

General Terms and Conditions of ZIEGENER + FRICK GmbH

§ 1 General

1. The following terms and conditions ("GTC") shall apply to all current and future business relations with our customers and shall exclusively apply to all concluded contracts.
2. Any other provisions, including but not limited to differing, opposing, or additional general terms and conditions of customers shall not become part of the contracts, even if we are aware of them, unless we have expressly consented to their applicability in writing. Changes or amendments to contracts, or any side agreements, shall only be binding if confirmed in writing. Acceptance of deliveries or partial deliveries shall be deemed an acceptance of these GTC.
3. Our presentations of products and services in advertising brochures, sales brochures, price lists or the like shall not be deemed offers for acceptance; they shall only be deemed invitations to make offers for acceptance.
4. Special terms and conditions apply for the borrowing of goods for testing.

§ 2 Conclusion of contract

1. All our quotations are non-binding. They are subject to reasonable technical changes as technology advances and to reasonable changes in form, colour, or weight.
2. By ordering goods, customers bindingly agree to buying the ordered goods. We shall be entitled to accept the offer to buy in the form of a purchase order within two weeks from receipt. A contract is only concluded if we confirm a purchase order in writing. If goods or services are delivered without a prior order acknowledgement issued to the buyer, the contract shall be deemed concluded by acceptance of the delivery under these GTC.
3. If customers order goods by electronic means, we will confirm receipt of these orders immediately. Such receipt shall not be deemed a binding acceptance of the purchase order. The receipt can be combined with the acceptance.
4. Conclusion of a contract shall be subject to our correct and timely supply by our suppliers. This shall only apply if an incorrect or non-delivery is beyond our control, in particular in the event that we enter into a congruent covering transaction with our sub-supplier. Customers will be informed about a non-availability of goods or services immediately. Any consideration will be refunded immediately.
5. If customers order goods electronically, the contents of the order will be stored by us and at their request submitted to the customers by email, accompanied by these GTC.
6. Any documents submitted to customers, for example cost estimates, drawings, images, copyrights etc. shall remain the property of ZIEGENER + FRICK. They must not be disclosed to any third party. ZIEGENER + FRICK undertake to disclose any documents received from customers and labelled as confidential to third parties with the customers' consent only.

§ 3 Prices and payment

1. The quoted prices are subject to the statutory value-added tax as applicable on the date of delivery and are to be understood ex works (manufacturer's or our own warehouse) and exclusive of installation/assembly. The method of shipping shall be in our own discretion. In the event of a sale to destination, customers shall bear the shipping and packaging costs. We ship in customary packaging. If special packaging is required (for example seaworthy packaging), this shall be at the customers' expense. If goods are delivered duty unpaid, the customers shall bear the duties and costs charged by the customs authorities. Packaging cannot be returned.
2. Payment shall be due immediately upon receipt of invoice. Customers shall be in default of payment immediately after an extended term of payment has expired. A reminder shall not be required.
3. If customers are in default of payment, they shall be obligated to pay a late payment penalty in the amount of up to €40. We reserve the right to prove and charge any higher damage incurred through the late payment.
4. If customers fall in arrears with payments that are due, or if checks or promissory notes issued by customers are dishonoured, or if other facts become known that indicate a considerable deterioration of a customer's financial situation, or if there is significant doubt about a customer's ability or willingness to pay for other reasons, we shall be entitled to demand immediate payment of all outstanding invoices from that customer, also and insofar as checks or bills of exchange were presented for such, and to demand payment in advance for all outstanding deliveries or, without prejudice to any other rights to which we may be entitled, to withdraw from the contract/s and fix an appropriate deadline for payment at the same time. Customers can prevent our exercise of such rights by providing appropriate security.
5. We shall also be entitled to exercise the rights mentioned under no. 7 above, if insolvency proceedings have been opened over a customer's assets or if an application for an insolvency order was declined for insufficiency of assets, or if a customer's company is dissolved or wound up, or if execution is levied against significant parts of a customer's assets.
6. A customer has a right of retention only to the extent that their counterclaim is based on the same transaction.
7. Customers can only set off counterclaims that were recognized by us or that were declared final and conclusive by a court. Customers shall not be entitled to hold back any payments based on outstanding credit notes. Exempt from the non-setoff provision shall be counterclaims that are synallagmatically linked with the principal claim.

§ 4 Time of delivery

1. Times and dates of delivery stated by us shall be non-binding and subject to the full and timely supply through our sub-suppliers. Delivery times shall be deemed met if the goods have left the warehouse or if the customer was notified about the readiness for collection by the end of the delivery period. If orders cannot be fully or partly executed at the time when they are placed, we reserve the right to cancel them. Customers shall not be entitled to any claims for damages from delays in or defaults of delivery unless this is due to wilful intent or gross negligence on our part. A precondition for meeting the delivery time is that the customers have fulfilled all of their own obligations under a contract.
2. Partial deliveries are allowed, unless a customer can prove that partial delivery is of no avail to them.
3. If we are prevented from meeting delivery times due to unforeseen circumstances that are beyond our control and could not have been avoided with the due care of a prudent businessperson (force majeure), the delivery times shall be reasonably extended by the duration and scope of the event, unless delivery has become completely impossible. In particular, events of force majeure mean disturbances of operations through fire, water, or similar circumstances, failure of production facilities or machines, strike and lockout, shortages of personnel, material, energy, transport options, etc., irrespective of whether the circumstances have occurred at our site or at the site of a supplier or sub-supplier.
4. In the event that the non-compliance with the delivery time is beyond our control or if delivery is impossible, customers shall be entitled, in the event of a default in delivery and after sending a notice including a reasonable deadline for delivery, to withdraw from contract with respect to all deliveries that have not been reported ready for shipment by the deadline. Any further claims, such as damage claims based on late delivery or non-fulfilment, and particularly claims for compensation of direct damage, shall be excluded, unless they are based on our wilful intent or gross negligence. In the event of wilful intent or gross negligence, the compensation for damage resulting from delay shall be a maximum of 0.5% for each week of delay; however, the compensation shall not exceed a maximum of 5% of the value of the entire delivery.

§ 5 Shipment, transfer of risk, acceptance

1. Shipments will be made from the warehouse.
2. The risk of accidental loss or accidental deterioration of the goods shall pass to the customers upon delivery, notification of readiness for collection, handover, or delivery of the goods to the freight forwarder, carrier, or other person commissioned with shipping in the event of a sale to destination, however, no later than at the time when the goods leave our warehouse, depending on which event occurs first. This applies too if delivery with freight paid was agreed. If shipment is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer on the day on which the goods are ready for shipment; however, at the customer's request and expense, the supplier shall be obligated to effect the insurance that the customer requests. The customer shall also bear the risk of accidental loss during transport, if any defective goods are returned to us during the warranty period or are sent to a repair shop designated by us.
3. Customers shall be obligated to accept the goods that are ready for shipment. If customers are in default of acceptance, this shall be deemed equal to delivery.
4. If a shipment is postponed at a customer's request, the risk of performance shall pass to the customer upon notification about the readiness for shipment; the customer hereby agrees to pay any costs incurred through storage, at minimum, however, 0.5% of the invoice total for each month of delay. We shall be entitled to dispose of the goods otherwise if, after we notified the customer and set a deadline for delivery, such deadline is not met; in that event, we reserve the right to supply the customer with a reasonably extended delivery time.

§ 6 Retention of title

1. The title to the delivered goods shall remain with us until the payment or other performance from the customer has been received in full.
2. Customers shall be obligated to handle the goods with care. Insofar as preventive maintenance work or inspections are necessary, customers shall carry them out at their own expense.
3. Until further notice, customers shall be authorized to sell the goods held under the retention of title in the ordinary course of business. The customer hereby assigns to us any and all receivables in the amount of the invoice total to which the customer is entitled as a result of sales to third parties. We hereby accept this assignment. Upon assignment, customers shall be authorized to collect the receivables. We reserve the right to collect the receivables ourselves as soon as customers do not fulfil their payment obligations properly or default in payment. If a customer's customer insists on a non-assignment clause, our customer shall notify us about this immediately. To the extent that customers cannot provide sufficient other security for our receivables, we shall be entitled to forbid any sale of the goods supplied by us to third parties that prohibit assignments.
4. Customers shall be obligated, at our request, to provide us with information about the stock of goods subject to the retention of title and about the assigned receivables. In the event of third-party access to goods that are held under the retention of title or for which the receivables are assigned to us, customers must inform us immediately and support us in the exercise of our rights; in particular, customers shall exercise the necessary legal remedies to protect our rights.
5. Customers shall be obligated to inform us without any delay about any third-party access to the goods, for example by way of execution, or about any damage to or the destruction of the goods. Customers shall notify us about any change in the ownership of the goods or of their own place of residence or place of business.
6. In the event that a customer violates the contract, we shall be entitled, without further notice, to withdraw from the contract and demand the return of the goods, in particular in the event of a default in payment or a considerable deterioration of the customer's financial situation. Customers shall then be obligated to grant us access to their premises to allow us to take possession.
7. Customers shall be obligated to insure the goods held under the right of retention, following the principles of a responsible businessperson, and hereby assign any insurance or other claims based on the loss or deterioration of the goods held under the right of retention.
8. Any processing of our goods that are held under the right of retention shall be deemed processing on our behalf without any obligation resulting thereof for us. Through processing, combining, merging, or mixing of our goods that are subject to the right of retention with goods owned by the customer, we shall acquire co-ownership in the new goods—in the ratio of the invoice value of the goods that are subject to the right of retention to the value of the goods of third parties at the time of processing, combining, merging, or mixing.
9. If the total value of the security provided to us exceeds the receivables by more than 20%, we shall release security to this extent at the customer's request.

§ 7 Warranty

1. As first remedies, our warranty in the event of defects in the goods covers the correction of the defects or replacement delivery, in our discretion.
2. Customers shall inspect the goods immediately upon delivery for any defects and for completeness; any detected defects must be reported to us immediately. If customers fail to inspect and report any defects in due time, the delivered goods shall be deemed approved, unless there are defects that were not recognizable during inspection. Defects that are detected later must be reported to us immediately as well; otherwise, the goods will be deemed approved with respect to such defects too. All defects must be reported in written form and must describe the defect under complaint in detail. Otherwise, Sec. 377 HGB shall apply accordingly.
3. If customers withdraw from contract based on legal defects or defects of quality after an attempt to remedy the defects has failed, customers shall not be entitled to damages for the defects. If customers, after an attempt to remedy defects has failed, opt for damages, the goods shall remain at the customers' if this is considered reasonable. The amount of the damages shall be limited to the difference between the sales price and the value of the defective goods. This shall not apply if we have fraudulently concealed the violation of contract.
4. The warranty period for new goods shall be 12 months from delivery of the goods from the warehouse. The statutory warranty periods shall be reduced accordingly. Warranty for used goods shall be excluded, unless agreed otherwise in writing. This shall not apply if customers have failed to report any defects to us in due time as set out under no. 2 above. The reduction or disclaimer above shall not apply to damage claims based on grossly negligent or intentional violations of obligations, or based on at least negligent violations of life, body, or health.
5. In general, only the manufacturer's descriptions of the products shall be deemed agreed qualities of the goods. Any public statements, promotion or advertising by the manufacturer shall not be deemed representations of the goods' qualities under the contract.
6. If customers receive incorrect assembly instructions, our only obligation shall be to provide fault-free assembly instructions, and this applies only if the errors in the assembly instructions prevent a proper assembly.
7. We do not accept any liability for damage resulting from the following: unsuitable or inappropriate use, faulty assembly or commissioning through the purchaser or third parties, natural wear and tear, faulty or negligent handling, unsuitable operating resources, faulty construction work, unsuitable foundation, chemical, electrochemical, or electric influences, unless these are due to a fault of the supplier.
8. We do not give customers any guarantees in the legal sense. This shall not affect any guarantees given by manufacturers.
9. If repairs are carried out during the warranty period, this shall generally not extend the warranty period.
10. A precondition for warranty claims shall be that the defective delivery items can be inspected or checked by us at the customer's or, in our discretion and at our request, sent to us or a repair shop designated by us, in proper and safe packaging, freight prepaid, and at the risk of the customer. Any replaced parts shall become our property.
11. We shall not be liable for any consequences resulting from manipulations or repairs of the goods that are carried out by customers or third parties, for example.
12. Warranty claims must not be assigned to third parties.

§ 8 Liability

1. In the event of violations of obligations that fall under ordinary negligence, our liability shall be limited to the average foreseeable direct damage with respect to such contracts and the type of the goods. The same applies to violations of obligations through our legal representatives or employees that fall under ordinary negligence. We shall not be liable towards our customers in the event of violations of minor obligations under the contract that fall under ordinary negligence.
2. The above disclaimers and limitations of liability shall not apply in cases of liability without fault, in particular under the Product Liability Act, or in the event of damage to body or health, or loss of life for which we are responsible.
3. Damage claims of customers based on defects shall become statute-barred after one year from the date of delivery of the goods from the warehouse. This shall not apply in the event that we can be blamed for malice.

§ 9 Repair service

1. Items that are handed in or sent to us for repair after the warranty period must be packed in their original packaging or otherwise packed properly and safe for transport. If repairs are not carried out, we will bill the expense for the cost estimate that was prepared at the customer's request to the customer. Within the framework of our repair services, the warranty period for all works carried out by us shall be 6 months. Defects due to operational wear and tear shall be excluded.

§ 10 Final provisions

1. These GTC shall be governed by the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. Should one of the provisions of these GTC be or become ineffective, in full or in part, the validity of the remaining provisions shall not be affected. The partly or entirely invalid provisions shall be replaced with provisions that come as close as possible to the economic intent of the invalid provisions.
3. If the customer is a businessperson, a corporate body under public law or a special fund under public law, the place of jurisdiction for all disputes under this contract shall be the place of business of ZIEGENER + FRICK GmbH, Ellhofen, provided that we shall also be entitled to file action at the place of customer's registered office or location of their subsidiary. The same applies if customers do not have their general place of jurisdiction within Germany or if a customer's registered or usual place of residence is unknown at the time when an action is filed.
4. Arbitration proceedings shall be excluded with respect to the contract or the GTC. The only valid procedure is the recourse to the courts.
5. Insofar as we are obligated to take back sales or transport packaging materials under the packaging regulations, the customer shall return these packaging materials to our warehouse—free of charge, cleaned, free from foreign materials, and separated by types of materials.
6. Customers agree that we will use the data provided by them to us within the framework of our business relations, for our own business purposes within the meaning of the data privacy laws.
7. Changes or amendments to these GTC require the written form. This requirement of written form can also only be changed or amended in the written form.