

General Terms and Conditions for Supply and Delivery

Zill GmbH & Co. KG (edition: 21.12.2004; 14.02.2007)

§ 1 General – Scope

- (1) Any and all supplies, deliveries and offers of Zill GmbH & Co. KG – hereinafter “Seller” – shall exclusively be made on the basis of these General Terms and Conditions. Unless explicitly agreed to in writing Seller does not accept Buyer’s General Conditions to the extent as they contradict or are inconsistent with these General Terms and Conditions. Seller’s General Terms and Conditions shall also apply in the event of performance of supply or delivery without Seller’s reserve despite positive knowledge of Buyer’s contradictory or inconsistent purchase conditions.
- (2) These General Terms and Conditions shall also apply for all future contractual relations irrespective of any subsequent explicit agreement with regard to their application.
- (3) These General Terms and Conditions shall apply to companies within the scope of § 310 sect.1 BGB only.

§ 2 Offer – Documents

- (1) Any and all of Seller’s offers shall be without obligation and non-binding. Acceptances and orders shall not be binding unless confirmed to in writing by Seller. The same shall apply with regard to amendments, modifications and collateral agreements.
- (2) Drawings, measures, weights and any other descriptions of the goods shall only be binding where explicitly agreed to in writing. Seller shall reserve deviations of the goods in quality, weight, measures or thickness as are usual in trade.

§ 3 Prices – Terms of Payment

- (1) Unless otherwise agreed prices stated in Seller’s offer shall be valid and binding for a period of 8 days from the date of the offer. The prices inclusive of applicable statutory VAT stated in Seller’s order confirmation shall prevail. Additional supplies or services shall be charged separately.
- (2) Unless otherwise agreed Seller’s invoices shall be due and payable without reductions on the date of receipt of the invoices. Taking of cheques, where accepted by Seller, shall only be made on account of payment. Consequences of late payments shall be as stipulated by the applicable statutory regulations.
- (3) The Buyer may set off only those claims that are undisputed, accepted by Seller or that have been finally determined by a court of competent jurisdiction. The Buyer shall have a right of retention only to the extent that his claims are based on the same contractual relation.

§ 4 Time of Delivery

- (1) Unless otherwise explicitly agreed to the date of delivery stated by Seller shall not be binding.
- (2) Seller shall not be liable for delays in deliveries or services including delays of binding delivery dates, due to force majeure or due to events substantially aggravating the performance of deliveries or services or rendering them unachievable. Such events irrespective of their occurrence at the Seller, her suppliers or sub-suppliers, shall include but not be limited to subsequent restrictions to acquisition of raw material, plant interruption, strike, lockouts, shortage of personnel or transportation, official orders of competent authorities etc. In such case Seller shall be entitled to extend the time for delivery accordingly plus a reasonable start-up period or to withdraw in whole or in part from the contract with regard to that portion not yet delivered or performed.
If delivery is delayed by more than three months Buyer shall after granting a reasonable grace period, be entitled to withdraw from the contract with regard to that portion not yet delivered or performed.
- (3) In the event of failed, wrong or delayed supply by Seller’s suppliers Seller shall be entitled to withdraw from the contract with the Buyer.
- (4) In the event of delay Seller shall be liable in accordance with the applicable statutory regulations provided that the delay is due to a wilful misconduct or grossly negligent breach of contract by Seller. Wilful misconduct or grossly negligent acts of Seller’s agents or persons engaged by Seller in the performance of her contractual obligations shall be attributable to Seller. Should the delay not be due to a wilful breach of contract by the Seller her liability shall be limited to the foreseeable and typical damage normally covered by a contract. This shall also apply to culpable breach of essential contractual obligations.
- (5) If not otherwise stipulated herein, in the event of delay Seller shall be liable by way of liquidated damages in the amount of 0.5%, up to a maximum of 5%, of the value of the delivery, per each completed week of delay.
- (6) Partial supplies shall be permissible at any time.

§ 5 Transfer of Risk

- (1) Risk shall pass to Buyer as soon as the goods have been delivered to the carrier or have left Seller’s warehouse for dispatch. If dispatch has failed due to reasons not attributable to Seller risk shall pass to Buyer upon information of Buyer of readiness for dispatch.

§ 6 Warranty

- (1) Buyer shall immediately examine the goods with regard to quality or volume discrepancies and shall inform Seller in writing within one week from receipt of the goods of any discovery of a defect. Otherwise the Buyer’s right to claims with regard to defects shall be excluded. Buyer shall inform Seller in writing of any hidden defects within one week after their discovery. To meet the deadline dispatch of the information in due time shall be sufficient. The burden of proof for any and all prerequisites of a claim shall be upon the Buyer, in particular the burden of proof for the defect itself, for the date of discovery and for the timely information of the Seller.
- (2) The Seller’s liability for defects shall be excluded should the Buyer not adhere to the Seller’s instructions for use.
- (3) In case of warranty defects the Seller shall, as subsequent performance by way of remedy, at her option either repair or replace defective items by a new non-defective item.
- (4) Should such remedy fail Buyer at his option shall be entitled to cancel the contract or to demand a reduction of the contract price.
- (5) The warranty period shall be one year from transfer of risk to the Buyer. Claims for damages as a result of a warranty defects shall be legally barred after one year from transfer of risk. This shall not apply in case of grossly negligent acts on the part of Seller or in the event of personal or health injuries or death of the Buyer.

§ 7 Liability

- (1) Seller shall be liable in accordance with the applicable statutory regulations where Buyer claims damages as a result of wilful misconduct or gross negligence of the Seller or her agents or persons employed by the Seller in the performance of her contractual obligations. In the event of gross negligence liability shall be limited to the foreseeable damages typically covered by the contract. Excessive damages shall be excluded.
- (2) Seller shall be liable in accordance with the applicable statutory regulations in the event of culpable breach of fundamental contractual obligations. In this case, however, liability shall be limited to the foreseeable damages typically covered by the contract.
- (3) Liability for personal or health injuries or death shall not be affected. The same shall apply for the mandatory liability in accordance with the product liability law or in case of a guarantee given by the Seller.
- (4) Unless otherwise provided above Seller’s liability shall be excluded. This shall in particular apply for damages based on the violation of obligations in contract negotiations or other violations of obligations or for property damages based on tort in accordance with § 823 BGB. The same shall apply where Buyer claims for futile expenditures in lieu of damages.
- (5) Where Seller’s liability is excluded or limited by these General Terms and Conditions such exclusion or limitation shall also apply with regard to the personal liability of Seller’s employees, workers, staff, agents or persons employed by Seller in the performance of contractual obligations.
- (6) Where Seller’s liability is excluded or limited by these General Terms and Conditions Seller herewith assigns to Buyer her eventual claims for damages against her suppliers as a result of a violation of contractual obligations, if any.

§ 8 Retention of Title

- (1) The goods shall remain Seller’s property until each and every claim against the Buyer to which Seller is entitled under the business relationship between Seller and Buyer, including collateral claims and regardless of the legal theory they are based on, has been duly satisfied. The retention of title shall remain unaffected if individual claims of the Seller are included in a current account, balanced out and accepted.
 - (2) In case Buyer acts in violation of the contract and in particular in case of delayed payments Seller shall be entitled to retrieve the goods. The retrieval shall be construed as cancellation of the contract. Upon retrieval Seller shall be entitled to utilize the goods. Any proceeds from the utilization shall be set off against Buyer’s accounts payable after deduction of reasonable costs of utilization.
 - (3) Buyer shall immediately inform Seller of any seizure or other acts of intervention by third parties into the goods under Seller’s retention of title and shall supply immediately any and all documents required by Seller to oppose. Buyer shall further inform such third parties in advance of the existence of Seller’s rights to the goods. Buyer shall bear any and all costs of intervention against the third party should such third party not be able to reimburse such costs.
 - (4) Buyer shall be entitled to resell the goods in the ordinary course of his business. In case of resale Buyer shall, however, herewith assign to Seller to the extent and in the amount of Seller’s claims against the Buyer, any claims against Buyer’s customers or third parties including collateral claims and eventual balance of claims and Seller herewith accepts such assignment. Despite the assignment Buyer shall be entitled to collect outstanding claims. Seller’s right to collect outstanding claims shall remain unaffected. Seller, however, shall undertake not to collect the claims as long as the Buyer shall satisfy his debts out of received revenues, shall not delay payment and in particular as long as no petition for composition or insolvency proceedings shall be filed against Buyer or Buyer has stopped payments.
 - (5) Buyer shall not be entitled to give the goods or assigned claims in pledge or as security.
 - (6) Any processing or consumption of the goods by the Buyer shall always be for the Seller.
- Where the goods are processed together with other items not owned by Seller Seller shall acquire co-ownership in the processed goods in the ratio of the value of her originally sold goods to the value of the processed goods at the time of processing. For the processed goods the same shall apply as for the goods under retention of title.
- (7) Upon Seller’s request Buyer shall be obliged to supply a detailed list of Buyer’s claims including amounts, names and addresses of his customers and to give Seller any information required to assert the claims.
 - (8) Seller undertakes to release upon Buyer’s request her security rights to the extent as the value of the realizable values of Seller’s securities exceed the secured claims by more than 10%. It shall be Seller’s obligation to choose the securities to be released.

§ 9 Place of Jurisdiction and Performance

- (1) When Buyer is a businessman, public law body or public special asset the place of jurisdiction shall be Seller’s principal place of business. Seller shall be entitled, however, to bring charges against the Buyer at his place of residence.
- (2) These General Terms and Conditions as well as any relations arising out of the contract shall exclusively be subject to and governed by the substantive law in force in the Federal Republic of Germany with the exception of the application of the United Nations Convention on Contracts for the international Sale of Goods.
- (3) Unless otherwise stated in the order confirmation place of performance shall be Seller’s principal place of business.