

GENERAL TERMS AND CONDITIONS OF BUSINESS of trans-o-flex ThermoMed GmbH (10.06.2020)

1. **Scope**
 - 1.1 These terms and conditions of business shall apply for all agreements with trans-o-flex ThermoMed GmbH (ThermoMed) for all services, in particular for the takeover, handling, transshipment, storage and delivery of temperature-controlled consignments within the temperature range of +2°C to +8°C to the intended consignee. Shipments for other temperature ranges will be taken over only after separate agreement with ThermoMed.
 - 1.2 Unless otherwise regulated in these Terms and Conditions of Business, the latest version of the "General German Forwarding Agents' Conditions" (ADSp) shall apply, supplemented by the statutory provisions; in cross-border traffic the provisions of the CMR (Convention on the Contract for the International Carriage of Goods by Road) and for air freight shipments the Warsaw Convention or the Montreal Convention shall apply respectively. Conflicting general terms and conditions of business of the customer are herewith expressly contradicted.
 2. **Specifications / exclusions**
 - 2.1 Only suitably packed, stackable and sortable parcels up to 25 kg single weight and maximum dimensions of 60x40x40 cm in length x width x height and/or complete pallets of up to 300 kg single weight and maximum dimensions of 120x80x160 cm in length x width x height (including the height of the loading aid) will be accepted.
 - 2.2 Inadequately packaged goods, goods of special value, such as money, precious metals, works of art, pecuniary documents and similar, foul and intensively smelling materials / goods and food are generally excluded from picking up. The taking over of goods excluded in such a way does not constitute a waiver of exclusion from transportation.
 - 2.3 Hazardous goods are excluded from takeover for transport.
 3. **Duties of the customer**
 - 3.1 Each package must be labelled by the customer with a fully completed label approved by ThermoMed and in particular be clearly identified with regard to the necessary temperature range (+2°C to +8°C).
 - 3.2 The corresponding consignment data must be made available by the customer to ThermoMed by electronic means no later than 6:30 p.m. on the day of the takeover of the respective parcels. Details of the customer and consignee, consignment number, as well as temperature range are always necessary. If additional services are requested, these are to be indicated likewise. Any costs incurred on account of faults and damage due to incorrect labelling and/or missing or delayed data transmission shall be borne by the customer. In as far as the electronic consignment data is incomplete, incorrect, not available on time or missing, ThermoMed is entitled to either carry out or refuse delivery and to store the consignment temporarily until the complete and correct shipment data has been received, and to charge a fee to cover the added cost and effort.
 - 3.3 The packaging (also in the case of pickup orders) is the responsibility of the customer. It must be appropriate both for the requirements of mass transportation, in particular for sorting on an automatic package sorting system, and, as required, the temperature requirements have to be adequate and the goods have to be sufficiently protected against any access to the contents, without leaving externally visible traces. ThermoMed is unable to check the packaging individually on account of the specified short takeover times, but reserves the right to reject packaging as inadequate in individual cases.
 - 3.4 The customer must hand over the consignments in a pre-cooled state – corresponding to the temperature range ordered in each case for the goods to be transported. This also includes the pre-cooling of the shipping packaging, the filling material, if necessary the securing and loading aids as well as any empties (loading aids). The acceptance of the consignments by ThermoMed does not constitute an acknowledgement of a proper handover and/or sufficiently pre-cooled volumes.
 - 3.5 Consignments to be taken over are to be made available by 5.00 p.m. Any other takeover times require a written agreement.
 - 3.6 When dispatching bonded goods, the customer must enclose all papers completed fully and properly, which are required for customs clearance. The customer is solely responsible for the contents of these accompanying documents.
 4. **Scope of services / operational procedures**
 - 4.1 The services comprise the provision of transport, the takeover, transshipment, distribution and the provision of delivery of shipments on working days from Monday to Friday; further services only after written agreement.
 - 4.2 The individual order itself is placed when the goods are handed over by the customer to ThermoMed during the regular takeover at the scheduled times and/or on delivery by the customer. The exact scope of the order is determined by the data transferred electronically by the customer, subject to any corrected findings of ThermoMed upon receipt of the goods in the transshipment centre.
 - 4.3 The taking over of consignments with a different prepayment of carriage than "carriage paid" requires special agreement.
 - 4.4 The customer is aware that the consignments are transported as part of a consolidated shipment. As due to this form of mass transportation the same duty of care cannot be exercised or ensured as in the case of a single shipment, the customer accepts as a proper organisational process that the interface control checks are carried out by ThermoMed only in accordance with clauses 4.5.-4.10..
 - 4.5 During takeover of the consignments from the customer, the driver – insofar as the driver actually has the opportunity for this purpose – can check individual packages up to a maximum number of 50 parcels per takeover for completeness and external damage and give a receipt accordingly in respect of the net number of the parcels taken over (up to maximum 50 parcels, otherwise per shipping unit) and their external intactness.
 - 4.6 The vehicles used by ThermoMed are adjusted to a set temperature of +2°C-+8°C on takeover of the goods. This state is determined and documented at every takeover location. ThermoMed shall record the temperature with the aid of sensors which determine the temperature every five minutes and record the result.
 - 4.7 All incoming parcels are scanned individually on arrival of all shipments at the main transshipment centre (HUB) during the nightly transshipment process and any discrepancies determined in the transmitted shipping data are communicated to the customer. This check by means of the delivery scan at ThermoMed shall be binding for the customer and ThermoMed.
 - 4.8 The goods shall be delivered on receipt of signature of the consignee or other persons from whom it can be assumed under the circumstances that they are entitled to accept the consignments.
 - 4.9 ThermoMed uses as a rule electronic means for verification of correct delivery. The digitalised form of the signature provided by the consignee and the reproduction of such a signature shall be expressly accepted by the customer as proof of delivery. In the event of discrepancies as regards content for any countersigned consignment note, the results of the consignee signing for the goods by electronic means shall generally be considered as being solely decisive and binding.
 - 4.10 ThermoMed does not show any link between the shipping data of the individual parcel and the temperature measured directly in the container. The temperature documentation of every parcel results from linking the route taken from the customer to the consignee with the temperature data in the cargo holds used.
 - 4.11 Insofar as shipments shall be delivered to the East or North Frisian Islands or Helgoland, ThermoMed hands over the goods to the island forwarding agent with releasing effect. An active cooling of the goods is no longer ensured from this point in time.
 - 4.11 As a rule, consignments within Germany, with the exception of the East or North Frisian Islands as well as Helgoland, are delivered on the working day (Monday to Friday) after the day of takeover. Deliveries to islands shall only be the subject matter of the contract after express agreement. The same shall apply for the use of special fixed date services or other special services of any type by the customer. The regular lead time for pick-up orders is three working days after collection of the goods. For cross-border consignments, deviating standard lead times shall apply depending on the case, which shall be queried individually.
 - 4.12 In the event that delivery was unsuccessful, a further attempt to deliver will be undertaken unless other arrangements have been made. If delivery is not possible, the customer is to be informed.
 - 4.13 If neither delivery nor return is possible due to faulty or missing sender details or for other reasons, ThermoMed is entitled to open the package for the purpose of establishing the customer. If this process is unsuccessful, the contents will be destroyed after 6 months following their takeover.
 - 4.14 When ordering special fixed-time services, the customer is responsible for attaching the tof-Plus 10 and 12 o'clock service labels and/or using the uniform business label for accepting the corresponding information pictograms concerning the respective individual services. The Plus-Service shall be considered as of the 16th minute as no longer provided in due time. In such a case, the customer is entitled to demand compensation in the form of a differential amount between the commissioned and the subsequent fixed-time Plus-Service. In the case of faulty labelling, ThermoMed shall not issue such credit notes.
 - 4.15 Delivery receipts are provided without any charge only in the case of a complaint. In addition to this, ThermoMed is entitled to charge a reasonable processing fee for requests of delivery documents. In other respects, the electronic creation of a delivery document, if applicable, the countersigned counterfoil of the consignment note, shall be deemed as being proof of delivery.
5. **COD services**
 - 5.1 COD shipments are not taken over without a special agreement and only in the context of domestic German carriage.
 - 5.2 COD orders (cash or by crossed cheque) are placed and paid in Euros. The maximum COD amount per shipment and/or per consignee is EUR 5000.
 - 5.3 COD shipments and the associated shipping documents must be clearly indicated as such on the address label and the amount to be collected through COD must be clearly entered on the label. The customer is responsible for correct labelling. The data from COD shipments must be transmitted on the same day.
 - 5.4 Where the amount is not entered or is indistinctly recorded on the documents and/or the consignment data is missing, the order for COD services shall be deemed not to have been placed. This shall also apply if the parcel is not labelled or the labelling is illegible.
 - 5.5 The COD shipment is only delivered step by step against full settlement of the amount to be collected COD.
6. **Remuneration for work performed**
 - 6.1 Unless individually agreed otherwise, the latest versions of master tariffs with fair pricing structures covering costs shall apply for dispatch. It shall be the prices in force on the date on which the order is placed that shall apply. These master tariffs shall be made available upon request.
 - 6.2 Insofar as fees have been agreed individually for a limited period of time, each Party to the contract may at any time demand in writing that the tariffs are adjusted for the subsequent period of time (or any subsequent periods of time there may be). If the Parties are unable to reach an agreement within six weeks from the written claim to enter into a new remuneration agreement or no party has applied for an adjustment of prices, the agreed prices shall change after the period of the fixed price by the same percentage by which the nominal wages index set by the German Federal Office of Statistics has increased in proportion to the previous year.
 - 6.3 Prices do not include, but shall nevertheless be subject to, VAT. An individually agreed remuneration shall apply on the basis of the minimum terms stipulated accordingly in the price agreement. Insofar as one or more of the stated parameters which count for calculating the price differ by more than 5% from agreed figures within 3 successive months, ThermoMed may adjust the prices accordingly. The Customer must be notified in writing at least six weeks before price adjustments.
 - 6.4 The remuneration may be increased as compensation for increased costs. This shall, for example, be the case if third parties from which ThermoMed sources ancillary or preliminary work necessary to render the performances owed under this contract (e.g. fuel) raise their prices. Moreover, price increases are allowed to the extent that they have been brought about as a result of an increase in statutory or official stipulations or duties, that means, in particular, VAT, vehicle tax, toll fees, minimum wages. The Customer must be notified in writing at least six weeks before price increases.
 - 6.5 Services which exceed the scope of services in points 1.1 and 4, entitle ThermoMed to pass on the additional expenditure arising.
 - 6.6 The packaging and pallet weights are included in the chargeable weight.
 - 6.7 Redirecting deliveries to another destination will be charged separately.
 - 6.8 In the case of incorrect declaration of consignments (e.g. colli instead of pallets) and/or incorrect, delayed or missing shipment data, ThermoMed is entitled to charge a processing flat rate to cover the added cost and effort.

- 6.9 ThermoMed shall provide the customer with an extensive invoice about the services provided during the invoicing time period. Invoices are due for immediate payment without any deduction.
- 6.10 Should the customer not raise specific objections in written form within 4 weeks after receipt to an invoice forwarded to it, this invoice shall be deemed to have been confirmed by it as being correct as regards content. Objections as regards content are excluded in this respect after the deadline has expired.
- 6.11 Offsetting by the customer with claims against ThermoMed or the assertion of rights of retention by the customer is excluded, unless the claims involved have been recognised by declaratory judgement or accepted by ThermoMed in writing as legitimate.
- 6.12 If the customer is in default of a demand for payment, all remaining demands for due payment against him can be asserted.
- 7. Liability**
- 7.1 The liability and the limitation of liability of ThermoMed shall be according to clauses 22 to 27 ADSp 2016 in the latest valid version, respectively. The essential provisions are summarised in the following:
The liability for loss or damage of goods (with the exception of authorised storage) is specified in clause 23 of the ADSp 2016, limiting the legal liability according to Article 431 HGB (German Commercial Code) of 8.33 SDR/kg per damage case or damage event respectively to € 1 million or € 2 million respectively, or 2 SDR/kg, whichever is the higher.
In multimodal transport, including maritime transport, liability is generally limited to 2 SDR/kg.
The liability of ThermoMed for damages other than to goods, with the exception of damages during ordered warehousing, personal injury or damage to goods belonging to third parties, is limited to three times the amount that would be payable for the loss of the goods, but no more than € 100,000.00 per case of damage.
- 7.2 **An exception shall apply for damage caused by temperature damage to the goods to be transported, insofar as the goods are to be transported in accordance with the customer's order within the temperature range of +2°C to +8°C. In these cases, the liability of ThermoMed for the parcels in its care amounts up to € 750.00 per parcel plus freight.**
- 7.3 **This special provision on the limitation of liability is, however, not applied, insofar as ThermoMed has to employ subcontractors because of special quantities scheduled at short notice and at the express written request of the customer. The liability provisions of the aforementioned clauses 1. and 2. shall apply to these transports by subcontractors up to the handover of the consignment to the main transshipment warehouse (HUB).**
- 7.4 If the customer hands over consignments in the range of +2°C to +8°C which are not suitable for this temperature range, ThermoMed shall not accept any liability for damage caused by the temperature deviation.
- 7.5 The current version of the provisions of the ADSp shall generally apply in addition to these requirements. ThermoMed assumes that the average goods value is approx. € 1,000.00 per gross weight unit of the consignment. Insofar as this value is exceeded, the customer must notify ThermoMed of this, so that precautions and special security measures against theft can be agreed by arrangement with the customer if necessary. ThermoMed offers in this respect a number of secure transport options as special services (see a more detailed description at: www.thermomed.tof.de). If information regarding this is omitted, it shall basically be deemed that in case of loss a theft could only take place due to the lack of the information.
- 7.6 In case of consignments to other countries, export as well as import, the provisions of the CMR shall apply.
- 7.7 ThermoMed is not liable for damage which has been caused to these or third-party items and/or persons by the taking over of inadequately protected, inadequately pre-cooled or inadequately packaged consignments that are excluded from the transportation.
- 7.8 In addition, liability is excluded if damage was caused by the customer transmitting incorrect or incomplete data or no data at all (at the proper time) to ThermoMed and in the case of the customer being responsible for a delayed departure.
- 7.9 In the case of COD orders, the customer is aware that the delivery drivers of ThermoMed handle the amounts to be collected with due care, keep them separately, and that drivers are instructed to maintain confidentiality about CODs and the amounts, as well as to observe particular caution, however, security measures within the meaning of a transport by security vehicle cannot be carried out. Drivers are neither armed nor are the vehicles particularly protected against robbery. Any liability of ThermoMed on account of the absence of security precautions, in particular in the event of a robbery, is thus excluded, with the exception of personal damage. The liability also lapses if counterfeit money is accepted, unless this was at least with gross negligence.
- 7.10 ThermoMed is not liable for consequential damages or consequential charges, such as pure economic losses, loss of earnings, lost profits or loss of turnover, expenditure from substitute performance and damage or loss arising due to delays in the case of customs clearance.
- 7.11 Hindrances to performance, which cannot be attributed to the area of risk of a contractual party, exempt the contractual parties from the obligation to perform for the duration of the disturbance and the scope of its effect. Article 412 paragraph 3 HGB shall remain unaffected. Such hindrances to performance shall be deemed as force majeure, such as for example earthquake, extreme weather and/or traffic conditions, flooding, unrest, military or terrorist acts, strikes and lock-outs, official measures, blockades of transport routes as well as other unpredictable and unpreventable and serious events. In the case of a hindrance to performance, each contractual party is obliged to inform the other party without delay.
- 7.12 ThermoMed accepts no responsibility for the contents of consignments.
- 8. Insurance**
The customer can advise ThermoMed within the scope of the transfer of consignment data to insure the consigned goods at a higher value of up to € 50,000.00 per parcel. In this case, ThermoMed shall arrange a separate insurance policy for the goods in question, which will be charged for at three one-tenths of a percent of the higher insurance value, at least however at € 5.00 per item.
- 9. Exchange of loading devices**
Loading devices (pallets) shall only be exchanged if this has been agreed in writing with ThermoMed.
- 10. Information about data usage**
If ThermoMed receives electronic postal addresses in connection with the sale of goods or service, this address shall be used for direct mail for its own similar goods or services. The Customer shall be entitled to raise an objection to data being used for this purpose at any time. No other costs shall be incurred for this other than the sending costs at basic rates. The objection may be sent in by post to trans-o-flex ThermoMed GmbH, Widerruf, Hertzstraße 10, 69649 Weinheim or by e-mail to widerruf@tof.de.
- 11. Data protection**
- 11.1. ThermoMed shall collect and process the Customer's personal data and that of its employees (hereinafter known collectively as "the Party concerned") only for carrying out its contractual obligations, as well as for invoicing and for commercial communication with the notified contact person.
- 11.2. The legal basis for the above-named data processing is the need to fulfil the contract (Article 6 Para 1 b of the GDPR [DSGVO]).
- 11.3. ThermoMed shall be entitled to call in service providers for all logistics and haulage services; they shall obtain access to the personal data. These parties are in particular system partners.
- 11.4. It is not envisaged that the personal data will be sent to a third party country.
- 11.5. ThermoMed shall save the personal data until the end of the contractual relationship and thereafter until the end of the statutory safekeeping periods.
- 11.6. If the Customer is a natural person, he shall be entitled to have information about data processing, as well as to have data corrected, deleted or restricted. In addition to this, this system partner shall be entitled to the above rights concerning a supervisory authority.
- 11.7. The Customer shall undertake to inform the Parties concerned about data processed in the name of trans-o-flex in the appendix "Information leaflet about data protection" (this can be downloaded from http://www.trans-o-flex.com/en/terms/general-terms-and-conditions/data_privacy_information_sheet). The format of the information shall be left up to the Customer, provided that it ensures that that all the Parties concerned receive the necessary information.
- 11.8. The Data Protection Officer for trans-o-flex is Mr Mihail Jugov (eDSB) at intersoft Consulting Services AG, Beim Strohhause 17 in 20097 Hamburg. You may contact him by e-mail at Datenschutzbeauftragter@tof.de
- 12. Written form**
Side agreements and deviating agreements must be made in writing. This shall also apply if therequirement for the written form is to be waived.
- 13. Partial validity/place of jurisdiction/applicable law**
- 13.1 Should one of the provisions of these General Terms and Conditions of Business be invalid, the continued existence of the remaining provisions shall not be affected thereby. The invalid provision shall be replaced with one that accords as closely as possible with its economic meaning in a legally permissible manner.
- 13.2. The place of jurisdiction and place of performance is 69469 Weinheim. If another place of jurisdiction outside of Germany should be legally mandatorily justified, the customer shall bear all fees, costs and expenses which arise in connection with each successful prosecution which legally accrues against him.
- 13.3. The contract relationship is governed by German law, unless otherwise determined above.