

# General Terms and Conditions

Zambelli - technik, spol. s r. o.

Stand: 25.08.2023

## 1. Inclusion of conditions / Written form

- 1.1 These general terms and conditions apply for business transactions between us and our customers orders, even if the customer refers to their own general terms and conditions.
- 1.2. Conditions in order documents of our customers diverging from, supplementary or adverse to our terms and conditions are not accepted even if they were not explicitly rejected. This especially applies when we provide the service without reservation, in spite of conflicting conditions.
- 1.3. Diverging agreements within the meaning of number shall only be valid in a particular case, when expressly confirmed by us in writing. The validity of the remaining general terms and conditions shall remain unaffected.
- 1.4. In particular cases, individual agreements made with the customer (including subsidiary agreements, reservations, amendments and supplements) shall precede the general terms and conditions. A written contract and our written agreement respectively shall be authoritative for the contents of such agreements. Changes of this written form clause shall also be made in writing.

## 2. Prices and conditions

- 2.1 The prices applicable are either those specified in an individually created and valid offer or the prices listed in the current price list at the time of contract conclusion. Upon the release of a new price list, the previous lists become invalid.
- 2.2. All prices generally apply ex works and do not include VAT. The place of receipt needs to be reachable by a 40t goods-vehicle.
- 2.3. Our prices are based on the quantity information that are available at the time of conclusion of the contract. If this is not the case and we lack information necessary for ordering materials from our suppliers, the customer must submit the required information immediately. If the total costs have increased by at least 5 % between the conclusion of the contract and the customer's performance of the act of cooperation, we are entitled to make a corresponding price increase to compensate for the increase in costs.
- 2.4. In the event of non-compliance with agreed-upon deadlines, the use of out-of-house service and/or consulting services – for all conceivable reasons – a fee of € 500,00/ day excl. incurred travel costs will be charged per deployed employee.
- 2.5. In the event that the customer has cancelled the order before the production of the goods, a cancellation fee of 15% of the order volume will be charged. Cancellation of the order during or after production is not possible. In this case, the customer is obligated to pay the agreed purchase price and accept the goods.

## 3. Delivery / Security for default in delivery

- 3.1 Delivery is generally made using the most cost-effective freight route.

- 3.2. The delivery is in principle unloaded at the confirmed place of receipt. The risk of accidental loss passes to the purchaser upon leaving our factory (see also point 5. 2.).
- 3.3. Partial deliveries by us are permissible if this is organizationally necessary. Otherwise, partial deliveries are made only at the explicit request of the customer. The additional costs incurred in this case are borne by the customer. This also applies to other types of shipping methods expressly requested by the customer.
- 3.4. Delivery period commences once the customer has fully performed his act of cooperation according to 2.3. A calendar-defined date of delivery is postponed by the same period by which the customer's performance of the act of cooperation is delayed.
- 3.5. For compliance of the delivery date, it is sufficient for the goods to have left our premises (see 5.2) before the expiration of the delivery period, or for us to have made the goods available and notified the customer of our readiness to dispatch.
- 3.6. We may make the execution of an order dependent on an advance payment or payment of invoices still outstanding from previous orders. The customer is obliged to deliver a contract performance guarantee of a big bank licensed for business operation in the EU in the amount of the payment amount still outstanding or any other security within the meaning of §232 para 1 of the German Civil Code (BGB), before the start of delivery and/or installation of our goods. Until the provision of such security, we reserve the right to refuse performance.
- 3.7. If circumstances arise after the contract conclusion that are beyond our control or the control of a subcontractor or unforeseeable, e.g., raw material or energy shortage or breakdown of machinery required for production, industrial dispute, cases of force majeure or circumstances for which we are not responsible and significantly impede delivery, we will inform the customer immediately and provide the estimated new delivery time. In case delivery is still not possible within the new deadline, we are entitled to wholly or partially withdraw from the contract. We will reimburse any consideration already made by the customer immediately. Our statutory rights of withdrawal and termination, as well as the legal provisions regarding the handling of the contract in case of exclusion of the obligation to perform (e.g., impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected. In any case, the customer's statutory rights of withdrawal and termination remain unaffected.
- 3.8. We have the discretion to choose the packaging material and method. Packaging typically consists of recyclable materials/pallets. To prevent transport damage, especially for sea or air exports, we offer special packaging. The customer is responsible for covering the costs of special packaging, crates, and special containers.

#### **4. Default of acceptance**

- 4.1 The customer is in default of acceptance if they refuse to accept delivery of the defect-free goods upon delivery. If they have expressly stated before this point that they do not wish to accept the order, delivery is unnecessary, and the customer is already in default of acceptance with our explicit offer to deliver the goods. The default of acceptance obliges the customer to reimburse storage costs, which are set at a minimum of 0.5% of the order amount for each month incurred, but not exceeding 5% of the net order amount in total. The customer is allowed to provide evidence that, as a result of the default of acceptance, no damage occurs to us at all or that the storage costs are significantly lower than the flat rate indicated here.
- 4.2 In the event of default of acceptance, we are also entitled to withdraw from the contract under the conditions of § 323 of the German Civil Code (BGB) or to claim damages for non-performance under the conditions of §§ 280 para 1 and 3, 281 BGB. As compensation for non-performance, we can demand 50% of the order prices without further proof, unless the customer proves that no damage or lesser damage has occurred. However, we reserve the right to claim the full order price against delivery of the goods.

#### **5. Passage of risk**

- 5.1 Place of fulfilment for payment is Krumau/Český Krumlov.
- 5.2 The place of performance for the delivery is either the plant in Budweis/České Budějovice or Krumau/Český Krumlov. If, at the customer's request, the goods are shipped to a location other than our factories, the risk of accidental loss or deterioration of the goods passes to the buyer upon leaving the factory. The provisions of § 447 BGB also apply even if the shipment is carried out using our means of transportation or personnel, regardless of who bears the freight costs. In this case, § 278 BGB applies to our employees.
- 5.3 Notwithstanding the provisions of 5.2, risk shall pass to the customer after we delivered the goods to the customer or the customer has failed to accept delivery, in accordance with the provisions of 4.1.

#### **6. Customer's obligation to provide proof for intra-Community supply for intra-community deliveries**

- 6.1 In accordance with the statutory Czech VAT implementation regulations we are obliged to request proof from the customer, in the form of a certificate of arrival or, in special cases, an alternative proof, for every tax-exempt intra-Community delivery.
- 6.2. When shipping through an external carrier, the fully and accurately completed section in the CMR consignment note is acceptable as an alternative proof to the Confirmation of arrival.
- 6.3. In case that the customer transports the consignment with his own vehicle, only the Confirmation of arrival may prove the intra Community delivery.

- 6.4. For parcel or break bulk cargo shipments by mail or courier service, proof is obtained by the supplier from the respective service provider.
- 6.5. For all deliveries according to 6.2 and 6.3, the customer is obliged to provide the corresponding proof through a timely electronic transmission to ZT-Confirmation@zambelli.com. Failure to provide proof leads to a recalculation of (Czech) VAT to the customer, as the condition for exemption of intra-Community supplies has not been fulfilled.

#### **7. Defect rights**

- 7.1 Only quality agreements expressly and in writing made with the customer are binding. In particular, all information in lists and offers regarding dimensions, weights, and illustrations are only approximate and always non-binding.
- 7.2 The actual delivery may deviate from any sample within customary tolerances. Such deviations do not otherwise constitute a defect. Item 1.4 remains unaffected. Minor colour and surface variations may occur when different batches are used, but do not constitute a defect. The customer accepts that mass-produced items, i.e., products that are delivered in larger quantities than 1000, defective pieces of up to 1.5 % of the delivery quantity may occur. These must be sorted out by the customer. He will receive a corresponding credit. Further claims in this regard are excluded.
- 7.3 The customer is obliged to promptly inspect the received goods. Obvious defects of any kind and/or delivery of a kind or quantity of goods other than ordered must be reported immediately upon receipt of the delivery and documented in a delivery protocol to be prepared by the customer. Other defects, regardless of their nature, that become apparent through a proper examination, without the delivery being obviously different from the ordered type and quantity, must be reported in writing without delay, no later than within five days from the time of delivery. Failure to make a proper and timely complaint deems the delivery as approved. Hidden defects which are also not discovered in the course of a proper inspection must be reported in writing within one year from the date of delivery. Reference is made to § 377 et seq. of the German Commercial Code HGB.
- 7.4 Pending the resolution of the complaint, the contested goods shall generally not be further processed to allow us the opportunity to inspect the reported defects on-site. We reserve the right to approve further processing even without inspection.
- 7.5 In the case of defects, we will, at our discretion, remedy the defects or deliver replacement goods. If the remedy fails after a reasonable period, the customer may, at their discretion, reduce the purchase price, withdraw from the contract, or, in the case of our culpability, demand damages. If the customer withdraws from the contract, they are not entitled to damages in lieu of performance due to the defect unless we are responsible for intent. Claims of the customer for damages are otherwise excluded.

7.6 We are entitled to make subsequent improvement dependent on the customer paying the due purchase price. However, the customer is entitled to retain an appropriate part of the purchase price in relation to the defect. This is typically twice the amount of the price attributable to the rectification or replacement.

7.7 The warranty period is 12 months from delivery.

7.8 The specified limitation periods for the right to purchase also apply to contractual and non-contractual claims for damages by the customer based on a defect in the goods, unless the application of the statutory limitation period would result in a shorter limitation period in individual cases. The limitation periods stipulated by the Product Liability Act remain unaffected in any case. For other claims for damages by the customer, statutory limitation periods apply.

## **8. Terms of payment / Delay in payment**

8.1 Unless otherwise agreed, our invoices are payable without deduction immediately upon receipt.

8.2 Counterclaims, including the buyer's rights regarding defects, do not entitle to offsetting or retention, unless there is an undisputed or legally established counterclaim.

8.3 Generally, our invoices include a precise due date, by which payment must be made at the latest. If this date is exceeded, the customer is in default.

8.4 The customer is therefore in default without a reminder, if the purchase price is not paid by the calendar-determined deadline. Without prejudice to this, we reserve the right to remind the customer after the due date.

8.5 If the customer is in default of payment, we are entitled, from the beginning of the default, to demand statutory interest at a rate of 9 percentage points above the base interest rate of the ECB. However, we reserve the right to claim higher default interest if we can demonstrate that we incur higher default interest from banks.

8.6 We reserve assertion of additional or higher damages. If the customer fails to make due payments, we are also entitled to withdraw in accordance with § 323 para 1 of the German Civil Code (BGB). We are entitled to withdraw immediately, if the customer suspends payments, files for the opening of insolvency proceedings or if such proceedings are initiated against his assets.

8.7 Payments by bill or cheque are accepted on account of performance subject to payment. The acceptance of bills only occurs by mutual agreement if the corresponding issuance costs are fully reimbursed in cash and the bills are discountable securities.

## **9. Reservation of title**

9.1 Goods delivered remain our property until all present and future claims arising from business relationships with the customer are fulfilled. However, the retention of ownership for delivered goods ceases when the existing balance is completely settled (reserved goods).

9.2 The customer is be obliged to store, and label reserved goods separately.

9.3 Processing or transformation of reserved goods is performed by the customer on our behalf without any obligations arising for us. If the customer combines, mixes or processes our reserved goods with other goods we are entitled to co-ownership in the resulting product in proportion to the respective values. Value of our co-ownership is determined by the ratio of the invoice value of our reserved goods to the selling price of the products created by combining, mixing, or processing. These goods are considered reserved goods according to these terms and conditions.

9.4 The resale of the reserved goods is permissible in the ordinary course of business as long as the buyer ensures our extended retention of ownership. Other dispositions, particularly pledging and transfer of ownership by way of security of the reserved goods, are not allowed.

9.5 The customer hereby assigns in advance to us all claims he is entitled to concerning the reserved goods, whether arising from resale or other legal grounds, up to the amount of the secured claims. We hereby accept this assignment. If the aforementioned claims are included by the customer in a current account relationship, the current account claims are hereby assigned to us in full. After offsetting, the balance takes its place, and it is considered assigned up to the amount of the original current account claim, this applies accordingly upon termination of the current account relationship.

9.6 The customer is entitled to collect the assigned claim only in the ordinary course of business and only revocably. Upon our request, must notify the debtor of the assignment if the customer is in default with payment of a secured claim and the disclosure was previously notified to the customer. We also have a right of notification.

9.7 The authorization of the customer to dispose of reserved goods as well as to process, combine and mix, and, in addition, to collect claims assigned becomes extinct in the event of non-compliance with terms of payment, unauthorized disposal, significant deterioration of the financial position of the customer, bill or cheque protest and insolvency proceedings filed against the customer. In these events, we are entitled to take possession of the reserved goods after a declaration of withdrawal, enter the customer's premises for this purpose, request relevant information, and take necessary insights into the books.

9.8 We undertake to release the securities available under the foregoing provisions, at our discretion, upon the customer's request, to the extent that the value of the secured claim exceeds it by more than 20%.

9.9 The customer must immediately notify us of any imminent or actual access by third parties to the reserved goods or assigned claims. If registration and/or fulfillment of other requirements is a condition for the effectiveness of the retention of ownership, the customer is obliged to inform us about it and, at his own expense, promptly carry out all necessary actions and make all required notifications.

## 10. General limitations of liability

- 10.1 We are liable according to the statutory provisions, if the customer asserts claim for damages based on intent, gross negligence, including intent or gross negligence of on the part our representatives or vicarious agents. If no intentional breach of contract is attributed to us, liability for damages is limited to the value of our delivered product.
- 10.2 Liability for culpable injury to life, limb or health always remains unaffected. This also applies to the mandatory liability under the Product Liability Act.
- 10.3 Further liability for damages, regardless of the legal nature of the asserted claims, is excluded. This applies in particular to claims for damages arising from negligence at the time of contract conclusion, due to other breaches of duty, or based on tortious claims for compensation for material damages according to §§ 823 ff. of the German Civil Code (BGB).
- 10.4 This limitation also applies if the customer demands compensation for futile expenses, instead of a claim for damages in lieu of performance.

## 11. Infringement of third party rights

If deliveries are made based on drawings or other specifications provided by the customer, or if such deliveries infringe upon the rights of third parties, particularly intellectual property rights, the customer shall indemnify us against all resulting claims, unless we are involved in the creation of the claim through intent or gross negligence. In such cases, the provisions under section 9 notwithstanding, the distribution of liability between the customer and us shall be governed by §§ 830, 840, 254, or 426 of the German Civil Code (BGB).

## 12. Place of performance, Jurisdiction, Applicable law

- 12.1 The place of jurisdiction for all legal disputes arising from the contractual relationship is the court responsible for Wegscheid, if the customer is a merchant, a legal entity under public law or a special fund under public law. However, we are entitled to sue the customer at the registered office.
- 12.2 For all legal relationships between the customer and us, only the substantive law of the Federal Republic of Germany applies, excluding all international and supranational legal systems, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13. Data storage

Data is stored in accordance with data protection laws.

## 14. Act on Alternative Dispute Resolution in Consumer Matters / Mediation

We do not participate in dispute resolution procedures before a consumer arbitration board. However, in the event of a dispute regarding the quality of the product we have supplied, we are open to involving an expert jointly with the customer to neutrally assess the product quality. This expert will then decide on the alleged defects, avoiding the need for court intervention. The costs of this expert procedure will be distributed according to the cause of the dispute. Such an arbitration procedure, however, only takes place if both parties agree to it.