

Standard Terms and Conditions of Sales

§1 General - Scope

1. Our conditions of sale apply to all current and future business relationships with the buyer.
2. Deviating, contrary or supplementary standard terms and conditions shall not become part of the contract, even if we are aware of them, unless their validity is expressly approved in writing.
3. If individual provisions of the contract with the buyer, including these standard terms and conditions, are or become wholly or partially invalid this shall not affect the validity of the remaining conditions. The wholly or partially invalid provisions shall be replaced by a provision whose economic target most closely approaches that of the invalid provision insofar as this does not cause a material change to the contents of the contract.
4. The customer (Buyer) confirms if he resales ZOLLER products that he complies with all provisions and regulations of German and international export controls as well as with the US re-export regulations. The customer (Buyer) confirms with his order that the products will remain in the delivery country respectively will not be delivered out of the European Union. Additionally the customer (Buyer) declares with his order his compliance with these kind of laws and regulations.

§2 Offer- Offer Documents

1. Our offers are non-binding.
2. Orders only come into force through our written confirmation of contract. The scope of the performance that is owed shall be governed solely by our confirmation of contract. Oral agreements, regardless of whom ever agreed with, shall not be valid unless they have been confirmed in writing. The written form requirement is indispensable and cannot be overturned by oral agreements between the parties or by conclusive behaviour.
3. If the buyer orders the item to be delivered electronically we will confirm the order without delay. The confirmation of receipt shall not be deemed to be a binding acceptance. We expressly exclude all further duties to inform.
4. The documents on which our offers or confirmations of order are based, such as, for example, illustrations, drawings, information on weights and dimensions, are approximate only unless they are expressly referred to as binding. We reserve title to and copyright in cost estimates, illustrations, drawings, calculations and other documentation. This documentation may only be passed to third parties with our express written approval.

§3 Prices - Terms of Payment

1. Unless otherwise shown in the confirmation of order our prices are ex works excluding packaging.
2. Our prices do not include VAT. This will be shown separately in the invoice in the amount valid on the date of billing.
3. Deduction of discounts shall require a separate written agreement. Any period for discounts that is granted shall apply from the date of the invoice. Payment of the purchase price shall be made to us as follows net free point of payment:
1/3 advance payment within 10 days of receipt of the confirmation of order at the very latest,
1/3 within 10 days of the notification that the object of purchase is ready for shipping, the remainder within 10 days of the issue of the invoice. The buyer shall be in default of payment after expiry of this period.
4. If the buyer is in default of payment we shall be entitled to demand default interest of 8% above the base rate in accordance with §1 of the German Discount Rate Transitional Act of 1998-06-09. If the default damage is higher we shall be entitled to claim for this further damage. However, the buyer shall have the right to submit evidence to us that no damage or less damage was caused as a result of the default.
5. The buyer shall only be entitled to set off if his counterclaims have become final and absolute or if we accept them. In addition he shall only be entitled to exercise a right to retention insofar as his counterclaim is based on the same contractual relationship.

§4 Delivery Period

1. Delivery dates or periods that are agreed bindingly or without obligation must be in writing.
2. An agreed delivery period shall commence when the conformation of order is sent but not before the buyer has provided all the documents, permits, releases that he has to supply and all technical questions have been clarified or before receipt of the advance payments. Compliance with our delivery obligation presupposes the timely and due fulfilment of the buyer's obligations.
3. The delivery period is complied with when the delivery item has left the works or the readiness for shipping was notified before its expiry.
4. We shall not be liable for delays in delivery even for binding periods and dates that are caused by force majeure and as a result of events that considerably hamper our delivery or make it impossible more than just temporarily; these shall include in particular labour disputes, administrative orders, etc., even if they occur at our suppliers or subcontractors. They shall entitle us to postpone the delivery for the duration of the hindrance plus a suitable start-up period or to withdraw from the contract wholly or partially with regard to the part that has not yet been fulfilled. We shall inform the buyer as soon as possible of the start and end of hindrances of this nature.
5. If we are in default of delivery for reasons for which we are responsible the buyer shall be entitled to demand flat-rate compensation of 0.5% of the delivery value to a maximum of 5% of the delivery value for each complete week of the delay to the exclusion of further claims. The flat-rate compensation for delay presupposes that the buyer is unable to use the ordered delivery item in time or in accordance with the contract because of the delay. If the buyer sets a suitable time limit with a threat of refusal after we have already defaulted with the delivery, he shall be entitled to withdraw from the contract following the expiry of this time limit without result. Further claims for damages, with the exception of the flat-rate compensation, are excluded.
6. If the buyer is in default of acceptance or in breach of other duties to cooperate, we shall be entitled to demand compensation for the damage that we have suffered including any extra expenses. In this case the price risk of accidental loss or an accidental deterioration of the item purchased shall be transferred to the buyer as well at the moment that he defaults with the acceptance. We shall also be entitled to set a suitable extension of time for acceptance or fulfilment of the duties to cooperate. After expiry of a suitable extension of time we shall be entitled to dispose of the delivery item otherwise, to claim damages for the default in acceptance and to supply the buyer with a product of equal value with a suitable extended period of time.

§5 Transfer of Risk - Cost of Packaging

1. Unless otherwise agreed in the confirmation of order delivery "ex works" is agreed.
2. Packaging, of whatever kind, will not be taken back; the buyer agrees to dispose of the packaging at his own expense.
3. If the buyer wishes we will ship the consignment at the buyer's expense with the insurance he requests, in particular transport insurance. In this case the risk shall be transferred to the buyer as soon as the shipment has been passed to the person carrying out the transport. If shipping is delayed at the request of the buyer the risk of accidental loss or an accidental deterioration shall be transferred to the buyer.

§6 Construction Changes

We reserve the right to make construction changes at any time but do not undertake to carry out such changes to products that have already been delivered.

§7 Warranty for defects

1. The buyer's rights under warranty presuppose that he has duly fulfilled his obligations to inspect and give notice of defect in accordance with §§377,378 of the German Commercial Code (HGB). The buyer shall bear the full burden of proof for all preconditions for a claim, in particular for the defect itself, for the time at which the defect was detected and for the submission of the notice of defect in good time.
2. Insofar as there is a defect to the item purchased for which we are responsible we shall have the option of reworking or supplying a replacement. In case of reworking we agree to pay all the costs required for the purpose of reworking in particular the costs of transport, travel, labour and material insofar as these are not increased because the delivery item was brought to a location other than that of the place of performance.
3. If we are unwilling or unable to rework or supply a replacement, if this is delayed in particular beyond a reasonable period of time for reasons within our control, or if the reworking or replacement delivery fails for other reasons, the buyer shall have the option of demanding a reduction in the price or cancellation of the contract. Reworking shall be deemed to have failed after the second attempt at reworking unless something else follows from the type of the item or the defect or the other circumstances. In case of a minor breach of contract only, in particular of a minor defect only, the buyer shall not have the right to withdraw from the contract. If the buyer chooses to withdraw from the contract in case of failed subsequent performance he shall not be entitled to any damages. If the buyer chooses damages in case of failed subsequent performance, the goods shall remain with the buyer if this can be expected of him. Damages shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if the breach of contract was caused fraudulently.
4. We shall not be liable for damage that is not caused to the delivery item itself; in particular we do not assume any liability for lost profits or other pecuniary loss suffered by the buyer.
5. We do not assume any guarantee for natural wear, unsuitable or incorrect use or conditions, faulty commissioning by the buyer or a third party or for any reasons that are outside our sphere of influence and for which we are not at fault.
6. The guarantee period is 12 months from the date on which the risk is transferred.

§8 Limitations of Liability

1. In case of a slightly negligent breach of an obligation our liability shall be limited to the average damage typical for the contract that is foreseeable and direct in accordance with the type of goods. This shall also apply to slightly negligent breaches of obligations by our statutory representatives or vicarious agents.
We do not assume any liability for slightly negligent breaches of immaterial contractual obligations.
2. The above limitations of liability shall not apply to physical injury, damage to health or loss of life that is attributable to us.
3. Claims by the buyer for damages for defects shall lapse one year after the transfer of risk. This shall not apply if we can be accused of fraud. Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, associates, representatives and vicarious agents.

§9 Reservation of Title

1. We reserve title to the delivery item until complete payment of all claims under a current business relationship.
2. The buyer agrees to handle the object purchased with care. Insofar as maintenance and inspection work is necessary the buyer shall have this carried out in good time at his own expense. He also agrees on demand by us to take out replacement value insurance at his own expense for the item delivered to cover damage by fire, water and theft.
3. The buyer shall notify us immediately in writing in case of seizure or other encroachments by third parties. Insofar as the third party is unable to reimburse us for the judicial and extra-judicial costs of an action against execution in accordance with §771 of the German Civil Procedure Rules the buyer shall be liable for the loss that we suffer.
4. In case of behaviour by the buyer contrary to the contract in particular on default of payment or a breach of an obligation under Nos. 2 and 3 of this provision we shall be entitled to withdraw from the contract and to demand the return of the item purchased.
5. The buyer may not sell the delivered item purchased to a third party until all claims under the current business relationship have been paid. If the delivered item purchased is amalgamated with other items we shall on the one hand receive co-ownership in the homogeneous new item in the ratio of the value of the item at the time of amalgamation; on the other hand the new homogeneous item may not be resold until all claims under the current business relationship have been paid. If in spite of this the buyer sells to a third party in contravention of the contract, the buyer hereby assigns his claim against the third party under the resale in the amount of our claim or our co-ownership share (anticipatory assignment). We accept the assignment. The buyer shall inform us without delay on demand of the name and address of the third party and disclose or hand over to us all the information and documents, for example contract documents, that are required to collect the assigned claim.
6. The buyer may not pledge the item we delivered to a third party or assign it to a third party as security.

§10 Concluding Provisions

1. Unless otherwise shown in the confirmation of order our place of business shall be the place of performance.
2. The laws of the Federal Republic of Germany shall apply. The provisions of the UN Sales Convention shall not be applied.
3. If the buyer is a merchant, a legal entity under public law or special assets under public law, our place of business shall be the exclusive legal venue for all disputes under this contract. This shall also apply if the customer does not have a general legal venue in Germany or his address or usual place of abode were not known at the time the action was filed.

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