

General Terms and Conditions of Delivery and Payment of Otto Zimmermann GmbH

valid from 01.01.2015

1. Scope of application

- 1.1 The present General Terms and Conditions of Delivery and Payment shall apply to all deliveries and services rendered by us towards entrepreneurs and enterprises, public-law entities and public-law funds (Customer). To the extent not expressly stated to the contrary, our following terms and conditions shall apply exclusively.
- 1.2 They shall likewise apply to future business relationships, even if they are not expressly agreed again.
- 1.3 Contradictory or deviating terms and conditions of Customer shall not become contents of the agreement, even if we do not expressly contradict them.

2. Conclusion of the contract

- 2.1 Our quotations shall be subject to change without notice to the extent that they have not expressly been designated as binding in the text of the quotation. A contract shall only originate when we confirm the order in writing. Our written order confirmation shall be decisive for the contents and scope of the contract. Oral agreements, assurances, promises or guarantees shall only become binding with our written confirmation.
- 2.2 We reserve ownership and copyrights to estimates, illustrations, diagrams and other documents; they shall be treated confidentially by Customer and may not be made accessible to third parties.
- 2.3 Changes to the technical finish of the goods ordered shall be admissible to the extent that an essential change of function does not occur as a result or Customer does not prove that the change cannot be reasonably expected of it.
- 2.4 We shall only assume a guarantee for the property or the service life of an object if this has expressly been assured in our order confirmation or in our advertising.

3. Delivery period and force majeure

- 3.1 Delivery periods which are not expressly designated as being binding shall be non-binding.
- 3.2 The start of a delivery period stated by us shall presuppose clarification of all technical questions. Agreed delivery periods shall additionally also only apply under the precondition that Customer fulfils the obligations incumbent on it in good time.
- 3.3 Delivery dates and delivery periods shall be subject to correct and punctual delivery to us.
- 3.4 The delivery period shall be extended suitably in the event of obstacles in delivery for which we are not answerable. In such a case, we shall notify Customer of the start and end of such circumstances. We shall not be liable for disturbances of operation through no fault of ours, even during arrears. If we cannot be reasonably expected to fulfil our obligations for reasons for which we are not answerable, we shall be entitled to withdraw from the contract. The right to withdrawal shall also exist if an extension of the delivery period has been notified to Customer to start with. The same shall apply to incidents of force majeure.

4. Passage of risk, insurance

- 4.1 The risk of chance destruction and deterioration of the delivery shall pass to Customer upon provision and notification of the readiness for dispatch. This shall also apply if dispatch is delayed as a result of circumstances for which we are not answerable. If there is no notification of readiness for dispatch, risk shall pass to Customer with hand-over of the goods to the transporter, albeit no later than departure from the factory or warehouse. This shall also apply in the event of use of our means or transport or delivery freight prepaid.
- 4.2 Customer shall be obliged to insure the goods adequately as long as our retention of title applies. Notwithstanding this, we shall be entitled, albeit not obliged, to insure the goods on Customer's behalf and to charge the costs incurred as a result.

5. Prices, price changes

- 5.1 To the extent not agreed to the contrary, our prices shall apply ex works, including item packaging, albeit exclusive of dispatch packaging, freight, insurance and statutory turnover tax. These items shall be charged separately.
- 5.2 We reserve the right to change our prices suitably if decreases or increases in price occur following conclusion of the contract, in particular as a result of changes to the technical finish in the sense of Section 2.3, of wage agreements or changes in material prices. Upon request, we shall prove them to Customer.

6. Payment terms

- 6.1 To the extent not agreed to the contrary, our invoices shall be due for payment without any deduction within 30 days of the date of invoice. In the event of payment within 14 days, we shall grant 2% discount, but only if all older due invoices have been settled. Cheques or bills of exchange shall not be accepted.
- 6.2 In the event of Customer's arrears in payments, we shall be entitled to place all claims from the entire business relationship due for payment immediately. Discount agreements, rebates, price deductions etc. shall be deemed forfeited in such a case. During arrears, Customer shall pay interest on the money owed at a rate of 8 percentage points above the basic rate of interest of the ECB.
- 6.3 If the payment terms are not complied with, we shall be entitled to demand immediate cash payment for all deliveries. If we learn of circumstances questioning Customer's creditworthiness (e.g. failure to comply with payment terms), we shall be entitled to perform outstanding deliveries only against cash in advance, COB or collateral or to withdraw from the contract and to demand damages. We shall further be entitled to collect the goods at Customer's expense after we have withdrawn from the contract.
- 6.4 Customer can only offset with claims which are undisputed or legally effective. The same shall apply accordingly to the rights of retention, to the extent that the counterclaim is based on the same contractual relationship.
7. **Retention of title**
- 7.1 Our deliveries shall always be subject to retention of title. Until complete settlement of all claims from the business relationship with Customer, the goods shall remain our property. In current account, the retained title shall be deemed security for our balance claim.
- 7.2 Customer shall be entitled to resell the conditional commodities supplied within the framework of its ordinary course of business. In such a case, it shall assign its claim to a purchase price to us to the amount of the value of the conditional commodities. If we so request, Customer shall notify us of the debtors of the assigned claim and notify them of the assignment. Customer may however neither pledge the conditional commodities nor transfer them by way of security.

- 7.3 Machining and processing of the conditional commodities shall always be done on our behalf as manufacturer in the sense of § 950, German Civil Code, albeit with no obligation for us. The processed goods shall be deemed conditional commodities in the sense of the terms and conditions. If conditional commodities are processed or inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the conditional commodities to the invoice value of the other commodities at the time of the processing or blending. The co-ownership rights originating in this way shall be deemed conditional commodities within the meaning of the present terms and conditions. If we so request, Customer shall be obliged to inform the acquirer of the conditional commodities of our ownership rights.
- 7.4 Customer shall be authorised to collect the claims from the resale, notwithstanding our own authorisation to collection. As long as Customer properly complies with its payment obligations, we shall not claim collection ourselves. If we so request, Customer shall notify us of the debtors of the assigned claims and notify them of the assignment. Our right to notify the garnishees of the assignment ourselves shall remain unaffected. Customer shall not be allowed to assign the claim against the garnishee to third parties or to agree a ban on assignment with the garnishees.
- 7.5 Customer shall be obliged to notify us without delay and in the quickest possible way of a pledging or any other impairment of our collateral rights by third parties. Customer shall be obliged to provide us with all the documents necessary to attend to our rights and to reimburse us for the costs originating as a result of a necessary intervention.
8. **Warranty, notification of defects, acceptance, period of barring**
- 8.1 Claims from defects in quality shall presuppose that Customer has complied with its statutory duties to examination and notification pursuant to § 377, German Commercial Code.
- 8.2 If a defect in quality exists, we shall provide subsequent performance. It shall be done at our choice in the form of after-working or substitute delivery. To the extent that subsequent performance fails, is not done within a suitable period set by Customer or is rejected by us, Customer shall, at its choice, have the right to withdraw from the contract, to demand a reduction of the price corresponding to the defect (reduction) or to demand damages within the limits of the following Sections 9, 10. Customer shall be limited to the right of reduction to the extent that the defect does not impair or only inconsiderably impairs the value and the usefulness of the goods for the use presupposed in the contract or customary.
- 8.3 Each contracting party can demand a formal acceptance of the service rendered by us. Minutes to be signed by both parties shall be produced concerning the outcome of the establishments. Slight defects shall not entitle to rejection of the acceptance. If there is no formal acceptance, although we have requested that Customer accepts, our service shall be deemed accepted with the expiry of a suitable period which we shall set for Customer with our request for acceptance.
- 8.4 The period for barring of warranty claims by limitation shall be one year in the event of delivery of new goods to entrepreneurs - apart from the cases of § 438, sub-section 1, sub-section 2 a) and b), German Civil Code. The period shall commence upon delivery of the goods.
- 8.5 Warranty claims shall not exist for defects occurring following passage of risk as a result of unsuitable or improper use, defective assembly or commissioning by Customer or third parties, inadmissible mode of operation and natural wear and tear.
9. **Limitation of liability**
- 9.1 In the event of an injury to life, limb or health to be ascribed to us or one of our statutory representatives or vicarious agents, we shall be liable in accordance with the statutory directives.
- 9.2 The following shall apply to sundry damage:
 - a. for damage based on a deliberate or grossly negligent breach of duties by us or one of our statutory representatives or vicarious agents, we shall be liable in accordance with the statutory directives.
 - b. for damage based on a breach of cardinal contractual duties as a result of slight negligence by us or one of our statutory representatives or vicarious agents, our liability shall be limited to the foreseeable damage typical for the contract.
 - c. claims to damages for sundry damage in a breach of subsidiary duties or inessential duties in the sense of simple negligence have been ruled out.
- 9.3 The exclusions or limitations of liability shall not apply to the extent that we have fraudulently failed to disclose a defect or have assumed a guarantee for the property of the object.
- 9.4 Customer's claims to reimbursement of vain expenditure in lieu of damages for the service and liability according to the Product Liability Act shall remain unaffected.
10. **Liability for indirect damage**
- 10.1 We shall only be liable for indirect damage as a result of a defective delivery, such as loss of production, loss of profits and additional consumption of material, in cases of malice aforethought or gross negligence.
11. **Ban on assignment**
- 11.1 Customer shall not be entitled to assign rights from contracts concluded with us to third parties without our consent.
12. **Applicable law, place of jurisdiction, severability clause**
- 12.1 The contract shall exclusively be governed by German law, ruling out UN purchase law (CISG).
- 12.2 Place of performance for our deliveries as well as Customer's payment obligation shall be our company's registered office (currently: Saarbrücken). The place of jurisdiction for both parties shall likewise be our company's registered office (currently: Saarbrücken). However, we shall also be entitled to sue Customer at its general place of jurisdiction.
- 12.3 If a regulation in the present General Terms and Conditions of Delivery and Payment is or becomes ineffective, the validity of the remaining terms and conditions shall be unaffected.