

# **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

## **A. General information**

1. The following General Terms and Conditions of Sale and Delivery (hereinafter referred to as 'GTCs') apply to all contracts entered into by us, Zeller+Gmelin GmbH & Co. KG, and the purchaser.
2. These GTCs apply exclusively, even if no specific reference is made to them in subsequent contracts. Purchaser's terms and conditions which conflict with our GTCs shall not become part of the contract even after our acceptance of the order.
3. Agreements supplementary to or deviating from these GTCs entered into between us and the purchaser must be set out in writing in the contract. This also applies to the cancellation of the written form requirement.
4. Our statutory rights beyond the scope of these GTCs remain unaffected.

## **B. Offers, orders, conclusion of contract**

1. Our offers are subject to change and non-binding unless they are specifically designated as binding.
2. Unless otherwise agreed, an order does not become binding until we have issued an order confirmation in text form. The purchaser is bound to its purchase order for a period of two weeks. Order confirmations created in automated processes without name and signature are deemed to be written order confirmations. Our failure to respond to purchaser offers, orders, requests or other declarations may only be construed as our consent if this has been explicitly agreed. Order confirmations containing obvious mistakes, misspellings or miscalculations are not binding for us.
3. Illustrations, drawings, information about weight or dimensions, other performance and consumption data, DIN standards or other descriptions of the deliverables are always approximate unless explicitly designated as binding. They do not constitute an agreement on or warranty of any quality characteristics of the deliverables.
4. We reserve the title and copyright to all quotation documents. Such documents may not be made available to third parties.
5. Unless expressly agreed otherwise in writing, the purpose of the contract pursuant to § 434 para. 2 no. 2 BGB (German Civil Code) is

limited to the delivery of goods that comply with the owed quality. The owed quality of the goods is conclusively agreed in the purchase order and order confirmation. Unless expressly agreed otherwise in writing, the goods do not have to comply with the objective requirements pursuant to Section 434 (3) BGB. In particular, it is not owed that the goods are suitable for normal use and/or that they have a quality which is usual for goods of the same type and which the buyer can expect taking into account (i) the type of goods and (ii) the public statements made by us or on our behalf or by another person in previous links in the contractual chain, in particular in advertising or on the label. Nor need the goods conform to the nature of any sample or specimen provided by us to the buyer prior to the formation of the contract.

### **C. Deliveries, delivery dates, late deliveries**

1. Our order confirmation is authoritative for scope of performance. Changes to the agreed scope of performance are subject to our confirmation in text form.
2. Unless explicitly otherwise agreed, deliveries will be effected 'ex works' or EXW as per Incoterms® 2020 (73054 Eislingen/Fils, Germany).
3. Delivery dates are only legally binding if we have explicitly confirmed them in writing. Agreed delivery periods and dates are deemed to have been complied with if the shipment leaves our factory or warehouse, or if we have notified the purchaser that the products are ready for dispatch, before the expiry of the deadline. The delivery is subject to our receipt of timely and correct deliveries from upstream suppliers.
4. Part deliveries are admissible, provided that the purchaser can reasonably be expected to accept them. Part deliveries are independent transactions and can be billed as such.
5. If, at the purchaser's request and deviating from the purchase order, we effect part deliveries, any additional costs incurred will be invoiced to the purchaser. The purchaser does not have the right to execution of the contract in deviation from the purchase order.
6. The delivery period commences when the contract enters into force. Compliance with delivery periods is subject to the purchaser's timely and proper performance of other obligations.

7. If the purchaser has concluded a fixed-term master agreement on future deliveries with us and does not call off the products in due time, we are entitled to set a reasonable additional time period and upon its expiry to deliver and invoice the products, or to withdraw from the contract or, if the purchaser has acted culpably, to claim compensation for damages in lieu of performance.
8. If non-compliance with delivery deadlines is due to force majeure and other disruptions over which we have no control, e.g. war, terrorist attack, import and export restrictions, epidemics and pandemics, regulatory measures, particularly quarantine orders, including such measures which affect our suppliers, the agreed delivery periods shall be extended for the duration of the disruption. The same shall apply in the event of industrial action affecting us and our suppliers.
9. If we are not able to comply with binding delivery deadlines due to circumstances over which we have no control (non-availability of products or services), we will inform the purchaser forthwith of the circumstances and state a new provisional delivery period. If the products or services are not available by the end of the new delivery period, we are entitled to withdraw from the contract in whole or part; in this case any consideration already paid by the purchaser will be promptly reimbursed. For the purpose of these GTCs, non-availability of products or services particularly includes late deliveries by our suppliers if we have entered into a congruent covering transaction, if neither we nor our supplier are at fault, or if we are not under obligation to procure the products or services from third-party suppliers in a particular case. Call-off orders must be accepted within six months of our notification of delivery readiness. If the purchaser does not call off the products in due time, we are entitled to set a reasonable additional time period and, upon its expiry, to deliver and invoice the products, to withdraw from the contract or, if the purchaser has acted culpably, to claim compensation for damages in lieu of performance.

### **Passing of the risk and late acceptance**

1. Unless explicitly otherwise agreed, all deliveries are 'ex works' or EXW as per Incoterms® 2020 (73054 Eislingen/Fils, Germany), i.e. the risk of accidental loss or deterioration of the deliverables passes to the purchaser as soon as the deliverables are handed over to the carrier or leave our warehouse for shipment. This also applies if part

deliveries are made, or if we have agreed additional services such as the payment of transportation costs.

2. At the purchaser's request we will take out transport insurance for the deliverables at purchaser's expense covering the risks specified by the purchaser.
3. Unless otherwise agreed, the shipment method, shipment route and the carrier are selected by us.
4. If the purchaser is late taking acceptance, we are entitled to receive compensation for any damages incurred. The rate of compensation for each day of delay is 0.5% of the net price of the deliverables up to a maximum amount of 5% of the net price of the deliverables. The contract partners are at liberty to prove higher or lower damages.
5. The risk of accidental loss or deterioration of the deliverables passes to the purchaser at the time when the purchaser is in default of acceptance.

#### **E. Dimensions, weights and delivery quantities**

1. The dimensions, weights and quantities stated in the factory or warehouse's delivery documents are authoritative for billing; customary deviations are admissible.
2. When liquids are delivered by tanker, the records of the calibrated measuring equipment on the transport vehicles are authoritative if the products are delivered in our tankers or by a carrier contracted by us.

#### **F. Prices**

1. All prices are in euros. All-in prices are always as stated in the order confirmation. Statutory VAT, other taxes and customs duties are not included in the price and will be charged separately in the invoice on the billing date.
2. Unless otherwise agreed, all prices are 'ex works' or EXW as per Incoterms® 2020 (73054 Eislingen/Fils, Germany) and exclusive of ancillary costs such as packaging, freight or insurance. All ancillary costs in Germany and, if applicable, in other countries which are incurred in connection with the delivery shall be paid by the purchaser.
3. If the purchaser does not receive an order confirmation or the order confirmation does not contain any price information, the prices in the effective schedule of prices at the time of delivery apply.
4. The applicability of carriage paid prices is subject to unimpeded transport routes. Special surcharges, i.e. high and low water

supplements, ice charges etc. shall be paid by the purchaser. The same applies to unloading, discharging and other costs which are incurred in addition to freight costs.

### **G. Payments, offsetting**

1. Unless otherwise agreed in writing, invoiced amounts are immediately due and payable. The date of the invoice is authoritative for agreed payment or early payment deadlines. The date on which the amount is credited to our account is authoritative for deadline compliance.
2. In the event of non-compliance with a payment deadline we are entitled to charge default interest in the amount of 9 percentage points above the base rate (section 247 of the German Civil Code [Bürgerliches Gesetzbuch], BGB). This shall not affect our right to claim further damages.
3. We are entitled to use payments to settle the oldest outstanding receivables, plus any accrued default interest and costs - in the order of costs, interest and principal amount. The purchaser may not take advantage of early payment discounts on new invoices if it has other outstanding invoices with overdue payments. Our representatives and company employees are only empowered to collect receivables if they have our written authorization.
4. Bills of exchange are only accepted as a means of payment on the basis of prior written agreements. Bills of exchange and cheques are accepted on account of performance only. All expenses, charges etc. incurred in connection with the acceptance of bills of exchange shall be paid by the purchaser.
5. If the purchaser defaults on payment, we are entitled to demand immediate cash settlement of all outstanding and undisputed receivables arising from the business relationship.
6. The purchaser may only offset claims which have been established as undisputed or are legally binding.
7. We are entitled to demand advance payment or security in respect of outstanding deliveries or services if, after conclusion of the contract, we become aware of circumstances which substantially impair the purchaser's creditworthiness and may jeopardize the purchaser's payment of outstanding receivables. This also applies if the purchaser fails or refuses to pay our outstanding receivables and there are no indisputable or legally binding objections against the receivables on the part of the purchaser.

## **H. Retention of title**

1. The delivered products shall remain our property until all liabilities in connection with the business relationship between the purchaser and us have been settled in full.
2. The purchaser is required to handle the products to which title has been retained with due care. In particular, the purchaser shall take out adequate insurance at its own expense against fire, water and theft damages with cover up to the new value of the products. The purchaser hereby assigns all claims under the aforementioned insurance policies to us. We herewith accept the assignment. If assignment is not admissible, the purchaser shall irrevocably instruct the insurance company to make any payments to us only. Further claims shall remain unaffected. The purchaser shall furnish proof of insurance to us upon request.
3. If the products to which title has been retained are inseparably combined with other objects to which we have no title, we shall acquire co-ownership in the combined item equal to the value of the items to which title has been retained (invoiced amount plus VAT) relative to the value of the other items at the time of combination. If the products to which title has been retained are combined in such a way that the purchaser's object is viewed as the principal object, it is agreed that proportionate co-ownership shall be transferred to us by the purchaser. We accept this transfer. The provisions of this paragraph 3 also apply if the products to which title has been retained are mixed in or processed with other objects.
4. The purchaser is authorized, until such time as we revoke this authority, to sell the products to which title has been retained in the ordinary course of business. The purchaser is not entitled to pledge the products to which title is retained, to transfer title to the products as collateral or to dispose of them in any other way which would jeopardize our title to them. In the event of attachment or other third-party interventions, the purchaser shall provide written notification to us without delay, furnish all necessary information, inform the third party of our ownership rights and support our actions to protect the products to which title has been retained.
5. The purchaser hereby assigns receivables from the sale of the products to which title has been retained and all ancillary rights to us in the amount stated on the invoice, including VAT. We hereby accept

this assignment. If the products to which title is retained are sold together with other products not supplied by us, receivables from the sale of the products shall be assigned to us in the value of the products sold to which title is retained (gross invoiced amount including sales tax). If assignment is not admissible, the purchaser shall irrevocably instruct the third-party debtor to make any payments to us only.

6. The purchaser is authorized to collect receivables assigned to us on our behalf until such time as we revoke our authorization. This does not affect our right to collect such receivables ourselves. However, we will not assert claims for receivables ourselves or revoke the authorization for as long as the purchaser meets its payment obligations. If the purchaser breaches the contract - particularly by defaulting on payment - it shall notify us of the assigned receivables and the relevant debtors, notify the debtors about the assignment and hand over all documents and information necessary for us to assert our claims.
7. We may revoke the purchaser's right to collect receivables and to sell the products if the purchaser fails to comply with its payment obligations to us, or is in default of payment, or ceases to effect payments or if insolvency proceedings are initiated in respect of the purchaser's assets.
8. We are required at the purchaser's request to release the collateral to which it is entitled if the realizable value of such, taking the customary bank discounts into account, exceeds our receivables to be secured in connection with the business relationship by more than 10%. The collateral to be released is selected by us.
9. When products are delivered to countries with other legal systems in which retention of title pursuant to section H. is legally ineffective, the purchaser hereby grants us an appropriate security interest. If further measures are necessary in this connection, the purchaser will do everything necessary to grant us such a security interest without delay. The purchaser shall support all actions which are necessary and helpful in ensuring the effectiveness and enforceability of such security interests.

#### **I. Quality characteristics, advice and use of the products**

1. The product quality characteristics are always as stated in our product descriptions, specifications and designations. Deviations are

admissible provided that they do not materially impair the products' suitability for the customary intended use. Public statements, recommendations or advertising are not indications of product quality characteristics if we are not aware of them and cannot be reasonably expected to be aware of them.

2. Applications-related advice provided by us, either verbally or in writing, is not binding and does not exempt the purchaser from performing an own inspection to assess product suitability, even if the products are generally recommended for a specific purpose. The suitability of the products for a specific purpose is not guaranteed unless we have provided express written confirmation to that effect.

## **J. Warranty and liability**

1. Warranty for material defects and defects of title shall be based exclusively on the quality owed as conclusively agreed in the purchase order and order confirmation.
2. The purchaser's rights in the case of defective products are subject to the statutory inspection and notification requirements (sections 377 and 381 of the German Commercial Code [Handelsgesetzbuch], HGB) having been met. In particular, the supplied products must be inspected upon delivery and written notification of obvious defects and defects revealed by such an inspection must be sent to us without delay. The purchaser shall notify us of hidden defects in writing without delay after their discovery. For the purposes of sentence 1, 'without delay' shall be construed as within 14 working days, whereby the date of our receipt of the notification is authoritative for compliance with the deadline. If the purchaser fails to inspect the products properly and/or notify us of any defects, we shall be exempted from liability for the defect. The purchaser shall describe the defect in the written notification and send a sample of the defective product to us.
3. If a purchaser's defect notification is unwarranted, we are entitled to demand compensation for any expenses incurred, unless the purchaser furnishes proof that no fault can be attributed to it for the unwarranted defect notification.
4. If the defect notification is warranted, we are entitled to render subsequent performance by either rectifying the defect or providing a replacement. If the product is no longer at the point of delivery, the purchaser shall pay all additional costs incurred by us for defect

rectification, unless the transfer of the product to another place is in accordance with the product's contractually agreed use.

5. Claims for subsequent performance are excluded in the case of minor deviations and deviations which the purchaser can be reasonably expected to accept.
6. The purchaser has no defect rights in the cases of
  - natural wear and tear;
  - defects caused by negligent handling after the passing of the risk (e.g. in deviation from the instructions for use), improper storage or care, or excessive use;
  - defects caused by acts of force majeure, particularly external influences, which are not established in the contract, or as a result of use of the product for purposes not established in the contract or which do not reflect customary use.
7. We accept no liability for defects due to purchaser's non-compliance with our instructions on processing or choice of material.
8. In the event that the goods are digital products within the meaning of §§ 327 ff. BGB (German Civil Code) or goods with digital elements pursuant to § 475b BGB (German Civil Code), we shall furthermore be liable to the purchaser for the provision of updates exclusively for the duration and to the extent agreed upon in the contract pursuant to Section B. clause 2. Item 6. sentence 2 or otherwise agreed with the purchaser in writing.
9. We have unlimited liability for damages due to breach of warranty or injury to life, limb or health. We also have unlimited liability for damages due to wilful misconduct and gross negligence, statutory vendor liability for product defects (in particular under the German Product Liability Act [Produkthaftungsgesetz]) and for malicious non-disclosure of a defect. In cases of ordinary negligence, our liability is limited to liability for breach of material obligations arising from the nature of the contract which are of particular significance to achieving the object of the contract. If such obligations are breached, our liability is limited to such damages which are typically to be expected in connection with this type of contract. Otherwise, liability is excluded.
10. The limitation period for defect claims asserted by the purchaser is 12 months, commencing at the time of the passing of the risk in accordance with D.1. It does not recommence after subsequent

performance. Our unlimited liability for damages due to breach of warranty or injury to life, limb or health, deliberate acts, gross negligence and product defects is not affected by this. In such cases the statutory limitation period applies.

11. The suspension of the expiry of the limitation period for claims under a right of recourse as stipulated in § 445b para. 2 sentence 1 of the German Civil Code (BGB) shall end no later than five years after the time at which we delivered the item to the purchaser. In the event of the final sale of the goods to a consumer, we may only invoke this if we simultaneously grant the purchaser equivalent compensation.
12. Insofar as our liability for damages compensation is excluded or limited, the exclusion or limitation shall also apply to the personal liability of our employees, representatives and vicarious agents.

#### **K. Returnable containers**

1. Returnable containers provided by us may only be used for the storage and transportation of our products. Once they have been emptied, they shall be returned to our nearest warehouse on a carriage-paid and charge-free basis. If returnable containers remain with the purchaser through no fault of our own for longer than 3 months, we are entitled to charge an amount of rent which is customary in our industry for those returnable containers remaining on the purchaser's premises.
2. If returnable containers are damaged, we are entitled to refuse to accept them back and demand reimbursement of the replacement cost, or repair at the purchaser's expense, or compensation for the value impairment. We must be immediately notified of any containers lost.
3. During the duration of provision of the returnable containers, the purchaser shall comply with all pertinent statutory and regulatory requirements at its own expense. The purchaser is liable for the returnable containers provided and any associated hazards commencing on the date of shipment or the date of notification of readiness for delivery and ending on the date of their return to our factory or warehouse.
4. The above provisions also apply if the purchaser has been provided with tanks, dispensing or metering equipment by us on a loan or rental basis, unless otherwise agreed. The purchaser is responsible for ongoing repairs and maintenance.

5. When transport and other containers are provided by the purchaser, we accept no liability for product defects and damage caused by the poor condition of the purchaser's containers.

#### **L. Concluding provisions**

1. Place of performance for us and the purchaser is the place of our registered office.
2. All legal relationships between the purchaser and us shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
3. The exclusive legal venue for all disputes arising out of this contract is the place of our registered office. We are also entitled to bring legal action at the purchaser's place of registered office or any other admissible legal venue.
4. The purchaser may only assign rights and obligations to third parties with our prior written consent.

**Zeller+Gmelin GmbH & Co. KG**

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