

## GENERAL TERMS OF SALE AND DELIVERY

as at May, 1<sup>st</sup> 2003

### 1. General Comments:

Our quotations, contracts and deliveries are made exclusively pursuant to the below conditions. Any deviations from the present business conditions and written contractual offers, as well as other agreements shall only be effective when confirmed in writing by THEYSOHN EXTRUSIONSTECHNIK GmbH (hereinafter referred to briefly as "THEYSOHN EXTRUSIONSTECHNIK"). Telefax messages meet the requirement of the written form. Any possible general business conditions of Customer shall not be accepted. THEYSOHN EXTRUSIONSTECHNIK need not contradict them specifically. The present general business conditions shall be deemed to have been accepted by Customer upon placing an order with THEYSOHN EXTRUSIONSTECHNIK, and with accepting our performance, at the latest.

Promises by and agreements with our staff members shall only have legal effect when they have been expressly consented and confirmed in writing by our company management.

Quotations by THEYSOHN EXTRUSIONSTECHNIK shall be without engagement. Orders by Customer shall only be accepted by means of a written confirmation by THEYSOHN EXTRUSIONSTECHNIK.

### 2. Object of the Performance:

The data, pictures and drawings in brochures or other sales documents, relating to the object of the purchase, are only considered as approximate and are therefore not binding. They shall only be considered as warranted qualities, if they are expressly confirmed as such by THEYSOHN EXTRUSIONSTECHNIK in writing. THEYSOHN EXTRUSIONSTECHNIK shall reserve the right to amend, especially to improve, embodiments and technical data regarding the objects to be delivered. The technical prerequisites, as well as the necessary infrastructure for the operation of the object of the purchase shall be provided by Customer.

Prior to entering into a contractual agreement, Customer is obliged to inform THEYSOHN EXTRUSIONSTECHNIK of any statutory, governmental and other provisions which relate, in particular, to the performance of the delivery, the assembly, the operation, the prevention of diseases and accidents, to restrictions on foreign-exchange, as well as export and import conditions, and altogether of all governmental stipulations that are suited to delay or to prevent the delivery. Customer is obliged to make sure to obtain all required governmental documents in time.

### 3. Price and Payment Conditions:

The prices indicated in the purchase contract are net prices, unless expressly agreed otherwise, and apply ex delivery work and without packaging. All additional costs of the contract, such as inter alia taxes, contract fees, stamp duties, import, export and transit charges, interest on discounts, customs tariffs and customs fees, governmental commission fees and alike shall be borne by Customer.

40% of the purchase price shall be paid when an order is placed (receipt of this amount by THEYSOHN EXTRUSIONSTECHNIK is the requirement for the effective conclusion of the contract), 30% when Customer is informed that the goods are ready for shipment, as well as 30% when handing the goods over to the carrier. These amounts shall be due in the currency indicated in the contract and shall be paid free of any charges and without any deductions.

Customer may offset payment claims by THEYSOHN EXTRUSIONSTECHNIK only, or may assert a right of retention only when Customer's counter-claim has been ascertained in court or acknowledged by THEYSOHN

EXTRUSIONSTECHNIK. Any assertions regarding rights of retention are precluded, when they are not based on the same contractual relationship. In case of late payment by Customer, THEYSOHN EXTRUSIONSTECHNIK is entitled to invoice all dunning and collection charges, as well as interest on arrears in the amount of 4% above Euribor. THEYSOHN EXTRUSIONSTECHNIK shall reserve the right to assert further rights.

### 4. Delivery and Transfer of Risk:

Unless explicitly agreed as fixed dates, all delivery dates are without engagement. In the event of delays in the performance by THEYSOHN EXTRUSIONSTECHNIK, for reasons for that THEYSOHN EXTRUSIONSTECHNIK is not liable, the delivery dates shall be extended accordingly.

The same shall apply when Customer fails to perform in time any acts of cooperation, as stipulated in the contract. In the event that such delays persist for more than three months, Customer and THEYSOHN EXTRUSIONSTECHNIK are entitled to withdraw from the contract.

If THEYSOHN EXTRUSIONSTECHNIK defaults, Customer may withdraw from the contract only after having granted THEYSOHN EXTRUSIONSTECHNIK in writing a respite of six weeks, as a minimum, which must have lapsed without any result. Delivery shall be fulfilled as soon as the information is communicated that the object of the purchase is ready for shipment.

Unless agreements to the contrary have been entered into, THEYSOHN EXTRUSIONSTECHNIK is entitled to make partial deliveries. As soon as Customer has put into use a partial delivery, Customer is precluded from withdrawing from the contract with regard to this partial delivery.

Customer bears all risks as soon as THEYSOHN EXTRUSIONSTECHNIK has handed the object of the purchase to the forwarder or carrier for the purpose of shipment. Shipments shall be for Customer's account and risk ex work. In the event that damage occurs on the object of the purchase in the course of the transport, Customer is obliged – independent of other obligations – to inform THEYSOHN EXTRUSIONSTECHNIK thereof immediately.

### 5. Packaging:

The object of the purchase shall be packaged in accordance with the mode of transport requested by Customer, in the suitable form used customarily by the trade. All costs arising in connection with packaging will be invoiced separately.

### 6. Retention of Title:

All objects of the purchase remain in the property of THEYSOHN EXTRUSIONSTECHNIK until they have been fully paid. Customer is prohibited from making any dispositions regarding the objects of the purchase prior to their full payment. As long as the reservation of ownership persists, Customer is obliged to keep the object of the purchase in its proper condition and shall have all necessary repairs performed at Customer's expense. In the event of third-party interventions, in particular in the case of any attachment of the object of the purchase by Customer's creditors, Customer is obliged to indicate THEYSOHN EXTRUSIONSTECHNIK's ownership and to inform THEYSOHN EXTRUSIONSTECHNIK thereof immediately in writing.

If Customer defaults on a payment, or if Customer infringes any other contractual obligation in connection with the retention of title, THEYSOHN EXTRUSIONSTECHNIK is entitled, irrespective of any other rights, to take back the object of the purchase immediately at Customer's expense.

THEYSOHN Extrusionstechnik GmbH

Josef-Sandhofer-Straße 4 | 2000 Stockerau, Austria

Phone +43 (0)59 692 2201 | Fax +43 (0)59 692 2202 | [office@theysohn.at](mailto:office@theysohn.at) | [www.theysohn.at](http://www.theysohn.at)

The same applies if bankruptcy proceedings are initiated regarding Customer's assets, or if any other major deterioration regarding Customer's property situation occurs. Taking back the conditional commodities shall not be tantamount to a withdrawal from the contract.

In the event that Customer did sell the object of the delivery to which the reservation of ownership applies, Customer is obliged to assign to THEYSOHN EXTRUSIONSTECHNIK, already now, any and all claims that may arise vis-à-vis Customer's buyers or third parties on account of the subsequent sale, in the amount of the ultimately invoiced amount (including value-added tax). In such an event Customer is obliged to inform THEYSOHN EXTRUSIONSTECHNIK of the assigned claim and the debtor, as well as to provide all information required for a collection of the amount, to hand over all pertinent documents, and to inform the debtor (third party) of the assignment. Once such claims have been assigned, Customer shall have the right to collect such claims.

THEYSOHN EXTRUSIONSTECHNIK's authority to collect the amount itself remains unaffected by the foregoing. However, THEYSOHN EXTRUSIONSTECHNIK undertakes not to collect the amount as long as Customer properly meets all payment obligations and does not default on his payments.

#### **7. Confidentiality:**

THEYSOHN EXTRUSIONSTECHNIK and Customer shall undertake not to disclose to third parties any operating secrets of the respectively other contracting party, as well as to instruct their respective staff members to act likewise.

#### **8. Warranty:**

The warranty period shall be 6 (six) months as of the day of the shipment. In the event of a material defect, any warranty performance by THEYSOHN EXTRUSIONSTECHNIK shall consist exclusively in an improvement or a substitute delivery, at THEYSOHN EXTRUSIONSTECHNIK's discretion.

Wear parts, such as heating bands, fuses, V-belts, filter mats, temperature sensors, or alike, shall not be covered by the present warranty. THEYSOHN EXTRUSIONSTECHNIK shall be informed in writing of any possible defects within 14 days after receipt of the object of the purchase, hidden defects shall be communicated immediately in writing upon their detection, with any warranty ceasing otherwise.

The warranty period shall not be extended, neither for the principal delivery nor for any replaced or new parts, by the elimination of the defect or its acknowledgement, also in the event that new parts are fitted into the principal delivery.

Defective objects of the purchase shall be kept at hand in the condition in which they were at the time when the defect was established, so that THEYSOHN EXTRUSIONSTECHNIK can examine them.

Damage, in particular, that is the result of natural wear, defective maintenance, non-observance of operating instructions or guidelines, excessive strain, the use of unsuited operating resources and unsuited primary materials, or of primary materials or operating resources that result in a greater wear on account of their condition, or which is due to chemical or electrolytic influences, defective construction and assembly operation not performed by THEYSOHN EXTRUSIONSTECHNIK, shall be excluded from any warranty. In addition, all minor defects shall also be excluded from warranty. Minor defects shall be such defects that do not have any immediate or noticeable effect on the functioning of the system or parts of the system or the quality of the product to be manufactured, such as optical or similar defects, in particular. When regrinds are processed in the plasticizing units, we are exempt from any liability and warranty regarding those parts that might be affected by such operations.

Warranty shall cease in the event that Customer or third parties make any changes or repairs regarding the delivery without our written consent.

THEYSOHN EXTRUSIONSTECHNIK guarantees, but only to the first buyer, when all payment obligations have been made, for a period of operation of the plasticizing units (= screws and

barrels) of 7200 operating hours, as a maximum; however the guarantee period is limited to 12 months, as a maximum, as of the date of the shipment.

This guarantee is given under the condition that only standard PVC formulations for pipes and standard PVC formulations for profiles are used, together with the additives that are suited for PVC processing, regarding their quantity and quality. Guarantee claims can only be accepted if these are asserted in writing vis-à-vis THEYSOHN EXTRUSIONSTECHNIK within 14 days after establishing the defect.

In the event that an order is produced on the basis of Customer's design specifications, drawings or models, our liability is excluded to the accuracy of the design, but is limited to the fact that the execution is provided according to Customer's specifications. Customer will keep us harmless and indemnify us in the event of any possible infringement of industrial property rights of third parties.

When accepting repair orders, or in the event that old as well as third-party products are to be modified or refitted, we shall not assume any liability and/or warranty whatsoever. Old products are such products where the warranty period has expired or which were previously used by THEYSOHN EXTRUSIONSTECHNIK or third parties.

In the event that parts of a delivery or a delivery as a whole are taken back, Customer shall receive a deduction from the total or partial purchase price in the amount of 3% per month for the reduction in value, for the period during which the taken back products of the principal or partial delivery were held in possession.

#### **9. Liability:**

Liability of THEYSOHN EXTRUSIONSTECHNIK for any damages, inter alia immediate or indirect damage, lost profit or a consequential damage, is not accepted save caused by intent only; in any event, any liability shall be limited to 10% of purchase price.

#### **10. Saving Clause:**

Should individual clauses of these Terms and Conditions be or become ineffective, this shall not affect the validity of the remaining provisions. The invalid clause shall be replaced with one which comes closest to the intended economic purpose of the parties.

#### **11. Place of Performance, Jurisdiction and Applicable Law:**

Korneuburg is the place of performance for any obligation arising from the present Agreement. All disputes arising out of or in connection with the present Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.

The UN Convention on Contracts for the International Sale of Goods shall be the applicable law, as well as substantive Austrian law in a subsidiary function. The language of the arbitral proceedings shall be English or German. The arbitral proceedings shall be held in Zurich.

Should the arbitration clause be or become ineffective, the exclusive place of jurisdiction for all disputes arising from or relating to these Terms and Conditions is the functionally competent Court Korneuburg.

**THEYSOHN Extrusionstechnik GmbH**

Josef-Sandhofer-Straße 4 | 2000 Stockerau, Austria

Phone +43 (0)59 692 2201 | Fax +43 (0)59 692 2202 | [office@theysohn.at](mailto:office@theysohn.at) | [www.theysohn.at](http://www.theysohn.at)