

General Terms and Conditions of Business – Zitzmann GmbH & Co. KG – Werkzeugbau Tettau

1. General

- (1) Solely our General Terms and Conditions of Business shall also apply to contracts concluded in the future.
- (2) We expressly reject any assertion of other general terms and conditions of business. This shall particularly apply to any defensive clauses against the agreed reservation of title.

2. Conclusion of Contract

- (1) Unless otherwise agreed, our offers are not binding until they have been accepted.
- (2) The conclusion of any contract is required to be in writing. If the Customer's declaration of acceptance deviates from our offer or if it contains side agreements or additions, the contract shall not be formed until our written confirmation. This applies to all side agreements, amendments or additions to the contract.

3. Prices / Payment Terms

- (1) The Customer must pay the prices that were agreed at the time the contract was concluded. Unless otherwise agreed, prices agreed are stated as euro prices, net, not including packaging costs, ex our registered office (seat) or respective works.
- (2) We are entitled to increase the agreed price if said increase reflects an increase in the prices of the raw materials we need to carry out the order that has occurred after the contract was concluded, provided that the price increase was not foreseeable to us at the time when the contract was concluded and provided that we are also not responsible for it. The increase in price may not exceed the actual increase in cost that has occurred in buying the raw materials.
- (3) The Customer must pay value added tax (*Umsatzsteuer*) on the agreed net price at the rate applicable on the date of delivery.
- (4) Unless otherwise agreed, invoices shall be due for payment immediately and without any deductions.
- (5) If the Customer is in default of payment (*"in Zahlungsverzug"*), ceases to make payments or if we become aware of circumstances which call the creditworthiness of the Customer into question, we shall be entitled to call in all of our accounts receivable for goods and services provided to date notwithstanding any other agreement regarding the due date in individual cases. We shall also be entitled to demand payment in advance or that security be provided. If the buyer fails to comply with this demand we shall be entitled to rescind the contract.

4. Set-Off / Right of Retention

- (1) There shall be no right of set-off against our claims unless the counterclaim has become final and absolute or is undisputed by us.
- (2) The Customer can assert a right of retention only if the counterclaim underlying the assertion of the right of retention is undisputed or has become final and absolute.

5. Delivery

- (1) The place of performance for the performances of both parties under the contract shall be our registered office (seat).
- (2) The Customer must collect the goods at the agreed place of performance at its own cost. If dispatch to another destination has been agreed at the Customer's request the Customer must bear the cost of transportation and the transportation risk, which thereby arise, even if the goods are transported using our own vehicles. If the Customer does not issue any express instructions we shall decide the mode of dispatch and the delivery route. At the Customer's request deliveries shall be insured in the Customer's name and for the Customer's account.
- (3) Unless otherwise expressly agreed in writing, the delivery dates and delivery deadlines stated by us are not binding. We are entitled to render part performances. In such cases the Customer must pay the price of the part performance rendered if said part performance can be used in an economically viable manner.
- (4) Any delays in delivery due to force majeure, strike, stoppages, a lack of raw materials, state intervention or due to other events which make delivery considerably more difficult for us and for which we are not responsible, shall entitle us to rescind the contract or, alternatively, to extend the delivery period by the duration of the hindrance plus a reasonable lead time. In the case of any longer interruptions we shall notify the Customer of the commencement and end of the delay as soon as they are known. If the duration of the hindrance exceeds a period of 8 weeks the

Customer shall, after having set a reasonable further deadline, be entitled to rescind the contract with regard to the part not yet performed and excluding any claims to damages.

- (5) We are entitled to rescind the contract excluding any claims for damages if we have concluded a congruent hedging transaction with our supplier and are let down by the latter for no fault of our own and we have undertaken all reasonable efforts to procure the raw materials which we need to carry out the contract.
- (6) If we are responsible for any delay in performance the Customer shall be entitled to rescind the contract after it has set a reasonable further deadline of at least 3 weeks. Any claims which the Customer may have to damages shall be subject to the limitation of liability under Clause 8.

6. Warranty

- (1) Any warranty claims because of obvious defects shall lapse if the Customer does not report them without undue delay. In this regard the provision in Paragraph 377 German Commercial Code (*HGB*) shall apply; the complaint must be raised in writing.
- (2) If our performance is defective we shall have the right to render supplementary performance ("*Nacherfüllung*"). Multiple supplementary performances shall be permitted.
If supplementary performance fails after a reasonable period the Customer can, if the statutory prerequisites are met, rescind the contract or reduce the agreed remuneration or, in the event of any defects due to intent or negligence, demand damages in accordance with the limitation of liability under Clause 8.
- (3) The Customer's warranty claims shall be time-barred within one year after our performance has been accepted. This does not apply to claims by the Customer for damages because of a defect, for which we are responsible, which are aimed at compensation for an injury to body or health or which are based on gross negligence on our part or by one of our vicarious agents. In such cases the statutory warranty period shall apply, but the extent of our liability shall be governed by Clause 8 of these General Terms and Conditions of Business.

7. Reservation of Title

- (1) We reserve title to the goods delivered by us until payment has been made in full.
- (2) We further reserve title to all goods delivered by us until the total debt due to us arising out of the business relationship with the Customer – including for claims that arise in future or conditional claims – has been paid. This shall also apply if the remuneration for certain goods designated by the Customer has been paid because the reserved title serves as security for the debt due to us for any balance.
- (3) If the reserved goods are processed, mixed or combined with goods that do not belong to us, we shall have joint title to the new article in the proportion that the invoice value of the reserved goods has to the invoice value of the other goods used.
- (4) The reserved goods may be sold in the ordinary course of business. The Customer hereby already assigns the accounts receivable resulting from the resale of the reserved goods to us as security.
If the Customer sells the reserved goods together with other goods that were not sold by us the account receivable arising out of the resale is assigned in the proportion that the invoice value of our goods has to the other goods sold.
The Customer can collect the accounts receivable assigned to us in its own name and for its own account. If the Customer is in default of payment ("*in Zahlungsverzug*") we shall be entitled to forbid the Customer from reselling the reserved goods and we shall be entitled to revoke its authority to collect the assigned accounts receivable. The Customer shall then be under an obligation to notify its customers immediately of the assignment and to provide us with all of the information necessary to collect the accounts receivable.
If we invoke our rights under the agreed reservation of title the Customer shall be under an obligation to prepare a precise list of the reserved goods, to segregate such goods and to hand them over to us and, for this purpose, to grant us access to the warehouse/place where the reserved goods are installed.
- (5) We must be informed without undue delay in the event that the reserved goods are seized by a third party. Any costs incurred to secure our rights shall be borne by the Customer.
- (6) If the value of the security that exists for the total debt due to us (reserved goods and assigned accounts receivable) exceeds the value of the debts due to us by more than 20 % we shall be obliged to release such security as we choose to that extent at the Customer's request.

8. Liability / Damages

- (1) Our liability is limited as follows:
- We shall not be liable for damage that occurs, which is uncharacteristic for the contract, if the cause of the occurrence of such damage is gross negligence on our part or by our senior executives ("*leitende Angestellte*").
 - In the case of gross negligence by ordinary vicarious agents we shall only be liable up to the amount of the remuneration agreed for our respective performance.
 - We shall not be liable in the event of any breach of duty by us, our senior executives ("*leitende Angestellte*") or our vicarious agents ("*einfache Erfüllungsgehilfen*") if there is only ordinary negligence ("*einfache Fahrlässigkeit*").
- (2) The limitations of liability under Clause 1 shall not apply if a cardinal duty has been breached or in the event of any injury to life, body or health. Cardinal duties are duties, the performance of which makes the proper implementation of the contract possible in the first place, and compliance with which the other contract party may generally rely on.

9. Miscellaneous

- (1) The place of jurisdiction for any and all disputes arising out of the contract with the Customer shall be Kronach, Germany, or, at our option, the court that has jurisdiction for the place where the Customer has its registered office (seat). If, when an action is filed, the Customer has moved its registered office (seat) or habitual residence to outside the jurisdiction of the Federal Republic of Germany or if the Customer's registered office (seat) or habitual residence is unknown, Kronach, Germany shall likewise be the place of jurisdiction.
- (2) German law shall apply; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.