

## **General Terms and Conditions of Purchase**

(As on: March 2021)

Albrecht Zwick GmbH,

Bandstahlstraße 27, 58093 Hagen-Halden

hereinafter referred to as “the user”

### **1. Scope of validity**

- (1) The following General Terms and Conditions of Purchase are applicable only for all the legal transactions between the “user” (Albrecht Zwick GmbH) and the “contracting partner”.
- (2) Unless otherwise agreed, the purchase terms apply in the version valid at the time of the order of the contracting partner’s order or, in any case, in the version last communicated to him in writing, also for similar future contracts, without the user having to refer to them again in each individual case.
- (3) Terms and conditions of the contracting partner or third party do not apply, even if the user does not separately object to their validity in individual cases. Even if the user gives reference to a letter that contains or refers to the terms and conditions of the contracting partner or a third party, this does not constitute consent to the validity of those terms and conditions.
- (4) Individual agreements made with the contracting partner in individual cases (including side agreements, additions and amendments) in any case take precedence over these General Terms and Conditions of Purchase. For the content of such agreements, subject to evidence to the contrary, an agreement or a confirmation by the user in writing is authoritative.

### **2. Orders and assignments**

- (1) Insofar as the offers of the user do not expressly contain a commitment period, the user will be bound to the offer one week after the date of the offer. Receipt of the user’s declaration of acceptance at the user is decisive for timely acceptance.
- (2) The user is entitled to change the time and place of the delivery as well as the type of packaging at any time by way of a written notification, observing a notice period of at least 7 calendar days before the agreed delivery date. The same shall apply to amendments of product specifications, provided that these can be implemented within the framework of the normal production process of the contracting partner without considerable additional expense; in such

cases the notice period pursuant to the above sentence shall be 14 calendar days. The user shall reimburse the contracting partner for any proven and reasonable additional costs incurred due to the amendment. If such amendments cause delays in delivery, which cannot be prevented with reasonable efforts in the normal manufacturing and business operation of the contracting partner, the originally agreed date of delivery shall be postponed accordingly. After a careful assessment, the contracting partner shall notify the user of any additional costs or delays in delivery to be expected in writing and in due time before the date of delivery, at least, however, within 5 working days after the receipt of the notification of the user according to sentence 1.

### **3. Prices, terms of payment, invoice details**

- (1) The price shown in the purchase order is binding. All prices include the legal rate of value added tax, unless this is listed separately.
- (2) Unless otherwise agreed in writing, the price includes the delivery and transport, including packaging, to the shipping address stated in the contract.
- (3) As long as in the concluded agreement, the price does not include packaging and if the remuneration for the packaging – that was not only provided on loan – has not been defined expressly, it is to be calculated in accordance with the verifiable net cost price. On request of the user, the contracting partner has to take back the packaging at his own cost.
- (4) Unless otherwise agreed, the user pays the purchasing price on delivery of the goods and receipt of the invoice within 14 days with a 3% discount or within 30 days net. The receipt of the transfer order at the bank shall be sufficient for the timeliness of the payments owed by the user.
- (5) The purchase order number, article number, delivery quantity and delivery address have to be indicated in all order confirmations, delivery documents and invoices. If one or more pieces of this information are missing and the processing by the user is, as a result, delayed in the framework of normal business dealings the payment periods given in paragraph 4 shall be extended by the period of the delay.
- (6) The user is entitled to rights of retention, offsetting and exploitation to the extent as permitted by law.
- (7) Surcharges for small or minimum quantities shall not be paid.

#### **4. Delivery time and delivery, transfer of risk**

- (1) The delivery time that is indicated in the purchase order or that is otherwise applicable in accordance with these General Terms and Conditions of Purchase (delivery date or period) is binding. Early deliveries are permitted only with express authorisation of the user.
- (2) The contracting partner is obliged to inform the user immediately in writing if circumstances arise or become apparent that the delivery time cannot be met.
- (3) For numbers of units, weights, quantities, etc., of a delivery, the values determined by user at the time of receipt inspection are decisive and form the basis for the settlement.
- (4) If the latest day on which the delivery is to be made can be determined on the basis of the contract, the contracting partner shall be in default with the expiry of this day without the need for a reminder from the user.
- (5) In the event of a delay in delivery the user shall be entitled without restriction to the statutory claims, including the right of withdrawal or claim for damages instead of performance after the fruitless expiration of a reasonable grace period.
- (6) In the event of delivery delays, the user shall be entitled without prejudice to other claims, after prior written warning to the contracting partner, to demand a contractual penalty of 0.5 %, for each commenced week of the delivery delay, however up to a maximum of 5 % of the respective order value. The contractual penalty shall be set off against the damage caused by the delay, which has to be compensated by the contracting partner.
- (7) The contracting partner is not entitled to make part deliveries without the user's prior written consent.
- (8) Even if shipment has been agreed, the risk of accidental loss shall only pass on to the user when the goods are handed over at the agreed destination.
- (9) The contracting partner is obliged to cover the risk of an accidental loss or an accidental deterioration of the ordered goods within the scope of a customary transport insurance.

#### **5. Scope of service, passing on of the order, obligation to inform**

- (1) The scope of the respective deliveries / services will be determined from the order.

- (2) The contracting partner will be obliged to expressly identify – with typographical emphasis – any deviations from the order in his order confirmation.
- (3) If there are considerable deviations set out in the respective order confirmation by the contracting partner, the conclusion of the contract will require the express written confirmation by the user. The principles of commercial confirmation letters will not apply.
- (4) The passing on of the order to third parties and the use of subcontractors will require the prior written consent of the user. Insofar as the contracting partner uses third parties to fulfil his service obligations, the contracting partner must oblige these third parties in the same way that the contracting partner has himself been obliged by the order and these terms. The contracting partner will conclude contracts with third parties in his own name and on his own account.
- (5) The contracting partner must check the enquiry and/or order, particularly for plausibility, feasibility, completeness, etc. and inform the user of any shortcomings without delay.

## **6. Ownership protection**

- (1) All the order documentation provided by the user (for example, diagrams, plans, drawings, calculations, instructions for execution and product descriptions) remain in the ownership of the user. The user retains the copyright for the order documentation. The order documentation shall be exclusively used for the contractual service. Any reproduction or transfer to third parties as well as other uses are prohibited. After completion of the order, the contracting partner shall return to the user on request the order documentation including possible copies made by him.
- (2) In principle, the transfer of ownership of the goods to the user must take place unconditionally and without regard to payment of the price. However, if in individual cases, the user accepts from the contracting partner a conditional offer stating that the transfer of ownership will only take place after payment of the purchase price, the contracting partner's retention of title ends at the latest at the time of payment of the purchase price for the goods delivered. In the ordinary course of business operations, the user remains authorized to a further sale of the goods even before payment of their purchase price, on condition that he assigns in advance the resulting receivable. This excludes all other forms of retention of title, particularly the extended and passed-on retention of title and the retention of title which is extended to further processing.

- (3) Any combination, incorporation or processing of the materials delivered by the user with other materials shall take place only on behalf of the user, so that the user becomes the joint owner for the new item. This also applies in the event of further processing of the delivered goods by the user, so that the user is considered as manufacturer and obtains ownership of the product in accordance with the proviso of the legal regulations at the latest at the time of further processing. A combination of material delivered by the user with other movable items, that are regarded as principal items, must take place only with express consent of the user.

## **7. Warranty for defects**

- (1) The user is entitled to the statutory claims without limitation in case of material and legal defects.
- (2) For the commercial inspection and reprimand duty, the statutory provisions apply with the following proviso: The duty of the user to inspect is limited to the defects clearly visible in the external examination carried out during the inspection of the goods on receipt, including the examination of the delivery documents (for example, transport damages, wrong or shortfall delivery) or during the quality control by way of random sample test procedure. No examination is required if an acceptance procedure has been agreed on. Apart from that, it depends on the extent to which examination is feasible taking into account the circumstances of the individual case according to proper business operations. Without prejudice to the duty to inspect, a complaint (notice of defect) shall in any case be deemed prompt and timely if it is sent within 7 working days from discovery or, in the case of obvious defects, from delivery.
- (3) By acceptance or approval of samples or specimens submitted, the user does not waive any warranty claims.
- (4) The settlement of an invoice of the contracting partner does not constitute an acceptance, that the delivered goods are free from defects, that they exhibit contractual quality or the assured properties or that the delivery has taken place in full and in time.
- (5) The warranty period is 5 years for items which, in accordance with their customary use, are used for a building, and otherwise 3 years, from the time risk is transferred, insofar as no longer warranty period has been specified in the contract or is required by law.
- (6) If the contracting partner discontinues his payments or insolvency proceedings are opened against his assets, the user is entitled to withdraw from the contract for the unfulfilled part.

- (7) Upon receipt of written notification of defects by the contracting partner, the statute of limitation of warranty claims shall be suspended until the contracting partner seriously and definitely rejects the claims or declares the defect to be remedied or otherwise refuses to continue negotiations on the claims. In the case of replacement delivery and rectification of defects, the warranty period for replaced and repaired parts starts again, unless the user had to believe from contracting partner`s behaviour that he is not obliged to these measures, but has only undertaken the replacement delivery or defect rectification as a gesture of goodwill or for similar reasons.

## **8. Product liability / Claim for damages**

- (1) The contracting partner is responsible for all damages incurred to the user or asserted by third parties due to personal injury or material damage which are attributable to a defective product supplied by him and is obliged to relieve the user from the resulting liability therefrom at first request, if necessary.
- (2) Within the scope of his indemnification obligation, the contracting partner, in accordance with Sections 683 and 670 of the German Civil Code, shall reimburse the costs resulting from or in connection with any third-party claims, including recall actions carried out by the user. Insofar possible and acceptable, the user shall come to an understanding with the contracting partner on the content and extent of the recall measures, inform him and give him the opportunity to comment. This does not affect any other legal claims.
- (3) The contracting partner is obliged to maintain product liability insurance with a coverage sum of at least EUR 5,000,000.00 per person injury damage / material damage at his own expense. The contracting partner shall send the user a copy of the liability policy at any time upon request.

## **9. Property rights**

- (1) The contracting partner guarantees that no right of third parties, in particular copyrights, are infringed in connection with his delivery and service. The contracting partner warrants in accordance with the proviso of paragraph 2, that the products supplied by him do not infringe any property rights of third parties in countries of the European Union or other countries in which he manufactures the products or where he has them manufactured.

- (2) The contracting partner is obligated to relieve the user of all claims raised by any third-party against the user due to the infringement of industrial property rights mentioned in paragraph 1 and to reimburse the user all necessary expenses in the context of these claims. This does not apply, to the extent that the contracting partner proves that he is neither responsible for the infringement of the property rights nor should have known about it, by applying the principles of commercial prudence at the time of delivery.

## **10. Secrecy and confidentiality**

- (1) The contracting partner shall keep confidential any business and trade secrets of the user, which have been entrusted to him or become known to him as such during the execution of or on the occasion of this contract, even after termination of the contract.
- (2) The parties shall treat the contents of the contractual relationship as confidential. Excluded from this is the disclosure to persons who are subject to legal obligation of secrecy, insofar as this disclosure is necessary for the proper management of the business or to safeguard legitimate interests. Confidential documents shall be kept separately and kept under lock and key so that they are not accessible to unauthorised persons.

## **11. Final provisions**

- (1) Place of performance for payments is the registered office of the user. Place of performance for deliveries and other services is the place of receipt specified in the order.
- (2) Exclusive place of jurisdiction for all legal disputes arising from or in connection with contracts between the user and the contracting partner is the registered office of the user. The user is at liberty to file suit against the contracting partner also at his general place of jurisdiction. This does not apply if the legal provisions designate a deviating exclusive place of jurisdiction.
- (3) The relationships between the user and the contracting partner shall only be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11th April 1980 shall not apply.
- (4) Should individual provisions of these General Purchase Terms in whole or in part prove invalid or become so in the future, this does not affect the validity of the remaining provisions of the Terms and Conditions of Purchase. The invalid contractual provision or the gap shall

be replaced by a legally valid substitute regulation that takes into account or comes as close as possible to the will of the parties that is identifiable from the contract and the General Terms of Delivery and the economic essence and the purpose of the inapplicable regulation.