

W. Zimmermann GmbH & Co. KG – General Sales and Delivery Terms and Conditions (March 2020)

1. General Information

- a) Only the following general business terms and conditions apply for the sale and delivery of our goods.
- b) The general business terms and conditions do not apply to transactions with consumers.
- c) We do not accept conditions of the buyer that contradict our general business terms and conditions, unless we have expressly agreed to the buyer's general business terms and conditions in writing on a case-by-case basis.

2. Order Acceptance

- a) Our offers are subject to feasibility and the ability to deliver, and are not legally binding.
- b) The buyer is bound by its order for a period of two weeks.
- c) Orders are only accepted when they have been confirmed by us in writing (order confirmation). Telephone and verbal agreements are valid only if they are confirmed by us in writing.
- d) In case of deviations between the order confirmation and the order, the contract is concluded with the content of the order confirmation unless the buyer objects within eight days.
- e) Coloured goods are delivered by us in standard colours. If the buyer desires higher colour fastness values, the requested colour fastness must be specified in writing on the order and contained in our order confirmation.

3. Prices and Payment Terms and Conditions

- a) All prices are net, excluding packaging, ex works and not including VAT, other taxes, duties, fees and bank charges.
- b) Our prices are based on the manufacturing costs in effect when the contract is concluded. Price changes are allowable when more than two months elapse between the conclusion of the contract and the agreed delivery date. If wages, the cost of materials or acquisition prices in the market increase after this period up to the completion of the delivery, we have the right to charge a commensurate price according to the cost increase. In this case, the buyer only has a right of withdrawal if the price increase exceeds the increase in the general cost of living (consumer price index for Germany) by more than 20% between the order and delivery dates.
- c) Payment must be made by bank transfer according to the conditions agreed upon with the buyer. Other payment methods are only permissible with our express prior consent. All payments must be made by the buyer free of costs. Costs associated with the method of payment are borne by the buyer.
- d) The receipt of goods by the buyer has no influence on the agreed payment terms. In case of late payment, we are authorised to charge late payment interest at the rate of 8 percentage points above the prime rate and no less than 9%. When the payment obligations are not met, we also have the right to make subsequent deliveries dependent on receipt of the amounts due or to refuse subsequent deliveries without granting a grace period, to demand compensation for damages and to ask for the immediate payment of invoices that have not yet come due.
- e) If the buyer withdraws from the contract with our consent prior to delivery, 25% of the net purchase price is payable as compensation. The buyer has the right to provide proof that no damages or damages lower than the flat rate were incurred.
- f) The buyer is not authorised to offset its receivables from us, unless the receivables are undisputed or legally established.

4. Delivery Date and Scope

- a) Delivery and shipment is ex works, at the expense and risk of the buyer. Goods are shipped at the risk of the buyer, even in case of freight prepaid delivery.
- b) The delivery term begins with the date of our order confirmation. The delivery term is met if the delivery item leaves the plant or the customer is notified that the shipment is ready within the delivery term. The fulfilment of all contractual obligations by the buyer is a prerequisite in order to meet the agreed delivery terms.
- c) Force majeure, disruptions, difficulties procuring materials, official acts, currency changes or other unforeseen events extend the delivery term according to the duration of the event. When the preceding circumstances arise in the course of an existing delay, we are not liable for them either. The delivery term is not extended if the delay was caused by intent or gross negligence on our part.
- d) On call orders have to be accepted no later than within four months after the end of the contract term. If goods prepared for shipment according to the terms of the contract are deferred by the buyer, we have the right to store said goods at the expense and risk of the buyer and to invoice them.
- e) The scope of delivery is determined by our written order confirmation. We have the right to make partial deliveries to the extent this is reasonable for the buyer. The delivered quantities may deviate from the quantities confirmed by us by +/- 15% when this is reasonable for the buyer. In this case, the buyer pays for the quantity that was actually delivered. Design or dimensional changes during the delivery term due to technology improvements and/or legal requirements are reserved insofar as the delivery item is not changed significantly and the changes are reasonable for the buyer.
- f) The current spread of coronavirus is a case of force majeure. In the event of delays due to the currently spreading coronavirus (SARS-CoV-2 virus), we shall be entitled to an appropriate extension of the delivery dates. This applies regardless of whether these delays are due to the fact that material deliveries cannot be effected at the scheduled date or our own employees are not available because they have fallen sick with/are subject to quarantine measures due to coronavirus (COVID-19 diseases). This also applies to any delays which are based on us not having healthy employees work for reasons of due caution because a risk of contracting a disease or infection cannot be ruled out due to specific indications and/or this is recommended by the authorities. The same applies in the case of shutdowns, lockdowns, travel bans, etc.

5. Confirmation of Arrival for Delivery Abroad

- a) In case of deliveries abroad, the buyer is obligated to provide us with a confirmation promptly, stating that the delivery item has arrived in the foreign country (confirmation of arrival).
- b) If the confirmation of arrival that is provided is not accepted by the German fiscal authorities in order to exempt the delivery from VAT, the buyer upon request is obligated to provide a delivery confirmation that has been amended according to our requirements.
- c) Should the buyer fail to meet the preceding obligations, the buyer is liable for damages payable to us.

6. Claims for Defects

- a) The buyer's claims for defects expire one year after delivery of the goods. This does not apply to compensation claims pursuant to 7. a).

- b) The buyer is obligated to inspect our goods promptly upon delivery or, to the extent this is inadvisable based on ordinary business operations, after their intended use and, should defects be found, to notify us promptly in writing. If the buyer uncovers a defect, the buyer is required to leave the goods untouched for an inspection by us.

- c) Returns of defective goods are only permissible with our consent. We have no obligation to store goods returned without our approval.

- d) In case of defective goods delivered by us, we are free to choose supplementary performance by means of the rectification of defects or the delivery of replacement goods in sound condition at our discretion. Should supplementary performance fail, the buyer at its discretion is entitled to an abatement or may withdraw from the contract.

7. Compensation and Limitation of Liability

- a) In case of intent or gross negligence, we are liable according to the applicable legal regulations – also for representatives or assistants. Otherwise we are only liable pursuant to the Product Liability Act, for the loss of life, physical injury or the impairment of health, or for the culpable breach of essential contractual obligations.

- b) In case of gross negligence and the violation of essential contractual obligations, liability is limited to the foreseeable damages typical for the contract.

- c) Liability for the impairment of the buyer's legal rights caused by the delivery item is excluded entirely. This does not apply in case of foreseeable damages typical for the contract.

- d) In case of simple negligence, damages due to delay are limited to 5% of the value of delivery or performance.

- e) The buyer can only withdraw from the contract pursuant to the applicable legal regulations if we are responsible for a breach of duty that does not constitute a defect. In case of breaches of duty, the buyer is required to state within two weeks after being asked by us whether the buyer is withdrawing from the contract because of the breach of duty or is insisting on performance.

- f) The preceding limitation of liability does not apply in case of intent, the loss of life, physical injury, the impairment of health or liability pursuant to the Product Liability Act.

8. Proprietary Rights and Nondisclosure

- a) The buyer shall inform us promptly upon filing for proprietary rights (e.g. patents or utility patents) with the German Patent Office for a product that uses goods delivered by us or our know-how.

- b) All information and data provided by us to the buyer must be treated as confidential and may not be made accessible to third parties under any circumstances. This applies regardless of the medium used to provide the information and data.

- c) Sketches, drawings and samples remain our property. They must be surrendered upon request.

9. Liens

- a) The delivered goods remain our property until all our receivables from the buyer are paid in full; the buyer is not permitted to pledge our goods or transfer them by way of security. The buyer is obligated to store all assets owned or co-owned by us, free of charge and with the care of a reasonable businessperson. For revolving accounts, our liens according to this and the following paragraphs serve to secure our net receivable.

- b) The buyer is obligated to notify us of access to the goods by third parties, for example in case of seizure, and to report any damage or loss of the goods to us promptly. Furthermore, the buyer has to notify the executive officer of our ownership rights. The buyer is obligated to provide us with all information required for an intervention. A change in the ownership of the goods or a change in the buyer's place of business or residence also has to be communicated to us promptly.

- c) The buyer may exploit the goods in the ordinary course of business, provided the buyer does not agree on an effective prohibition of assignment in regards to the buyer's resulting compensation claim or has effectively assigned said claim to a third party in advance; in the amount of our invoice total (gross) plus 10%, the buyer is not permitted to pledge said receivables against third parties nor offset them against other receivables. The exploitation of our goods includes combining, mixing or blending our goods with third-party goods, as well as reselling the goods in their processed or unprocessed state.

- d) To secure our receivables from the buyer, the buyer assigns all receivables from third parties arising from the buyer's exploitation of our goods to us now and in advance, in the amount of our invoice total (gross) plus 10% with priority over the buyer's remaining compensation claim. We hereby accept said assignment. The buyer is authorised to collect the receivables after assignment. We are authorised to revoke the exploitation and collection rights, and to collect the receivables ourselves, as soon as the buyer fails to properly meet its payment obligations arising from the business relationship with us and is in default of payment. In this case, the buyer is obligated to promptly provide all information required for collection and to promptly notify the third party of the assignment. We have the right to also inform the buyer of the assignment directly.

- e) Processing and treating the goods always takes place in our name and on our behalf, but without any liability on our part. If this results in a new asset, we grant the buyer coownership of said asset now and in advance in the proportion in which the value of the new asset exceeds our unpaid invoice amount (gross) plus 10%. If the buyer initially becomes the owner of the new asset, the buyer as security for our receivables from the buyer grants us co-ownership in the new asset in the corresponding proportion now and in advance.

- f) The above liens shall be released upon request by the buyer, to the extent their value exceeds our total receivable (gross invoice amount plus collateral charges) by more than 10%.

- g) Should we receive unfavourable information about the creditworthiness of the buyer after the conclusion of the contract, we have the right to withdraw from the contract or to demand prepayment, a guarantee or security from the buyer.

10. Final Provisions

- a) The laws of the Federal Republic of Germany shall apply without the rules regarding the conflict of law. Regulations of superseding law that take precedence and are mandatory remain unaffected. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

- b) Unless anything to the contrary is agreed upon, the place of fulfilment is our place of business.

- c) The jurisdiction for all disputes arising in the context of the contractual relationship is our place of business. We also have the right to sue at the registered office of the buyer.

- d) Should the contract with the buyer including these general business terms and conditions be or become ineffective in whole or in part, the validity of the remaining provisions shall remain unaffected.