

**Terms of Sales, Delivery, Work Product Delivery and Payment of company TZT Wilbring GmbH, Ahaus-Ottenstein**

**§ 1 General**

1. These terms and conditions (GTC) apply to the provision of goods and services - including information and advice - by company TZT Wilbring GmbH (seller) to entrepreneurs in the meaning of § 14 BGB, that is, natural or legal persons who purchase the goods or performance for commercial or professional use, as well as to legal persons of public law or special funds under public law (buyers).
2. These terms and conditions apply exclusively; any conflicting or deviating terms and conditions of the buyer are not recognized by the seller, unless he has expressly agreed to their validity. These terms and conditions also apply if the seller carries out the deliveries and services without reservation while being aware of conditions of the buyer that conflict with or deviate from these terms and conditions.
3. As far as textual form is mentioned below, both the written form and the form described in §126b BGB are permissible, in particular also fax or e-mail.
4. Verbal promises by representatives or other auxiliary persons of the salesman require the confirmation by the salesman in text form.
5. Legally relevant declarations and advertisements that the buyer has to submit to the seller or a third party must be in writing.

**§ 2 Offers, Services, Prices, Delivery Times**

1. The offers of the seller are non-binding.
2. The seller only agrees to an obligation to advice by virtue of separate consulting contract in text form.
3. Statements made by the Seller regarding the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and illustrations thereof (e.g. drawings and illustrations) are only approximate and to be understood as average values unless the usability for the contractually intended purpose requires exact conformity.
4. The properties of samples or samples are only part of the contract if expressly agreed in writing.
5. No further guarantees exist except those explicitly accepted by the seller in writing. In particular, descriptions of the subject matter or the scope of supply and services, specifications and technical data are not to be understood as a guarantee of quality. A guarantee is considered as accepted by the seller only if he has, in text form, at least referred to a property and / or a performance as "legally guaranteed".
6. The Buyer can only make qualitative claims on the ordered goods in the amount that can be reasonably or commercially offered for goods in the price range of the ordered goods.
7. Customary deviations and variations due to legal regulations or which represent technical improvements, as well as the replacement of components by equivalent parts are permissible for the delivered goods; they are not grounds for complaints and claims against the seller if they do not adversely affect the usability for the contractually foreseen purpose and any agreed specifications are complied with. The above also applies to sales based on a commercial sample.
8. If a significant change in certain cost factors - wages, material, packaging material or freight - occurs between the conclusion of the transaction and delivery, if at least four months have elapsed, the agreed price may be reasonably adjusted according to the influence of the relevant cost factors, by a maximum of 10% . The buyer has the right to withdraw from the contract, as far as the seller holds on a price increase request despite announcement of the buyer's intention to withdraw.
9. Delivery periods are subject to correct and timely self-delivery; if a specific delivery date or a specific delivery period has been agreed and confirmed in writing by the seller, the due date of the delivery claim or the beginning of the delivery period presupposes the technical clarification of the respective order. The delivery period is deemed to have been met if the goods have left the factory / warehouse at the agreed time or if the buyer has informed the buyer that he is unable to dispatch the shipment. For delays in delivery, a reasonable grace period must be set, which must be at least one quarter of the agreed delivery period, however, at a minimum 6 working days.
10. Packaging costs are born by the buyer.

### **§ 3 Delivery, Delay, Withdrawal**

1. For deliveries of the seller, his place of loading is the place of performance; on delivery the buyer bears the risk. If the instruction is changed, the buyer bears the costs.
2. Insurances are only concluded upon written request by and at the expense of the buyer.
3. Delivery free destination means: delivery without unloading. The unloading must be carried out immediately and properly by the buyer.
4. The seller is entitled to make partial deliveries if
  - the partial delivery is usable for the buyer within the scope of the contractual purpose,
  - the delivery of the remaining ordered goods is ensured and
  - the buyer thereby does not encounter significant additional effort or any additional costs (unless the buyer agrees to cover these costs).
5. If the buyer is not covered by a commercial credit insurance, then the seller is only obliged to start the production if equivalent security has been provided; accordingly, all agreed deadlines will be postponed.
6. Penalties will only be recognized if such have been negotiated individually with the seller. The seller does not recognize the exclusion of § 341 sentence 3 BGB.
7. If the seller defaults, his liability for the replacement of the delay damage in case of ordinary negligence is limited to 5% of the contract price. Further claims of the buyer remain unaffected.
8. Insofar as the goods to be delivered are only determined according to class characteristics, the seller shall only be liable for compensation for damage if does not prove that he is not responsible for the non-performance, the delay in delivery or the poor performance. In addition, the regulations of § 6 of the GTC apply.
9. The buyer can only withdraw from the contract within the scope of the legal provisions if the seller is responsible for the breach of duty.

### **§ 4 Payment**

1. For cash sales, the purchase price is payable immediately upon receipt of the goods without deduction.
2. Sales of deferred items require a separate written agreement.
3. In the case of a cash discount agreement, the discount deduction is only permissible if the buyer otherwise has no more than 30 days due invoices to settle with the seller; discountable are only the value of goods without freight. Unloading or assembly costs, services are not discountable; if partial deliveries and partial payments have been agreed, the deduction of the discount deduction shall also cease with regard to the partial delivery if the last partial delivery is not paid within the agreed discount period.
4. Payments are only considered to be made in a timely manner if they have been unconditionally entered into the account of the Seller within the deadline.
5. Offsetting rights are only granted to the customer if his counterclaims are legally established, undisputed or recognized by us.
6. A right of retention of the buyer is excluded, unless the counterclaim of the buyer comes from the same contractual relationship and is undisputed or legally determined.
7. If the buyer defaults on the payment of a due claim, all other claims which the seller has against the buyer from other legal relationships and which have already arisen are also due immediately; in this case, the payment terms, deferrals or similar payment aids granted by the seller expire as well. In addition, the seller in this case is entitled to withhold services that he still has to provide.
8. If, after the conclusion of the contract, it becomes apparent that the claim to the purchase price is jeopardized by the purchaser's inability to perform (e.g. by filing for insolvency proceedings), the vendor is authorized to withdraw from the contract in accordance with the statutory provisions and, if applicable, by setting a deadline to withdraw from the contract (§ 321 BGB). In the case of contracts for the production of unacceptable items (single-item productions), the seller can declare his withdrawal immediately; the statutory provisions on the dispensability of the deadline remain unaffected.

### **§ 5 Transfer of Risk, Warranty**

1. The risk passes to the buyer as soon as the goods have left the seller's factory. If the goods are ready for dispatch and the shipment is delayed or if the consignment or acceptance is omitted for reasons for which the purchaser is responsible, the risk shall pass to the purchaser upon receipt of the notification of readiness for shipment from the purchaser.
2. Claims of the buyer on grounds of material defects are excluded for the consequences of incorrect use (especially in the case of non-state-of-the-art installation or assembly contrary to the installation instructions) or natural wear of the goods, excessive use or inappropriate equipment

and the consequences of physical, chemical or electrical influences that do not correspond to the intended, average standard influences.

3. The buyer, as far as he is a merchant, shall observe the obligations of § 377 HGB. Defects identifiable upon delivery shall immediately be reported to the transport company and the recording of defects by the latter shall be initiated. Notification of defects must contain a description of the defect which is to be detailed as much as possible. A late complaint shall exclude any claim by the buyer.
4. Upon commencement of treatment, processing, combining or mixing with other items, the delivered goods shall be deemed to have been approved by the Purchaser in accordance with the contract. The same applies in the case of reshipment from the original destination.
5. Claims of the buyer for compensation of the expenses incurred for the purpose of rectification, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the goods shipped by the seller are subsequently delivered to location other than the site of the buyer, unless the delivery corresponds to its intended use.
6. The limitation period for claims for defects is 12 months, calculated from the day of the transfer of risk (see § 5 No. 1 of the GTC), in the case of buyer's refusal to receive or refusal of acceptance from the time of the readiness for transfer of goods. This does not apply to construction contracts, to items that have been used for a building according to their usual use and have caused its defectiveness, claims for injury to life, body and health, at least grossly negligent breaches of duty by the seller or one of his legal representatives or vicarious agents as well as for claims for damages under a warranty. Also unaffected are statutory special provisions for material claims of surrender by third parties, in case of malice of the seller and for claims in the supplier recourse in case of final delivery to a consumer.

#### **§ 6 Liability for Damages**

1. The seller is liable for damages - for whatever legal reason - without restriction
  - a) in case of intent,
  - b) in case of culpable injury to life, body or health,
  - c) in case of default, as far as a fixed delivery and / or fixed service date was agreed,
  - d) in the case of defects which he has fraudulently concealed or whose absence he has guaranteed,
  - e) in case of defects of the delivery item, insofar as the seller is liable according to the Product Liability Act for personal injury or property damage to privately used objects.
2. In case of culpable breach of essential contractual obligations, the seller is also liable, in the case of simple negligence limited to the damage that the seller had foreseen at the conclusion of the contract as a possible consequence of a breach of contract or which he should have foreseen in observance of customary care and which are typically expected in case of proper use of the delivery item. Significant contractual obligations are such obligations that protect contract-relevant legal positions of the purchaser, which the contract has virtually granted to him according to its content and purpose, and such obligations whose fulfilment enables the proper execution of the contract in the first place and on whose observance the purchaser has regularly relied and may trust.
3. The seller is also liable for damages caused by gross negligence. If, however, other than essential contractual obligations have been violated and other legal interests than life, body or health are affected, his liability in the case of gross negligence is also limited to the damages which he foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which he should have foreseen while observing customary care and which can typically be expected if the goods are used as intended.
4. The exclusions and limitations of liability stated in paragraphs 1 to 4 also apply to corresponding breaches of duty by the vicarious agents of the seller.
5. Insofar as the liability for damages against the seller is excluded or limited, this also applies with regard to the personal liability for damages of its organs, legal representatives, employees and other vicarious agents.

#### **§ 7 Retention of Title, Assignments**

1. The delivered goods remain the property of the seller until payment of the purchase price and repayment of all claims arising from the business relationship and the claims still arising in connection with the object of purchase as reserved goods. The entering of individual claims in a current invoice or the balance and their recognition do not cancel the reservation of title. If in connection with the payment of the purchase price by the Buyer a bill of exchange liability of the Seller is established, then the retention of title does not expire before redemption of the bill of exchange lia-

bility by the Buyer as a drawee. In the event of default of payment by the buyer, the seller is entitled to take back the reserved goods after withdrawal from the contract and the buyer is obliged to surrender them.

2. If the reserved goods are processed by the buyer into a new movable item, the processing is carried out for the seller, without responsibilities arising for the seller in the process. The new item becomes the property of the seller. When processing together with goods not belonging to the seller, the seller acquires co-ownership of the new object according to the ratio of the value of the reserved goods to the other goods at the time of processing. If reserved goods are combined, mixed or blended with goods not belonging to the seller according to §§ 947, 948 BGB, the seller becomes a co-owner in accordance with the statutory provisions. If the buyer acquires a property by combining, mixing or blending, he already today transfers co-ownership to the seller according to the ratio of the value of the reserved goods to the goods at the time of combining, mixing or blending. In these cases, the buyer shall store the property owned or co-owned by the seller free of charge, which also counts as reserved goods within the meaning of the following provision.
3. If the reserved goods are sold by the buyer, alone or together with goods not belonging to the Seller, the Buyer hereby assigns the claims arising from the resale in the amount of the value of the reserved goods with all ancillary rights and rank before the rest; the seller accepts the assignment. The value of the reserved goods is the invoice amount of the seller plus a safety surcharge in the amount of 10%; however, this does not apply if it clashes with rights of a third party. If the resold reserved goods are co-owned by the seller, the assignment of the claim extends to the amount corresponding to the share value of the seller in the co-ownership. Paragraph 1 sentence 2 shall apply mutatis mutandis to the extended retention of title; the advance assignment pursuant to Paragraph 3 sentences 1 and 3 extends to the balance claim.
4. The purchaser is entitled and authorized to resell, use or install the reserved goods only in the normal, orderly course of business and only with the proviso that the claims referred to in paragraph 3 are actually transferred to the seller. The buyer is not entitled to other dispositions of the reserved goods, in particular pledging or transfer by way of security. He is obliged to secure the rights of the seller on resale of the reserved goods in the amount of the purchase price claim on credit.
5. The seller authorizes the buyer, subject to revocation, to collect the claims assigned in accordance with paragraphs 3 and 4. The seller will not make use of his own collection authority as long as the buyer meets his payment obligations, even to third parties. At the demand of the seller, the buyer must name the debtors of the assigned claims and notify them of the assignment; the seller is authorized to inform the debtors of the assignment himself.
6. The buyer must immediately inform the seller of any foreclosure measures by third parties regarding the reserved goods or the assigned claims by handing over the documents necessary for the objection. This also applies to impairments of any kind.
7. With payment suspension, application for or opening of insolvency proceedings, an out-of-court settlement procedure, the right to resell, to use or to install the reserved goods and the authorization to collect the assigned claims expire; the direct debit authorization also expires in the event of a check or bill protest.
8. The securities pledged to the seller also extend to those liabilities that are unilaterally established in the event of insolvency by the insolvency administrator by way of a choice of fulfilment.

#### **§ 8 Applicable Law, Place of Fulfilment, Place of Jurisdiction**

1. The law of the Federal Republic of Germany shall apply, excluding the standards that refer to another legal system and the UN Sales Convention (CISG).
2. If the buyer is a merchant, the place of performance for all obligations arising from the contractual relationship is the head office of the seller.
3. For all disputes arising from the contractual relationship, the action shall be brought before the court having jurisdiction over the head office of the seller. The seller is also entitled to sue at the buyer's headquarters.

In case of discrepancies between the German original GTC and the English translation, the German version is binding.