. All types of documents sent by THELEICO such as drawings, calculations, samples, specifications, models and the like shall remain THELEICO's property and shall be protected by copyright law, unless otherwise agreed in writing.

THELEICO's quotations shall be non-binding. With respect to THELEICO's catalogues, prospectuses or internet data THELEICO reserves the right of minor variations in design, execution or performance of its products that are due to technical advances.

Partial deliveries shall be permitted and shall be deemed to be independent transactions. As a result of THELEICO's character of production, we reserve the right of excess or short deliveries up to 15 per cent of the quantity ordered.

§ 3 Time of Delivery

Delivery times are only stated approximately and shall be non-binding, unless their binding character has been expressly assured.

Delivery periods shall commence on the day on which the order confirmation is sent to the Purchaser by THELEICO, however, not before all technical questions and details of execution have been clarified. Moreover, THELEICO's delivery commitment shall be dependent on the Purchaser fulfilling his obligation in time and properly (eg providing documents, approvals, releases etc.).

Delivery time shall be deemed to be met, if the goods have been dispatched until expiry of the delivery time or if the Purchaser has been informed in writing on the readiness for shipment. In the event of force majeure, traffic problems, industrial disputes or other events beyond control delivery time shall be suitably extended.

In case that the Purchaser is in default of acceptance, THELEICO shall be entitled to claim compensation for damage according to § 281 German Civil Code.

The Purchaser shall generally not be entitled to claim compensation for damage, if the delivery time has been exceeded.

§ 4 Call Orders

In the case that call orders are agreed upon with the Purchaser , any remaining stock from these orders will be sent to the Purchaser after the agreed time period.

In the event that there is an increase in THELEICO purchase prices (in particular for material and energy) and/or in the wage or salary collective agreement being applicable to THELEICO with respect to deliveries which have to be effected later than four months following completion of a call order or other delivery contract , THELEICO shall be entitled to increase the price on a pro rata basis as a percentage of the purchase price and/or wage costs concerned.

§ 5 Conditions of Payment

Price lists, catalogues and internet information are non-binding. Any fixed price agreements shall require written form.

Unless otherwise agreed, THELEICO prices are quoted “ex works“ (EXW 59872 Meschede - Incoterms 2010) excluding packaging and other ancillary costs (eg customs duties). These costs are invoiced separately.

THELEICO prices do not include statutory value added tax which is shown separately on the invoice. The purchase price shall be paid net within 30 days from the invoicing date ex paying agent. Would you please pay attention to the information on the invoice!

Following expiry of the respective deadline, the Purchaser shall be in default. Legal provisions shall apply with respect to the consequences of default.

The same shall apply to separately invoiced partial deliveries.

The Purchaser shall only be entitled to rights of setting-off or retention, if his counterclaims are legally valid, undisputed or accepted by THELEICO and are based on the same contractual relationship.

Bills of exchange are not accepted and cheques, at all events, are only accepted as payment.

In case of default in payment THELEICO shall be entitled to charge costs incurred in making request for payment amounting to € 10.00 per reminder.

§ 6 Delivery / Passing of risk

Unless otherwise stated in the confirmation of order, delivery is made “ex works” (EXW 59872 Meschede – Incoterms 2010).

Starting with a commodity value of € 500.00 THELEICO delivers free domicile excluding packaging within Germany.

Unless otherwise agreed, THELEICO shall be entitled to choose the kind of shipment.

With respect to shipping agents working for the Purchaser the danger of accidental loss and accidental deterioration of goods passes onto the Purchaser on handing over the goods and, in the case of sale by delivery to a place other than the place of performance on delivering the goods to the shipping agent or to the person designated to carry out the delivery.

On Purchaser 's request THELEICO will arrange for transport insurance at Purchaser 's expense.

§ 7 Liability for Defects

For asserting claims for defects it is necessary that the Purchaser complies with the examination and notification duties under Art. 377 HGB (German commercial code). Before being used products will have to be inspected for their function. In this context THELEICO may refer to DIN norm EN12413 and observance of FEPA safety recommendations.

Liability for damage arising from non-observance of these safety recommendations shall be excluded. On Purchaser's request THELEICO will make available these FEPA safety recommendations, also for downloading on THELEICO's website. Normal tolerances regarding dimensions and weight shall not constitute a defect. Liability shall not be taken over for abrasives underlying extraordinary wear due to their substance-related condition, for damage due to normal wear, incorrect or negligent treatment, excessive stress, inadequate means of production, chemical, electro-chemical or electric influences, weather conditions or other influences of nature.

Liability shall not be taken over especially in case of incorrect storage (see also DGUV information 209-002 – Schleifer, so far: BGI 543 and FEPA safety recommendations for bonded abrasives and abrasive wheels with diamond and CBN.).

In the event that the object of purchase should be defective, THELEICO shall have the right of rectifying the defect or substituting delivery at THELEICO's choice. In case that THELEICO decides to rectify the defect, THELEICO shall be obliged to bear all expenses necessary, in particular transport, labour and materials costs. This shall not apply in case that goods ordered were brought to another place than the place of performance resulting in higher costs. If subsequent performance by THELEICO should fail, the Purchaser may demand termination of the purchase contract or reduction. If there is only minor lack of conformity with the contract, the Purchaser shall not be entitled to withdraw from the purchase contract or to demand reduction.

This is especially applicable in case of only unessential deviations from the condition. Claims based on defects shall be subject to a limitation period of 12 months from delivery or performance. This shall not apply to claims for compensation to which the Purchaser is entitled under § 8. These claims fall under the statutory limitation period. Assigning of warranty claims shall require prior written consent by THELEICO. THELEICO shall not grant guarantees within the legal sense to the Purchaser. Manufacturer's warranties shall remain unaffected thereby.

§ 8 Claim for damages

THELEICO's liability shall be limited to damage caused intentionally or by gross negligence. This shall not apply in the case of mandatory liability under the product liability law, injury to life, body or health and as far as THELEICO has taken over procurement risks or guarantees.

In addition, THELEICO shall be liable for breach of obligations which form the basis for duly performing the contract and on which the Purchaser relied and could reasonably rely on (material contractual obligations). However, with respect to such cases, liability is limited to usually reasonably foreseeable damages.

As for the rest, claims for compensation made by Purchaser shall be excluded. The Purchaser's right of withdrawing from the contract shall remain unaffected.

These provisions shall not change the onus of proof to Purchaser's disadvantage. The foregoing limitations of liability shall also apply to personal liability for damage of employees, workers, staff members, representatives and vicarious agents of THELEICO.

§ 9 Retention of Title

THELEICO reserves the right of ownership to the object of purchase, until all contractual services agreed with Purchaser have been paid in full.

The Purchaser is obliged to always treat goods delivered with care and to protect them against fire, water and theft damage at his own costs.

THELEICO shall be entitled to take back the object of purchase in the event that the purchaser gets into arrears. However, this does not mean terminating the contract. Once THELEICO has taken back the object of purchase, THELEICO shall be entitled to also make use of it. Profits achieved in doing this shall be set off against Purchaser's liabilities.

If goods delivered are seized, THELEICO shall immediately be informed by Purchaser in writing.

The Purchaser shall be entitled to resell the object of purchase in the ordinary course of business but already at this time, the Purchaser shall assign all claims at the amount of the invoiced amount (including VAT) to THELEICO that accrue to Purchaser from resale.

THELEICO reserves the right of having sums due collected by third parties. However, THELEICO will only make use of it, if Purchaser does not comply with the obligation to pay and gets into considerable arrears. The same shall apply if insolvency proceedings have been initiated on Purchaser's assets.

The Purchaser shall assign all claims against third parties to THELEICO resulting from the connection of the object of purchase with real estate.

§ 10 Delivery on Trial Basis

Unless otherwise agreed, in case of delivery on trial basis the Purchaser shall bear freight charges, packaging costs, costs of insurance and decrease in value having occurred. Moreover, for the duration of the trial period, Purchaser shall be liable for any losses or damage of goods supplied.

§ 11 Place of Jurisdiction – Place of Performance

The exclusive place of jurisdiction shall be THELEICO's place of business. However, THELEICO shall be entitled to sue the Purchaser at his place of business or domicile.

The law of the Federal Republic of Germany shall apply and application of CISG (United Nations Convention on Contracts for the International Sale of Goods) shall be excluded.

Unless otherwise stated in the confirmation of order, the place of performance shall be THELEICO's place of business. If individual provisions of this contract with the Purchaser including the present general terms and conditions should be or become ineffective in whole or in part, the validity of the remaining provisions shall not be affected thereby. The provision being ineffective in whole or in part shall be replaced by a provision coming as close as possible to the economic purpose of the ineffective clause.

