

## GENERAL TERMS AND CONDITIONS OF BUSINESS of trans-o-flex ThermoMed GmbH (01.09.2022)

### 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 Services shall be handled in keeping with the ThermoMed system, to which distribution companies belong as system partners. They take delivery of the goods, transport, deliver and trans-ship them as sub-contractors for Thermomed. Insofar as reference is made below to ThermoMed, this shall in all cases refer to this Thermomed system.

1.3 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 The restrictions on dimensions and weight of goods transported by ThermoMed are subject to regular system inspections and shall be defined by ThermoMed. The parcels handed over for dispatch must be compact and stackable. Pallets must be compact. The minimum as well as maximum weight, girth and dimensions are shown in the "Dimensions and Weights - ThermoMed" appendix in force attached to each order (May be downloaded from [https://www.trans-o-flex.com/wp-content/uploads/ThermoMed\\_TC\\_Annex\\_Weight\\_Dimensions\\_eng\\_2022-04-01.pdf](https://www.trans-o-flex.com/wp-content/uploads/ThermoMed_TC_Annex_Weight_Dimensions_eng_2022-04-01.pdf)).

2.2 The following shall not be transported within Germany or internationally without special agreement:

- a. Hazardous Goods
- b. Consignments sent by consumers
- c. Packages with inadequate packing, marking or consignment data
- d. Goods of particular value such as, for example, precious metals, real jewellery, money, coins, antiquities, works of art, furs, documents, certificates, securities, credit cards and phonecards (second tier valuables)
- e. Packages, the contents, transportation or external design of which are in breach of statutory regulations
- f. Guns, explosives and military equipment

- g. Consignments the contents of which could be used to injure and infect persons, or cause property damage
- h. Living or dead animals and plants, human remains, body parts or organs, perishable goods of all types
- i. Unpacked household goods

In addition to the above, the following will not be carried in international transport:

- d. Personal effects and ATA Carnet goods, consignments to be delivered against L/C or FCR
- e. Goods, the importation or exportation is forbidden under the regulations in force in the countries concerned
- f. Goods, declared by the Customer in accordance with Article 24 CMR and/or Article 26 CMR, the same shall apply for value and interest declarations in accordance with the Warsaw Convention and/or Montreal Convention. Goods to which a waybill stating the value is attached in accordance with Article 24 and/or Article 26 CMR must not be handed over. The driver shall be authorised to accept such a contract for Thermomed

2.3 Taking over goods in accordance with No 2.2 does not constitute any waiver of transportation. The Customer shall be under an obligation to ThermoMed to inspect the goods prior to hand-over and to notify ThermoMed whether the goods are subject to exclusion. In cases of doubt, he shall have to inform Thermomed and obtain a decision from it.

### 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 ThermoMed shall be entitled to reject an order if it does not correspond to the contractually agreed specifications. Insofar as minimum quantity specifications have not been agreed, ThermoMed shall be entitled to reject an order at all times.
- 4.4 The taking over of consignments with a different prepayment of carriage than “carriage paid” requires special agreement.
- 4.5 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 4.6.-4.8.
- 4.6 The maximum number of packages which will be taken over is 10. Insofar as more than 10 packages are handed over by the Customer, they are to be consolidated on a pallet (mixed pallet).

Insofar as the Customer hands over individual packages and pallets as well, the legally binding takeover of all packed items shall only take place when they are merged.

Insofar as it has been agreed with the Customer that ThermoMed is to provide loading container (trailer skips / swap trailers) at the Customer’s premises, and that the container is to be loaded and sealed by the Customer. The loaded container is then to be taken away in accordance with the agreed hand-over times. The Customer shall be responsible for the goods being properly stuffed and secured within the container. A record is to be kept of the hand-over of the loading container.

If the driver was unable to observe the container being loaded in a given instance, e.g. if he takes delivery of a sealed container, a record will not be kept of the physical hand-over at packages level. This will then be carried out for the first time when the packages are merged.

- 4.7 Insofar as the driver has only been able, when taking over the packages, to inspect the number (limited to a maximum of 10 packages per hand-over and no other pallets or containers) of packages handed over to him for visible damage and quantity and signed this off on a hand-over note, this respective number shall apply as being binding on both Parties as having been received without external damage.

Insofar as the driver when taking over full palletloads was able to observe the loading and signs off the number of palletloads he has taken over on the takeover note, the number of palletloads shall be regarded as having been taken over in full and undamaged, if the driver has not made a corresponding entry otherwise on the hand-over note.

Of the Customer hands over sealed units, mixed pallets or individual packages and pallets, the legally binding hand-over shall only take place for these packages and pallets, and this means the point in time at which ThermoMed assumes a duty of care, when they are merged.

Merging means that all packages collected from the Customer or brought in by a Customer to ThermoMed – in countries outside Germany these HUBS may be run by a system partner – will be individually scanned during the over-night transshipment procedure, whereby mixed pallets and load units will be opened and the packages individually scanned. An inspection by means of this incoming scanning at ThermoMed’s premises is binding for customers and ThermoMed. Only this specified quantity with any possible damage there may be having been recorded shall be regarded as having been taken over from the Customer.

- 4.8 The packages shall then be packed into mixed units, (e.g. pallets and skeleton containers) secured and marked (transport route label). Full palletloads and mixed units shall then be loaded onto a loading unit (e.g. trailer, swap trailer) scanned and the loading unit is then to be sealed after loading has been completed. At the target system site, the full pallets will be scanned, the mixed units broken up and each package scanned. Scanning will be carried out again when the packages are handed over to the delivery driver. The consignee shall confirm the receipt of the consignment with his signature. ThermoMed shall not have any other inspection obligations.

- 4.9 Upon request, ThermoMed shall provide the Customer with a discrepancy report by no later than the following working day (Monday to Friday) after the goods have been handed over to ThermoMed and the consignment data shall be sent by no later than 11:00 on the following working day. The discrepancy report shall show any discrepancies there may be from the Customer's consignment data, and if applicable, it will also confirm the Customer's consignment data as correct, complete and having been taken over by ThermoMed on time. This presupposes that the Customer has mounted the corresponding barcode correctly on the respective package. In this case, ThermoMed's error log will show which package is missing from which consignment or for which package no consignment data or incorrect consignment data was handed over.
- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 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.
- 4.15 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.
- 4.16 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.

- 4.17 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.
- 4.18 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 16<sup>th</sup> 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.
- 4.19 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 increase 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.
- 6.4 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.
- 6.5 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.
- 6.6 Services which exceed the scope of services in points 1.1 and 4, entitle ThermoMed to pass on the additional expenditure arising.
- 6.7 The packaging and pallet weights are included in the chargeable weight.
- 6.8 Redirecting deliveries to another destination will be charged separately.
- 6.9 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.
- 6.10 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.
- 6.11 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.

6.12 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.

6.13 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 limits of ThermoMed are determined by Numbers 22, 23, 24, 25, 26 and 27 of ADSp 2017, to all of which reference is made.

Excerpts of the liability limits are as follows:

**"With the exception of damages resulting from transportation at sea and storage as instructed, the carrier's liability for damage to goods in his care in accordance with Section 431 Para 1, 2 and 4 of the German Commercial Code [HGB] is limited by amount as follows:**

- **to 8.33 SZR/kg, if the carrier is a care, custody and control freight forwarder, haulier or fixed price carrier or consolidator,**
- **in all cases the carrier's liability from every claim shall be limited to a maximum of amount of 1.25 million €,**
- **for damages other than those incurred by goods put into storage as instructed, personal injury and property damage to third party goods, damages shall be limited in terms of amount to three times the sum which would have had to have been paid had the goods had been lost, to the sum of 125.000,00 € per claim,**
- **to a maximum sum amounting to 2.5 mill € per damaging event irrespective of how many claims are asserted on the basis of one damaging event.**
- **The carrier's liability for damage to goods when instructions have been issued to put goods into storage is limited to a maximum amount of 35,000.00 € per claim,**
- **In the event of stock-taking discrepancies liability shall be limited to the maximum sum of 70,000.00 € per year, regardless of the number and type of stock-takes conducted and the number of claims made for the damaging events giving rise to the stock-take discrepancies,**
- **Regardless of how many claims are made, if goods are put into storage following instructions, liability shall be limited to the sum of 2.5 million € per damaging event.**

7.2. 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.

7.3. The Customer shall have to draw the attention of ThermoMed in good time when the value of a



consignment is in excess of € 10.00 per kg or if goods are particularly vulnerable to being damaged, so that ThermoMed can take suitable precautions with the Customer – if necessary, in return for a special fee - and take special security measures to prevent theft or to protect the goods against damage. If no such notification is given and/or no agreement is made to the same effect with the Customer, as a matter of principle a loss and/or damages may only be claimed on account of no notification being given and/or an agreement being made in such cases.

- 7.4. In case of consignments to other countries, export as well as import, the provisions of the CMR shall apply.
- 7.5. 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.
- 7.6. 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.
- 7.7. 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.
- 7.8. With the exception of personal injury 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.
- 7.9. 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 lockouts, 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.
- 7.10. ThermoMed draws express attention to the fact that third parties may assert compensation claims for damages if the departure from the Customer's premises is delayed for reasons attributable to mistakes made by the Customer, since this may give

rise to delays throughout the system as a result. ThermoMed shall expressly reserve the right to pass on such third-party compensation claims for damages asserted against it over to the Customer.

## 8. Insurance

Generally, ThermoMed shall not have an insurance policy covering the goods for the Customer, unless the Customer expresses a wish in writing that such cover is taken out. In this case there will be an option in return for an appropriate sum of money to take out a transportation of goods insurance policy providing a specific level of cover, which, in the event of loss or damage will cover the full value of the goods up to a maximum of € 50.000,00 per claim.

## 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](mailto: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 ThermoMed in the appendix "Information leaflet about data protection" (this can be downloaded from [https://www.trans-o-flex.com/wp-content/uploads/ThermoMed\\_TC\\_Annex\\_Data\\_Privacy\\_Information\\_Sheet\\_en\\_Status\\_2019-11.pdf](https://www.trans-o-flex.com/wp-content/uploads/ThermoMed_TC_Annex_Data_Privacy_Information_Sheet_en_Status_2019-11.pdf)).

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 ThermoMed is Ms Vanessa Martin (eDSB) at intersoft Consulting Services AG, Beim Strohhouse 17 in 20097 Hamburg. You may contact him by e-mail at [Datenschutzbeauftragter@tof.de](mailto:Datenschutzbeauftragter@tof.de)

## **12. Written form**

Side agreements and deviating agreements must be made in writing. This shall also apply if the requirement 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.