

I. General

1. The following terms and conditions apply for our offerings, sales and delivery. Purchasing terms of the ordering customer or other deviating agreements are only binding for us if we confirm in writing.
2. References or contrary confirmations on the part of the ordering customer, with reference to his purchasing terms, are herewith explicitly declined.

II. Offer and Contract Signing

1. Our offers are subject to change until accepted by the ordering customer and can be revoked at any time up until receipt of written acceptance or delivery of the goods.
2. Offers are legally binding after our written order confirmation or after delivery of the goods. The ordering customer is bound by his order/his offer for 14 days. This period begins from our receipt of the order. During this 14 day period we are entitled to decline the signing of this contract. In the event that this is not declined by us or the goods are delivered by us during this period, the contract becomes binding without our written order confirmation as an exception.
3. The details provided in catalogues, brochures, newsletters, advertisements, illustrations and price lists on weight, dimensions, volume, prices, services and other such details are not binding unless they are expressly included in the contract. We are only obliged to maintain exact adherence to DIN norms, diagrams, weight and size details and plans if these are explicitly agreed to in writing. Otherwise the contractually binding properties are exclusively according to our product description. Unilaterally stated claims from the purchasing customer are irrelevant, as are advertising statements and other public statements made by our company or any of our suppliers.

III. Prices

1. The prices are ex-works plus statutory sales tax applicable in Germany. Additional costs for packaging, transport, insurance, customs duties etc. are invoiced at cost. This also applies for agreed partial deliveries and express deliveries.
2. The prices listed in our offers/order confirmations are based on the calculation at the point in time of the offer/order confirmation. In the event that there is a significant change in the raw material prices – of at least 10% – after completion of the order, we are entitled to increase the agreed prices proportionately. The customer is informed.
3. The minimum order value is EUR 50.

IV. Delivery

1. The details included in the order confirmation are the scope of the delivery. If there is no order confirmation the details in the offer apply.
2. The customer assumes full responsibility for the correctness of the documents he provides such as drawings, papers, samples, etc.. Any details relating to dimensions, etc. need to be confirmed in writing.
3. Any samples delivered will be invoiced.
4. The supplier reserves the right to make changes based on technological developments.

V. Delivery time, delays, impossibility, purchase on demand, standard damage compensation

1. The date confirmed in writing in our order confirmation applies as delivery date. If the customer does not provide the documentation in a timely manner, the delivery schedule is extended in accordance with the period of delay.
2. The delivery schedule is adhered to if the deliverable goods have left our works by the end of the delivery period or we have prepared the goods for delivery and informed the customer of its readiness to be delivered.
3. In the event that the ordering customer suffers damage due to a delay caused by our gross negligence, our management or those contracted by us for the fulfillment of our contractual obligations, the customer receives as standard damage compensation free from further claims for each full week of delay 0.5 % in total but a maximum of 5 % of the value of the part of the total delivery, which was not delivered punctually as a result of the delay. We reserve the right to establish proof of lesser damage. Otherwise Clause X applies.

VI. Force majeure /Reservation of rights to own delivery

1. In the event that we are unable to fulfill our obligation after signing the contract due to unpredictable, unusual circumstances, which we are unable to avoid in spite of reasonable effort in relation to the nature of the circumstances, especially industrial disputes, regulatory sanctions and intervention, delays in the delivery of important raw materials, energy supply difficulties, the delivery period is extended to a reasonable extent – if these circumstances lead to delays.
If the delivery is impossible due to these circumstances we are no longer obliged to deliver.
2. In the case of a strike or lock-out the delivery period is extended to a reasonable extent if these events lead to delays. If the delivery becomes impossible, we are no longer obliged to deliver.
3. If we can prove that, in spite of the careful selection of suppliers and in spite of reaching the necessary contractual agreements on reasonable terms, we did not receive punctual deliveries from our suppliers, the delivery period is extended by the period of the delay caused by the untimely delivery by suppliers. In the case of delivery impossibility by suppliers we are entitled to withdraw from the contract.
4. If the hindrance in the cases of clauses 6.1 to 6.3 lasts longer than 2 months, both contractual partners are entitled to withdraw from the unfulfilled parts of the contract.

VII. Payment

1. As long as the ordering customer is not in payment default for earlier deliveries and as long as there is not a critical worsening of the customer's asset situation, which could endanger our payment claim, the ordering customer is obliged to pay without any deductions within 14 days, calculated from the invoice date.
2. Payments to cover the oldest due invoice count as open invoices of the customer.
3. If the customer is in payment default, we are entitled to charge interest from the corresponding point in time equal to the interest rate calculated by the bank for open current account credit, but at least at 3% above the German Federal Bank base interest rate. This should be set lower if the customer provides proof of a lower debt encumbrance.
4. If the customer is in payment default for earlier deliveries or the customer's assets situation worsens significantly after signing the contract, which could endanger our payment claim, payment and delivery should be made in installments. The customer can avoid the delivery in installments by providing sureties amounting to the purchase price.
5. The customer is not entitled to balance claims if these claims against us remain unproven.

VIII. Retention of Title

1. The delivered goods remain our property until the completion of payment of the purchase price.
2. The customer is entitled to resell the retention goods in normal business transactions; a pledge or assignment of the goods as security is however only allowed with our approval.
3. The customer herewith transfers rights to any claims arising from reselling the retention goods; we accept the transfer of rights. Irrespective of the transfer of rights we are entitled to confiscate unless he fulfills his obligations towards us and his asset situation does not significantly worsen.
4. On our request the customer has to provide us with details necessary for the confiscation on the transferred debt and especially a list of debtors with names and addresses, the debt amount, invoice date and he has to inform the debtors of the transfer of rights.
5. The customer conducts any processing of the retention goods for us without any obligations arising for us as a result. In the event of processing, combination and mixing of the retention goods with other goods which do not belong to us we are entitled to the resulting co-ownership share of the new product equal to the invoice value to the other processed goods at the point in time of the processing, combination or mixing.
If the customer purchases sole rights of ownership to the new product, the contractual partners agree that the customer entitles us to co-ownership share of the new product equal to the invoice value to the other processed goods at the point in time of the processing, combination or mixing free of charge.
6. If the retention goods are resold, irrespective of whether with or without processing, combination or mixing, the above agreed preliminary transfer of rights applies only to the amount of the invoice value of the retention goods which are resold together with other goods.
7. The customer is obliged to inform us immediately of any third party enforcement measures relating to the retention goods or to the previously transferred debts and to provide information and all documentation necessary for intervention.
8. The authorisation of the customer to access the retention goods and to confiscation of the transferred debt becomes invalid in the event of payment default by the customer, in cheque or bill of exchange protests as well as a worsening of the asset situation – especially if there is an application for bankruptcy or for court protection against creditors on the part of the customer. In these cases we are especially entitled to take possession of the retention goods and the customer is obliged to provide us with the goods. The customer is also obliged to return the retention goods to us if he has combined them with other portable objects and disassembly is necessary prior to the return. This obligation does not apply if our delivered goods have become a significant component of a united object in the sense of § 9 47 BGB (German Civil Code). If the customer is a full commercial entity the return of the goods only entitles to a withdrawal from the contract if expressly declared as such by us.
9. We are obliged to free the sureties due to us according to the above terms on the request of the customer if the value exceeds the value of the debt by 10% or more.

IX. Complaints and rights in the event of defects

1. The customer is obliged to check our goods for defects immediately upon delivery. Within this checking process appropriate samples should be checked.
2. Complaints on incorrect or incomplete deliveries or due to recognised defects according to clause 9.1 have to be communicated immediately to us in writing and the defect components have to be returned to us on our request. Hidden defects, which cannot be identified by sample tests, have to be communicated to us immediately on their discovery. In the event of complaints or defects which are not communicated to us in a timely manner, the delivery is considered approved free from claims arising from incomplete, incorrect and defect delivery.
3. The obligation to examine and communicate defects also extends to assembly instructions and delivery which are too high or low volume.
4. If the delivered goods are defective or there are detailed functions missing or they are damaged within the limitation period of 12 months from the delivery date in the case of defect claims (with the exception of wear and tear), we have to provide replacements or improvements – if desired free from further customer claims.
5. If we allow a subsequent period to pass which we considered reasonable without providing a replacement or solving the defect, or the attempt to solve the defect is unsuccessful the customer can choose to claim withdrawal from the contract or reduction.
6. We assume the full costs for the delivery of the defect-free goods. This applies for the costs for the delivery of defect-free goods if the delivery is to customer business location as agreed in the delivery contract. Costs which arise as a result of delivery to another location are assumed by the customer.
7. The customer is not entitled to claims for defects:
- for damage which results from the unprofessional handling or excessive duty by the customer or his recipient;
- if statutory regulations or directives made by us for the set up and handling are not adhered to by the customer or his recipient, unless the defects are not a result of this non-adherence;
- if the delivered goods were produced on the basis on the customer requirements, particularly on the basis of his diagrams and the defect is a result of these requirements/diagrams;
- in the event of the solution of a construction task defined by the customer, which corresponded at the point of realization to the current state of technological development.
8. If the customer has made claims on us based on entitlement relating to defects and it becomes apparent that there are either no defects or the defect in question results from circumstances which do not comprise a guarantee obligation, the customer is obliged to compensate us for all resulting costs.

X. Other liability

The seller's liability is exclusively based on the agreements made in the aforementioned clauses. He is exempt from all liabilities which are not expressly stated, e.g. to delivery of defect-free goods, withdrawal from the contract or price reduction as well as replacements of any kind, and even of such damages, which do not relate to the delivered goods, irrespective of the legal basis. This exemption from liability does not apply in the case of intentional and gross negligence by legal representatives or those obliged to fulfillment and in the case of culpable violation of significant obligations (cardinal obligations). The exemption from liability can further not be applied in the case of errors in features which have been expressly agreed upon if the agreement served the purpose of protecting the customer against damage which did not arise on the actual delivered goods as well as if the damage occurs as a result of circumstances for which we have assumed a guarantee responsibility. The same applies if a purchasing risk is realised which we have expressly assumed. The exemption from liability does not apply in the cases where an obligation to provide compensation for damages applies in the corresponding national legislation, which cannot be contractually excluded, especially for product liability. Furthermore the exemption from liability does not apply in the event of damage to life, body and health. With the exception of damage to life, body and health and for premeditation and gross negligence by legal representatives and those obliged to fulfill obligations, the extent of the damage to be compensated is limited to typical, predictable damage.

XI. Violation of copyrights and third party commercial patent rights

1. It is the obligation of the customer to check that the documentation he provides does not violate any third party copyrights, especially commercial patents and commercial copyrights (taste samples, patents, usage samples, trademarks). In the event that we are subjected to third party claims relating to the utilisation, use or reproduction of the documentation provided to us by the customer resulting from the violation of copyrights and/or commercial protection rights or resulting from violation of the law relating to unfair competition, the customer is obliged to support us in the defence against these violation charges and to compensate us for all resulting damages (including legal counsel and court costs).

XII. Transfer of peril

1. If the goods are sent to the customer at his request, the peril of deterioration and disappearance of the goods is transferred to the customer at the point of handover to the freight or forwarding company or dispatcher. This also applies if the dispatch is not fulfilled from the fulfillment location and/or if we bear the freight costs.
2. If the goods are prepared for dispatch and the dispatch is delayed on grounds for which the customer is responsible, the transfer of peril to the customer takes place at the point in time at which the dispatch readiness is communicated to the customer.

XIII. Fulfilment location, applied law, legal domicile, written form and partial nullity

1. The fulfilment location for payment and delivery is 77866 Rheinau.
2. German law applies for these terms and conditions of sale as well as the legal relationships arising from this contract between us and the customer
3. The legal domicile for all disputes arising directly or indirectly from this contractual relationship is Kehl. In the event that we are plaintiff we are however entitled – but not obliged – to select the courts responsible for the customer's company location.
4. Additional agreements, reservations, changes and additions are only valid if confirmed in writing.
5. If a term within these terms and conditions of sale or a term within the framework of other agreements relating to the delivery contract is or becomes invalid the validity of all other terms or agreements remains intact.

**Commercial Register: District Court FR 371273, Managing Directors: Günther Zimmer, Martin Zimmer
Im Salmenkopf 5, 77866 Rheinau – Tel: +49 7844 9138 0 Fax: +49 7844 9138 80
info@zimmer-gmbh.de www.zimmer-gmbh.de**