

## **General Terms of Delivery and Payment of Zoma GmbH & Co. KG**

**Rudolf-Diesel-Str. 17, 89312 Günzburg**

**Status: 01/11/2019**

### **I. General information**

1. Our deliveries, services and offers are exclusively carried out owing to these Terms of Delivery and Payment. Counter-confirmations of the buyer with reference to his business terms are hereby objected to. Deviating, contradictory or supplementary General Business Terms of the buyer will only and accordingly become part of the contract if we have explicitly approved their validity in writing. This requirement for approval shall apply in any case, for example also if we carry out the delivery to the buyer without reservation in the knowledge of the buyer's General Business Terms.
2. All agreements, collateral agreements, changes and supplementations shall require a written form in order to be valid.

### **II. Prices – conclusion of contract**

1. Our offers are without obligation and non-binding. The contents of catalogues, documentation, product specifications or similar documents – also in an electronic form – will only become binding if this is explicitly agreed in writing.
2. Orders will become legally binding as soon as we confirm these in writing or carry these out immediately after receipt of the order or by adhering to the dates. The right is reserved to make insignificant changes, which do not influence the usability of the goods (e.g. packaging) and shall not justify any deviation from the order.
3. In case of a deterioration to the buyer's asset situation after conclusion of the contract, which poses a danger to the claim, we are entitled to request damages owing to non-fulfilment or to cancel the contract, unless the buyer makes an advance payment or provides security.

### **III. Delivery deadline and delay in delivery**

1. Delivery deadlines set to us shall require a written form and will only be deemed as approximately agreed.
2. We shall not be responsible for delays in delivery and service owing to force majeure and for reasons, which render the delivery substantially more difficult or impossible for us – these shall in particular include strike, lock-out, official order, etc., - even with deadlines or dates agreed binding. This shall also apply if these circumstances occur at our suppliers or sub-suppliers. They shall entitle us to postpone the delivery or service by the duration of the impediment plus a reasonable start-up time or to cancel the contract in full or in part owing to the not yet fulfilled part.

### **IV. Delivery, passing of risk, delay in acceptance**

1. The delivery shall be carried out at the account and risk of the recipient also if the transport is carried out by our own vehicles. The buyer is responsible for unloading the delivery vehicles at the place of destination.
2. In case of delivery in acceptance by the buyer we are entitled to cancel the contract in full or in part after setting a final deadline or to request damages owing to non-fulfilment. We are only bound to the agreed purchase price for the agreed delivery time. If the daily price is higher with a late release order then this will be used as a basis.

### **V. Prices – terms of payment**

1. Insofar as not otherwise agreed in an individual case our current prices respectively at the time when the contract is concluded shall apply, free Germany plus the applicable rate of value added tax. Our current

prices respectively at the time when the contract is concluded shall apply to export goods, principally as "ex works" prices.

2. Transport and all other packaging according to the packaging regulations shall pass to the ownership of the buyer and will not be taken back by us; excluded are pallets.
3. If costs increase after conclusion of the contract, in particular owing to concluded collective agreements or changes to material prices, we reserve the right to change our prices to a reasonable extent. We will prove the cost increases to the buyer upon request.
4. Invoices are due and payable immediately after the invoice date without any deductions. Deductions in particular deductions of cash discounts, shall require a special written agreement.
5. Interest on default in the statutory amount will be charged on due or deferred claims. Bills of exchange will not be accepted.
6. Claims can only be offset against an undisputed claim or a claim that has been determined final and binding or a right of retention asserted. Complaints about invoices must be lodged immediately.
7. In case of mergers, amalgamations, co-operations, take-overs and /or lapse of shares or similar situations the revenue basis must be newly coordinated and partly re-negotiated. The same shall also apply to the validity with regard to the change in delivery and settlement structure. Individually agreed conditions or other services may not be forwarded to third parties without the approval and consent of ZOMA.

## **VI. Reservation of title**

1. The delivered goods shall remain our property until the payment of the purchase price and all claims from the business relationship incurred and still to be incurred until this time.
2. The buyer is entitled to resale, not however to other disposals over the reserved goods, in particular to assignment as collateral and pledging of the goods.
3. Claims from resale or further processing will be assigned to us as a precautionary measure in the amount of the outstanding invoices amounts; we hereby accept the assignment declaration.
4. The buyer shall remain authorised to collect the claims. Irrespective of our authorisation to collect these we undertake not to collect the claims as long as the buyer properly satisfies his payment obligations.
5. Our property to processed reserved goods shall not lapse by processing, connection nor mixing, the new goods created by conversion shall rather be produced for us as owner. The co-ownership share corresponds with the ratio of the value of the reserved goods to the value of the finished product.
6. We undertake to release the aforementioned securities at our choice, at the buyer's request, to the extent that their value exceeds the claims which are to be secured by 20%.
7. The buyer undertakes to insure the reserved goods against loss and damage; he has to prove this upon request. Enforcement measures, also impending ones, are to be reported to us immediately.

## **VII. Report of defects**

1. Decisive for our liability for defects is the agreement reached regarding the condition of the goods. Deemed as an agreement on the condition of the goods are all of our product specifications insofar as they have been explicitly described as such by us. The handing over of samples and specimens shall not establish any agreement regarding the condition.
2. No guarantee promise is associated with an agreement concerning the condition of the goods. We shall only grant special guarantee promises in writing based on a separate agreement, which shall explicitly regulate the contents and the range of the guarantee. Details on the packaging (e.g. the imprinted best before date) shall not substantiate any guarantee.
3. The goods are to be inspected immediately upon receipt. Reports of defects must be made in writing within 48 hours after receipt of the goods and in any case before they are forwarded to third parties.
4. Goods for which a complaint is made are to be stored and treated properly. They can only be returned with our consent. Cut cheese wheels will not be taken back.
5. In case of justified defects reported within the deadline we are merely obliged, at our choice, to remedy the defect (subsequent improvement), to exchange the goods (substitute delivery) or to reimburse the reduced value (reduction). Further claims shall only exist according to Subclause VIII; otherwise they are excluded.
6. The buyer has to give us the time and opportunity which are necessary for the owed subsequent improvement or substitute delivery. In addition, he has to make a sufficient quantity of the goods for which a complaint is made or samples thereof available to us for the quality control.

7. Insofar as there is a period of more than six months between the passing of risk to the buyer and the passing of risk to the consumer the statutory presumption according to Sections 478 Par. 3, 476 BGB [German Civil Code] that the defect existed before the passing of risk to the buyer already will not apply with regard to possible claims for recourse of the buyer. The same shall apply if the defect is only recognised after the expiry of the best before date stated by us.

#### **VIII. Joint liability**

1. Claims for damages are excluded irrespective of the type of breach of obligation, including illicit acts insofar as there is no wilful or grossly negligent act.
2. In case of simple negligence we will only be liable for damages from the injury to life, the body and the health as well as for damages from the breach of an essential contractual obligation, in this case however only up to the amount of the foreseeable, typically occurring damages.
3. The aforementioned liability limitations and exclusions shall not apply to claims, which were established owing to malicious conduct, as well as with a liability for guaranteed characteristics and to claims according to the German Product Liability Act.

#### **IX. Place of jurisdiction – place of performance**

1. The place of performance for delivery and payment as well as place of jurisdiction is Augsburg. We are, however, also entitled to file an action at the general place of jurisdiction of the buyer.
2. The law of the Federal Republic of Germany shall apply to these terms of delivery and payment and the entire legal relationships between us and the buyer. The provisions of the UN Convention on Contracts for the International Sale of Goods or other international (contractual) legal systems will not apply.
3. The pre-requisites and effects of the reservation of title according to Subclause VI. are, on the other hand, subject to the law at the respective storage location of the object, insofar as accordingly the selected choice of law for the benefit of German law is inadmissible or invalid.