

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

1. Preamble

1.1 These General Terms and Conditions of Sale and Supply govern all legal relations between the parties in relation to the procurement of deliveries, services and products from the supplier (Taconova Group AG, Neunbrunnenstrasse 40, 8050 Zurich, Switzerland) (the "Supplier") by the customer (the "Customer") and form an integral part of any contracts concluded between the Supplier and the Customer, unless specifically provided otherwise.

1.2 Any terms that deviate from the General Terms and Conditions of Sale and Supply shall only be legally binding if they are accepted by the Supplier expressly and in writing.

1.3 All offers by the Supplier are non-binding. This also applies to all information provided by the Supplier, in particular in catalogues, pricelists and brochures. The Customer is bound by his order for a period of 30 days from receipt by the Supplier. The contract is concluded if the Supplier confirms the order in writing within this period or if he delivers. Orders and commissions which can be carried out immediately upon receipt of the order or commission will not be confirmed in writing. In these cases the contract is concluded by carrying out the order. Only in cases where orders cannot be carried out immediately upon receipt of the order or commission will the Supplier confirm receipt of the order or commission in writing. The contract shall only be deemed to be concluded once the Customer has received the Supplier's written order confirmation.

1.4 All agreements and legally relevant declarations by the parties or commercial agents must be made in writing in order to be valid. Declarations in text form, which are transmitted or captured via electronic media, shall be deemed to satisfy the written form requirement, if agreed by the parties.

2. Scope of the deliveries

Scope and content of the deliveries by the Supplier are conclusively listed in the order or commission confirmation or in the delivery note. Any additional services will be invoiced separately.

3. Brochures and technical documentation

3.1 Any information provided in brochures, advertisements, pricelists, catalogues, technical documentation, installation & operating instructions and on the Supplier's website are subject to technical modifications and improvements, and only describe a contractual property of the supplied item if this is explicitly stated to be the case.

3.2 All technical documentation shall remain the intellectual property of the Supplier and without the prior consent of the Supplier may neither be copied nor passed on to any third parties or used for any other purpose than the one for which it was supplied.

4. Requirements in the destination country

4.1 The Customer shall notify the Supplier, at the latest when placing the order, of any regulations and standards which apply with regard to the performance of the deliveries, the operation of the deliveries as well as to health & safety, and which must be complied with in the destination country.

4.2 Deliveries by the Supplier comply with the applicable regulations and standards at the Supplier's registered office.

5. Prices

5.1 Prices given in catalogues, brochures and such are non-binding. The prices applicable shall be those stated by the Supplier in the order or order confirmation. If there is no order confirmation, the latest pricelist of the Supplier shall be binding.

5.2 Unless agreed otherwise, all prices shall be net prices ex works in Swiss francs or Euro, exclusive of VAT and without any deduction whatsoever.

5.3 Unless agreed otherwise, all ancillary costs such as for freight, packing, insurance, export, transit, import and other permits as well as for certifications shall be borne by the Customer. The Customer shall also bear any taxes, duties, charges, custom duties and the like imposed in connection with the contract or shall reimburse the Supplier against production of appropriate evidence, if the latter was obliged to pay them.

5.4 A processing fee will be charged for small orders with a goods value of less than CHF or EUR 50.

5.5 In cases where the period of delivery is longer than two months, the Supplier reserves the right to make a price adjustment if the Supplier's costs (in particular rates of pay, costs of material, construction costs or any other economic parameters) change between the conclusion of the contract and the delivery, provided that the Supplier is not responsible for such changes. There will also be a reasonable price adjustment if the delivery period is subsequently extended for any of the reasons mentioned in paragraph 8.2 or if the type or scope of the agreed deliveries or services undergoes changes or if the documents supplied by the Customer did not comply with the actual circumstances or were incomplete.

6. Payment conditions

6.1 Payments shall be made in accordance with the agreed terms of payment without deductions of any discounts, expenses, taxes, duties, fees, customs, etc. The Customer is not entitled to refuse payment on the basis of any types of claims vis-à-vis the Supplier or to offset the asking price against any counter-claim. Subject to any other agreement, the payment period shall be 30 days from the date of invoice.

6.2 Any queries about invoices must be raised within 10 days of receipt of the invoice otherwise the invoices shall be deemed to have been accepted.

6.3 Unless otherwise agreed in writing, any claims by the Supplier vis-à-vis his customers shall be due for payment immediately and shall be paid into the account of the Supplier, free of charge, within 30 days of receipt of the invoice at the latest. The due date shall at the same time also be the maturity date. Interest of 5% from the due date as well as payment of reminder fees in the amount of CHF 10.- will be due for any invoices which are not paid within the 30 day payment period. A notice of default is not required. The Supplier is entitled to take measures to collect the claim without another reminder being required and to instruct a third party with the collection, at the cost of the Customer, or to rescind from the contract.

6.4 If the Supplier has reasonable grounds to assume that his claims under the contract, in particular the claim for compensation, are at risk, he is entitled, upon conclusion of the contract, to demand an advance payment, a down payment or an adequate guarantee from the Customer. The Supplier may hold back his deliveries until the advance payments or down payments have been made or guarantees have been provided. If advance payments or down payments have not been made or guarantees not been granted in time, the Supplier may choose to continue with the contract or rescind from it and may, in both cases, claim damages with immediate effect.

7. Reservation of title

7.1 The Supplier retains ownership of all of his deliveries until he has received all payments under the contract in full. If a current account agreement exists, the retention of title also covers the acknowledged balance.

7.2 The Customer shall assist with any measures required to protect the ownership of the Supplier, in particular he shall authorise the Supplier, at the expense of the Customer, to have the reservation of title registered or preregistered in public registers, books or such, in accordance with the respective state law and shall comply with any relevant formalities. For the duration of the reservation of title, the Customer will keep deliveries in a good condition at his own expense and will insure them for the benefit of the Supplier against theft, breakage, fire, water and other risks. He will furthermore take all measures to ensure that the ownership of the Supplier will neither be affected nor cancelled.

7.3 Any processing or remodelling of the goods subject to reservation of title by the Customer will always be made to the benefit of the Supplier but without any obligation for the Supplier. If the goods are combined with other goods, the Supplier will acquire co-ownership of the new good which amounts to the net invoice value of the good that is subject to reservation of title in relation to the other material. The Customer stores the co-owned item thus created for the Supplier, free of charge.

7.4 The Supplier will release guarantees granted, of his own choice, if the value of the securities exceeds the Supplier's claims, including any ancillary costs, by more than 10%.

8. Delivery period and delivery dates

8.1 If an order confirmation is sent out, the delivery period starts upon receipt of the order confirmation but not before all details of the execution of the order and any technical questions have been clarified and any agreed down payment or payment guarantee has been received. If no order confirmation is issued, the delivery period stated by the Supplier shall apply. The Supplier endeavours to comply with the mentioned delivery periods and dates. The Supplier can, however, not guarantee that the delivery periods and dates will be kept. Unless agreed otherwise, the Customer shall not be entitled to make claims of any kind due to any delays. Furthermore, the Customer shall be not entitled to cancel a delivery if any delivery period or delivery date has not been met.

8.2 The delivery period shall be reasonably extended at least for the duration of the disruption and its effects:

- if the Supplier does not receive information required for the performance of the contract in time or if the Customer subsequently changes the information and, by doing so, causes a delay of the deliveries or services;
- if hindrances occur which the Supplier cannot prevent, despite applying due care and attention, regardless of whether they occur at his end, on the Customer's side or with a third party. Such hindrances shall be, for example, considerable breakdowns, accidents, labour disputes, delayed or faulty delivery of the required raw materials, of semi-finished or finished goods, official measures or omissions, natural events; if the Customer or any third party are behind with any of the works to be carried out by them or if the Customer does not comply with his contractual obligations, in particular with the agreed terms of payment.

8.3 If the hindrance is not only of a temporary nature and if it continues for longer than six weeks, both parties shall be entitled to rescind from the contract.

8.4 The delivery obligation of the Supplier shall be subject to timely and correct self-delivery by any subcontractor, unless the Supplier is responsible for the wrong or delayed self-delivery. In these cases the Supplier may rescind from the contract.

8.5 Furthermore, the Supplier shall be entitled to cancel the contract according to paragraph 15.

9. Packaging

Unless agreed otherwise, the packaging will be accepted by the Customer.

CONTACT AND FURTHER INFORMATION

Taconova Group AG | Neunbrunnenstrasse 40 | CH-8050 Zurich | T +41 44 735 55 55 | F +41 44 735 55 02 | group@taconova.com | [taconova.com](https://www.taconova.com)

10. Transfer of use and risk

10.1 Use and risk will transfer to the Customer at the latest upon despatch ex works.

10.2 The risk will also transfer to the Customer if the Supplier has taken on other services (e.g. shipping costs or shipment and installation, also by deploying his own carriers) as an exception.

10.3 If the dispatch is delayed due to a fault of the Customer or of his agent or for reasons the Supplier is not responsible for, the risk of accidental destruction of the delivery items will transfer to the Customer at the time for which the delivery was originally scheduled. As of this point in time, the deliveries will be stored on account and at the risk of the Customer.

11. Shipping, transport and insurance

11.1 The Supplier shall be notified in good time of special preferences regarding shipping and transport. Transport shall be on account and at the risk of the Customer. The Customer shall address any reclamations in connection with shipping or transport to the last carrier without delay upon receipt of the deliveries or of the freight documents.

11.2 It is the Customer's responsibility to take out insurance against damage of any kind. Even if insurances are to be obtained by the Supplier in individual cases, they will be deemed to be taken out on behalf and for the account as well as at the risk of the Customer.

12. Inspection and acceptance of the deliveries

12.1 The Supplier inspects the deliveries prior to dispatch in the course of his certified quality assurance process.

12.2 The Customer shall inspect the deliveries within 10 days from receipt and shall inform the Supplier of any faults in writing without delay. The Customer's rights are set out in paragraph 13. If he does adhere to these conditions, the deliveries are deemed to be accepted and approved. The Customer will continue to be entitled to claim under the warranty against defects according to paragraph 13 in respect of any defects that cannot be detected at this time.

12.3 Acceptance shall also be deemed to have taken place if the Customer does not carry out the inspection within the deadline or if the Customer refuses acceptance without being entitled to do so or if the Customer uses deliveries by the Supplier.

12.4 The Customer shall have no rights and remedies for defects of any kind in deliveries with the exception of the rights and remedies listed explicitly in paragraph 12 or 13.

13. Warranty, liability for defects

13.1 Scope of the warranty

The Supplier warrants that the items of his deliveries are free of material defects and defects in title and are, at the time of transfer of risk, of the warranted and assumed quality and suitability. Insofar as the quality has not been warranted or agreed, an item is free of material defects if it is suitable for its contractually assumed purpose or if it is suitable for customary use and has a characteristic which is customary in items of a similar kind and which the Customer can expect in this type of item. A material defect exists if a delivery or service is verifiably defective or unusable as a result of poor material, faulty design or poor workmanship. Information regarding characteristics made in public statements by the Supplier, the seller or their assistants, in particular in advertising or in descriptions of items, only constitute descriptions or warranties in respect of the quality of deliveries if they are expressly referred to as such by the Supplier.

13.2 Exclusion of warranty

The warranty does not cover any defects or damage not proven to have occurred due to poor material, faulty design or poor execution of the supplies or services, e.g. due to natural wear and tear, improper maintenance, improper handling, disregard of installation or operating regulations, excessive use, unsuitable operating resources, chemical or electrolytic influences, as well as due to other reasons for which the Supplier is not responsible. The same applies to any uncontrolled use of inhibitors, untested use of corrosion inhibitors or the use of media which do not comply with the applicable standards. The Supplier will not bear the costs for removal and reinstallation, travel and transport costs from and to the site, installation costs and costs payable to any third parties.

13.3 Deliveries and services by subcontractors

With regard to deliveries and services by subcontractors, the Supplier only provides a warranty within the scope of the warranty provided by the subcontractor.

13.4 Rights of the Customer in cases of defects

In case of a warranty for defects of deliveries the Customer shall initially only have the right to demand supplementary performance. The Supplier will carry out supplementary performance of his choice, either by way of rectification or replacement delivery. As a replacement, like-for-like delivery items will be provided, which may also be successor products or products by third parties. The Supplier may refuse supplementary performance if it entails disproportionate costs. If supplementary performance does not occur or is only partially possible or not possible at all, the Customer shall be entitled to the compensation agreed for this case or if such an agreement was not made, to a reasonable reduction of the price. If the defect is so significant that the deliveries are only of substantially diminished use, the Customer shall have the right to rescind from the contract in respect of the defective part of the deliveries. If partial acceptance of the deliveries is commercially unreasonable for the Customer, he is entitled to rescind from the entire contract. In this case the Supplier shall repay any amounts paid to him for the parts of the delivery affected by the rescission.

13.5 Warranty period

The warranty period is 24 months from delivery of the good or 30 months from the date of production. The warranty period for replaced or repaired parts will start anew and will be 24 months from the delivery of the replacement parts. The above warranty periods shall also apply if the ordered item has been integrated in an immobile plant, as intended.

13.6 Exclusion of further claims

All further claims of the Customer for material or construction defects or poor workmanship as well as for absence or non-attainment of characteristics are excluded. Furthermore, the Supplier shall not be liable for any indirect or consequential damage, incurred in connection with defective items, if this is not due to a deliberate or grossly negligent breach of contract and/or action on the part of the Supplier.

14. Right to return based on good will outside statutory (defect) claims

14.1 Except in the cases of statutory claims for defects or other rights to return, the Supplier will only take back the goods based on good will if the Customer sends back the delivered goods within 30 days from the date of the invoice at his own cost. Shipments sent back by way of "paperless cash on delivery" will not be accepted. The goods must not show signs of use and must be sent back in their original sales packaging. Outer packaging or transport packaging does not need to be sent back.

14.2 Excluded from returns are the following products:

- TacoTherm Dual
- TacoTherm Fresh

14.3 Returns can only be accepted if a completed return note is enclosed with the return delivery. The Customer will receive such a form upon request by fax, email or post.

14.4 Any payments already made will be reimbursed without delay after deduction of an administration fee of 20% upon receipt of the goods, provided the aforementioned conditions are met.

15. Termination of the contract by the Supplier

If unforeseen circumstances should change the economic importance or the content of the deliveries or services considerably or should they affect the works of the Supplier considerably, as well as in cases of subsequent frustration of performance, the contract will be reasonably amended. If this is not economically viable, the Supplier shall have the right to terminate the contract or to terminate the respective part of the contract. If the Supplier wants to make use of the termination of contract, he has to inform the Customer immediately upon realisation of the importance of the event, even if an extension of the delivery period had initially been agreed. In case of a termination of the contract, the Supplier is entitled to payment for any deliveries already made. Any claims of the Customer for damages due to any such termination are excluded.

16. Exclusion of further liabilities of the Supplier

All cases of breach of contract and their legal consequences as well as all claims of the Customer, for whatever legal reason, are conclusively regulated by these General Terms and Conditions of Sale and Supply. Above all, any claims for damages, reduction, cancellation of the contract or rescission from the contract, not mentioned explicitly or agreed otherwise, are excluded. Under no circumstances shall the Customer be entitled to claim compensation for damage not occurred on the deliverable or service itself, in particular loss of production, loss of use, loss of orders, loss of profit as well as for any other indirect or direct damages. This exclusion of liability shall not apply in cases of unlawful intent or gross negligence of the Supplier, but shall also apply in cases of unlawful intent or gross negligence of assistants. Apart from that, this exclusion of liability shall not apply if mandatory law dictates otherwise. In case of an assumed guarantee, the Supplier shall be liable in accordance with any guarantee provisions.

17. Supplier's right to redress

If any person is injured or items are damaged through acts or omissions of the Customer or of any of his assistants and if the Supplier is held liable because of this, he shall have a right to redress vis-à-vis the Customer.

18. Place of law and applicable law

18.1 The place of performance for all services under the contract shall be the Supplier's main office. The place of law for any disputes in connection with the contractual relationship shall be Zurich, the Supplier will, however, reserve the right to sue the Customer at the Customer's main office.

18.2 The contract between the Supplier and the Customer shall be governed by Swiss law. The provisions of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980) are excluded.

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Taconova Group AG | Neunbrunnenstrasse 40 | CH-8050 Zurich | T +41 44 735 55 55 | F +41 44 735 55 02 | group@taconova.com | [taconova.com](https://www.taconova.com)