

Terms and Conditions of Sale and Delivery (03/2024)

1. Acceptance of the terms and conditions of sale and delivery

All orders accepted by us are executed on the basis of these Terms and Conditions of Sale and Delivery. By placing an order or accepting delivery, the customer expressly recognises these terms and conditions. Other terms and conditions (e.g. the customer's terms and conditions of purchase) shall not apply even if we do not object to them. Deviations from these terms and conditions require written agreement. Any invalidity of individual provisions shall not affect the validity of the remaining provisions of these terms and conditions.

2. Offer and conclusion of contract

All contracts with our customers shall only become effective upon our written or telex order confirmation. Until then, our offers are subject to change. Subsidiary agreements and contract amendments require our written confirmation.

3. Prices and payment

Our prices are quoted in EUR ex works excluding VAT and excluding packaging and other expenses. Our invoices are due for payment no later than 14 days after their date of issue, unless expressly agreed otherwise. If due invoices are not paid, all further deliveries are immediately due for payment. In the event of late payment, we shall charge reasonable interest, at least 9% above the ECB discount rate. The retention of payments or offsetting against counterclaims of the customer are not permitted unless they are recognised by us or have been legally established.

4. Delivery

The goods shall be dispatched at the customer's risk, irrespective of the place of dispatch and assumption of the shipping costs. Only EXW is offered. ZIMSOTEC acts as a vicarious agent if the Customer has commissioned dispatch/transport ex works. Unless otherwise agreed in individual cases, our delivery times are non-binding. Call-off dates and delivery schedules require our written confirmation in individual cases. Delivery shall commence with the dispatch of the order confirmation, but not before all documents, authorisations and approvals to be provided by the customer have been received. The delivery deadline shall be deemed to have been met if the delivery item has left the factory or readiness for dispatch has been notified by the time it expires.

All circumstances beyond our control, e.g. strikes and lockouts, obstructed supply of raw materials and supplies, official measures, operational disruptions at our premises and those of our subcontractors, shall release us from the obligation to deliver for the duration of the obstruction or, at our discretion, permanently for the part that cannot be fulfilled, without the customer being entitled to any claims against us on the grounds of cancellation. In the case of orders whose fulfilment consists of several deliveries, non-fulfilment, defective or delayed fulfilment of one delivery shall have no influence on other deliveries of the order. Partial deliveries are permissible. The value of the goods shall be calculated according to the actual quantity delivered. Returns require our prior consent in each individual case.

5. Industrial property rights and tools

We reserve the right of ownership and copyright to cost estimates, drafts, drawings and other documents; they may only be made accessible to third parties with our consent. Drawings and other documents belonging to offers must be returned on request. If we have supplied items according to drawings, models and samples and other documents provided by the customer, the latter shall guarantee that the industrial property rights of third parties are not infringed.

If our goods are delivered abroad, including in processed form, the customer shall indemnify us against all third-party claims arising from infringements of industrial property rights. Tools for the manufacture of the delivery item which are produced by us shall remain our property, even if the customer has assumed a proportion of the costs or the total costs for this. We shall determine the duration of storage according to our economic requirements.

The tools and equipment paid for by us shall remain our property, even if they are stored at our suppliers for the fulfilment of delivery orders.

6. Retention of title

All goods delivered shall remain our property until all our claims against the customer have been fulfilled. The customer may only sell, mix or combine the goods subject to retention of title within the scope of his ordinary, usual business operations.

In the event of resale, the customer hereby assigns to us by way of security his future claim against his customer arising from the resale, together with all ancillary rights, without the need for a subsequent special declaration. If the goods subject to retention of title are resold together with other items without an individual price having been agreed for the goods subject to retention of title, the customer shall assign to us, with priority over the remaining claim, that part of the total price claim which corresponds to the value of the goods subject to retention of title invoiced by us. We hereby accept the declaration of assignment. Any processing of goods subject to retention of title owned by us shall be carried out by the customer on our behalf without any obligations arising for us. We are the manufacturer within the meaning of § 950 BGB.

If goods subject to retention of title are processed, mixed or combined with other goods not owned by us, we shall be entitled to a co-ownership share in the new item in the ratio of the invoice value of the goods delivered by us to that of the other goods in accordance with Sections 947, 948 BGB; if the customer acquires sole ownership of the new item, the contracting parties agree that the customer shall grant us co-ownership of the new item in the ratio of the invoice value of the goods delivered by us and shall store it for us free of charge. In the event of the sale of goods to which we are entitled to co-ownership after processing, combining or mixing, the advance assignment shall include a share of the claim in the amount of the invoice value of our processed, combined or mixed goods.

We are entitled to take possession of the goods subject to retention of title if the customer defaults on the fulfilment of existing claims against him arising from the business relationship. The demand for surrender or taking possession shall not constitute cancellation of the contract.

Until our cancellation, the customer is entitled to collect assigned claims. The authorisation to collect shall also expire without express revocation if the customer does not meet his obligations towards us or falls into financial difficulties, in particular if payments are suspended or composition or bankruptcy proceedings are applied for. At our request, the customer shall provide us with the information necessary for the collection of the assigned claims, submit the relevant documents and notify the debtor of the assignment. The customer may neither pledge the reserved goods nor assign them as security. He must inform us immediately of any seizure, confiscation or other disposition by third parties. If the value of all securities existing for us exceeds our claims by more than 30% in total, we shall be obliged to release securities of our choice at the request of the customer.

7. Warranty and liability

We only assume warranty and liability for our deliveries and services in accordance with the following provisions: For not insignificant defects, which also include the absence of warranted characteristics, we provide warranty for a period of 12 months at our discretion by repair or replacement delivery, cancellation of the contract or reduction of the purchase price. If the repair or replacement delivery fails, if we refuse to remedy a defect or if we culpably allow a reasonable grace period of at least 30 days for repair or replacement delivery to elapse without success, the customer shall be entitled to cancel the contract or reduce the purchase price. If this is necessary to prevent loss of production or other disproportionately large damage, the customer may also remedy the defect himself or have it remedied by a third party in the above cases and demand reimbursement of the necessary costs from us. In the event of rectification or replacement delivery, our expenses shall be limited to the material and shipping costs. Our information on the object of delivery and service, the intended use, etc. Our information on the object of delivery and service, the intended use, etc. (e.g. dimensions, weight, functional values and the like) are descriptions or labelling. (e.g. dimensions, weight, functional values and the like) are descriptions or labelling, but not guarantees of properties. We reserve the right to deviations customary in the industry, unless otherwise agreed. If we deliver on the basis of a sample, we only guarantee the qualitative and dimensional properties of the sample that has been tested and approved by the customer for a specific purpose. Insignificant deviations from the sample or from earlier deliveries or other information, insofar as they do not significantly impair the contractually stipulated functionality, shall not justify any warranty claims.

A defect for which we are responsible does not exist in the following cases in particular:

- use of the delivery item other than that contractually agreed or specified in the sampling process
- Overloading, e.g. due to faulty operating conditions such as overheating, dry running, contamination, etc;
- Use of unsuitable operating materials, e.g. sealants, lubricants, anti-freeze and anti-corrosion additives, etc.
- improper handling, e.g. due to incorrect or excessively long storage, incorrect installation, etc.
- Defects at the point of use, e.g. faulty mating surfaces or screw connections normal operational or production wear and tear

Our deliveries and services shall in any case be subject to the statutory duties of inspection and notification of defects as well as the statutory limitation periods. In addition to the provision in the above clause 1, all further claims, in particular claims for damages of any kind and for any legal reason whatsoever, including claims arising from culpa in contrahendo, positive breach of contract and tort (§§ 823 ff. BGB) against us, our legal representatives, vicarious agents and employees, are excluded, unless liability is mandatory in cases of intent, gross negligence and the absence of warranted characteristics. This liability regulation shall also apply to our verbal and written advice and by means of tests or in any other way; in particular, the customer shall not be exempted from checking the suitability for the intended use himself.

8. Place of fulfilment, place of jurisdiction and applicable law

The place of fulfilment for delivery and payment is our head office, unless another place has been agreed in writing. If the customer is a registered trader, a legal entity under public law or a special fund under public law, the place of jurisdiction for all rights and obligations of the parties to the contract arising from transactions of any kind shall be the local district or regional court responsible for our head office. German law shall apply exclusively, to the exclusion of the laws on the international sale of goods, even if the customer is domiciled abroad.

9. Validity for non-merchants

These Terms and Conditions of Sale and Delivery apply to customers who are not merchants within the meaning of the German Commercial Code only with the restrictions resulting from the law governing the law of general terms and conditions

10. Business and operating relationship

Our employees and experts shall not disclose or utilise without authorisation any business and operating relationships of which they become aware in the course of their work outside the execution of the order.

11. Final provisions

Amendments to the contract or its components must be made in writing. This also applies to amendments to this clause. Verbal collateral agreements are invalid.

Should a provision of the contract be or become invalid, or should the contract contain a loophole, this shall not affect the validity of the remainder of the contract.