

General Terms and Conditions

Zimmer GmbH / 77866 Rheinau, Germany
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Commercial register No. 371273, Amtsgericht (court of registration) Freiburg i.Br.;
Registered office: 77866 Rheinau
Zimmer GmbH is a company within the Zimmer Group

§ 1: Application Area, Validity of These Conditions, Written Form

1. These General Terms and Conditions of Zimmer GmbH (= also referred to hereinafter as “we” or “us”) shall apply only with respect to a natural person or legal entity or partnership authorized by law which, at the time the agreement is concluded with us, is exercising its commercial or independent professional activity (entrepreneur) as well as a legal entity under public law or a special-purpose entity under public law.
2. All deliveries, services and products from Zimmer GmbH are, insofar as the specific contracts listed in § 1 item 5 are not present, provided solely on the basis of these General Terms and Conditions. We hereby expressly reject any references or counter confirmations from the Ordering Party asserting its own terms and conditions of business or purchase. We do not acknowledge any such terms and conditions of business or purchase deviating from our General Terms and Conditions, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall apply even if we knowingly and without reservation fulfill conditions of the Ordering Party that deviate from our Terms and Conditions.
3. These General Terms and Conditions shall also apply for all future transactions with the Ordering Party even without subsequent express agreement.
4. All agreements made between us and the Ordering Party for the purpose of fulfilling the respective contract shall be set forth in writing upon conclusion of the contract.
5. In the event of contracts in the area of general systems business or contracts focusing on assembly, commissioning, repairs, maintenance or other services, the General Terms and Conditions for Deliveries in the area of general systems business and the General Terms and Conditions for Assembly, Commissioning, Repairs, Maintenance and Other Services shall take precedence over these General Terms and Conditions.

§ 2: Quotation and Conclusion of Contract

1. Unless otherwise agreed, a contract with us shall take effect upon receipt of our order confirmation by the Ordering Party, which may occur orally, by phone, in writing, by fax or by e-mail. At the latest, however, the contract shall take effect with our provision of the delivery item.
2. Our quotations are always subject to change and non-binding. Quotations and orders of the Ordering Party shall be binding for us only if we confirm them in the form listed above or they are fulfilled by provision of the delivery item. If an order must be qualified as a quotation of the Ordering Party in terms of § 145 of the German Civil Code (BGB), the Ordering Party shall be bound by the order for a period of two weeks. This period shall commence with the moment of receipt of the order by us. In this case, we shall be entitled to accept a quotation of this kind within this period by sending an order confirmation in the aforementioned sense or sending the delivery item.

§ 3: Properties of Delivery Items, Design Changes and Documentation Requirement

1. The characteristics of the objects we deliver that are listed in the catalogs, brochures, price lists or are otherwise accessible do not entail any specification of properties unless the specifications are expressly agreed upon between us and the Ordering Party. Zimmer is obligated to maintain adherence to voluntary standards outside the ISO 9001 certification if this is expressly agreed in writing. All documentation corresponds to the specifications of the respective applicable European statutory Machinery Directives insofar as these are

applicable. All products are supplied with original operating instructions in German and English. All other languages of the European Community are available for a fee. Source documents shall not be handed over for independent translations.

2. Specifications regarding the properties or service life of our delivery items do not constitute a guarantee in terms of § 276 (1) of the German Civil Code (BGB) or § 443 of the German Civil Code (BGB), and in particular are not a guarantee of quality or guarantee of durability, unless Zimmer GmbH expressly assumes such a guarantee in writing.
3. We reserve the right to make changes to the delivery item in design or form that are related to improvement in technology or required by law during the delivery period, so long as this does not substantially alter the delivery item and the changes are reasonable for the Ordering Party. However, we are not required to also make such changes to previously delivered products.

§ 4: Quotation Documents, Data and Information; Confidentiality

1. We retain all property rights and copyrights for all content provided to the Ordering Party, including documents, data carriers, figures, drawings, patterns, costings, cost estimates, documentation and other documents produced by us as well as similar information in a tangible or intangible form (even in electronic form). They must not be used for purposes other than those stipulated in the contract and must not be made accessible to third parties without our prior permission being granted in writing. This applies in particular to all documents, data, figures, drawings and other information that we have designated as confidential.
2. The Ordering Party shall bear sole responsibility for the correctness of the documents and data, figures, drawings, templates, documentation and other information that the Ordering Party has provided to us.
3. The Ordering Party shall be solely responsible for checking whether the documents, data, figures, drawings, templates, documentation and other information that the Ordering Party has provided to us infringe upon the rights of any third party, namely, industrial property rights and copyrights. Insofar as a third party resorts to litigation against Zimmer GmbH due to the application, use or reproduction of the documents, data or other information that the Ordering Party has made provided to us as described above due to the infringement upon copyrights or industrial property rights or due to the infringement upon the German Act against Unfair Competition, the Ordering Party shall be obligated to support us in defending against such a claim. Furthermore, the Ordering Party must fully compensate Zimmer GmbH for all damage incurred by this. Such damage also includes the attorneys' fees and costs of litigation.

§ 5: Prices; Price Changes and Adjustments

1. Insofar as no other agreement has been made, our prices apply "ex works" and include no costs for transport, packaging, postage, insurance, statutory taxes, customs or other fees. We shall invoice the Ordering Party for the additional costs for packaging and transport as well as for postage and – to the extent agreed upon – for insurance at the cost price. This also applies to any agreed-upon partial deliveries and express deliveries. If any installation or assembly work is required, this shall also be invoiced separately. The statutory value-added tax incurred at the amount legally applicable on the day of delivery/invoicing shall be added to this.
2. The Ordering Party shall bear the costs for any duties and customs clearance charges incurred for shipments abroad.
3. The prices specified in our catalogs and other sales documents apply to the time of the respective publication of the sales documents. The condition is similar for prices on our websites. In the case of these, the prices refer to the time at which we posted them on the Internet. Unless expressly included in the content of the contract, they shall be non-binding. For this reason, we reserve the right to make price changes between publication of sales documents or information on the Internet and the conclusion of the contract.
4. The prices specified in our quotation or at the conclusion of the contract are based on our costing at the time of submitting the quotation or concluding the contract. We reserve the right – even after concluding the contract – to change prices if more than four months lie

between the conclusion of the contract and an agreed-upon delivery date. If a substantial change to our costing arises in such a period due to increased costs, for example, due to increased costs for materials or energy, value-added tax or wages of our employees and the resulting price increase of at least 10% for delivery items, we retain the right to increase our prices within the scope of the altered circumstances and without adding any additional profit. This shall not apply if we are in default with our delivery. We shall be obligated to proceed in the same manner and to the same extent – for an agreed-upon delivery date of more than four months – in the event of decreased costs. Upon request of the Ordering Party, we shall verify both increases and decreases in costs for the Ordering Party as soon as and to the extent they are incurred.

5. The minimum order value is 25.00 euros.

§ 6: Notice of the Value-added Tax ID Number by the Ordering Party for Shipments into EU Countries Outside of Germany

In the case of shipments to other countries of the European Union, the Ordering Party shall be obligated to share with us its value-added tax identification number when placing an order. If the Ordering Party still has not provided us with a valid value-added tax identification number by the time of invoicing, the statutory value-added tax shall be invoiced.

§ 7: Terms of Payment; Default, Inability to Pay, Indications of Financial Collapse of the Ordering Party

1. Unless otherwise agreed, our invoices shall be due within 14 days from the invoice date and payable in full within this period. Payment is to be made to our paying office. The Ordering Party is responsible for ensuring delivery of payment.
2. Deduction of a cash discount is permitted only with a special agreement with us in writing.
3. Payment shall not be regarded as having been made until the funds are available for our use. We shall accept checks only with an express agreement and always only on account of performance. In the case of checks, payment shall not be regarded as having been made until the check is redeemed. We shall not accept bills of exchange.
4. Prerequisites and legal consequences of the Ordering Party defaulting in payment shall be governed by the applicable legal regulations. Once the Ordering Party has defaulted, we are particularly entitled to demand that, in accordance with § 288 (2) of the German Civil Code (BGB), the Ordering Party pay interest at the applicable statutory rate above the respective base interest rate in accordance with § 247 of the German Civil Code (BGB) on the outstanding invoiced amount. However, we expressly reserve the right to claim a higher amount for damages caused by default.
5. We reserve the right to deliver to new customers only after prepayment or for cash on delivery.
6. Insofar as the Ordering Party has defaulted on payment – also with respect to prior deliveries – or we become aware of circumstances that give us reason to doubt the Ordering Party's ability to pay or creditworthiness and through which our payment claims for the service we are due in return appear to be jeopardized, particularly if the Ordering Party ceases making payments or opens or applies for insolvency proceedings over its assets or a comparable proceeding for settlement of debts, we shall be entitled to demand immediate payment of all outstanding claims from all business relationships with the Ordering Party, even insofar as we have accepted checks. In these cases we shall also be entitled to demand prepayment or security deposits.
7. For outstanding claims against the Ordering Party from prior business relationships, we shall be entitled – despite different payment provisions of the Ordering Party – to credit payments first to the respectively oldest debt that is due. If costs and interest have already been incurred, we shall be entitled – despite different payment provisions of the Ordering Party – to credit the Ordering Party's payments first to the costs, then to the interest and finally to the main outstanding claim. In the aforementioned cases we shall notify the Ordering Party about the kind of crediting done.

§ 8: Offset; Rights of Retention; Assignations

1. The Ordering Party shall have offset rights only if its counterclaims are established in a legally binding manner, undisputed or recognized by us. Rights of retention shall be excluded insofar as they are not based on the same contractual relationship. Furthermore, the Ordering Party shall be entitled to exercise a right of retention only with respect to counterclaims that are established in a legally binding manner, uncontested or recognized by us, and that are based on the same contractual relationship.
2. Assignment of claims against our company shall be ruled out. This does not apply in the application area of § 354 a of the German Commercial Code (HGB).

§ 9: Delivery Time; Obligation of the Ordering Party to Compensate for Damages from Delivery Delays for Which the Ordering Party is Responsible; Partial Deliveries

1. The delivery time shall be determined by the agreements made between us and the Ordering Party. Our adherence to it presupposes timely and unambiguous clarification of all commercial and technical questions with the Ordering Party; it also presupposes that the Ordering Party has met all obligations incumbent upon it in a timely and proper manner. This includes, for example, producing the information and documents to be procured by the Ordering Party, namely, any required regulatory certificates or approvals, as well as rendering any agreed-upon prepayment or down payment. Other- wise, the delivery time will be appropriately extended, unless we are responsible for the delivery delay.
2. In the event of later modifications to the contract by the parties that can influence the delivery date, the delivery time will be appropriately extended, insofar as special agreements are not made.
3. The delivery time shall be deemed to have been met if, by the time it expires, the delivery item has left our plant or warehouse or the Ordering Party has been notified of our readiness to ship the de- livery item. Insofar as acceptance must take place – except in the case of an authorized refusal of acceptance – the acceptance date is authoritative; alternatively, notification of willingness to accept is authoritative. If delivery is made early, this early time shall be authoritative rather than the originally agreed-upon time.
4. If sending of the delivery item is delayed for a reason for which the Ordering Party is responsible, we are entitled to set an appropriate deadline for the Ordering Party and to withdraw from the contract after the period expires unsuccessfully and to demand compensation for damages due to non-fulfillment. In this case, we are entitled – notwithstanding the option of claiming higher damages – to demand 5% of the agreed-upon contract price for the costs that have arisen through processing the order and for lost profits. The Ordering Party reserves the right to prove that we have incurred no damages or less damages.
5. We are entitled to partial deliveries so long as the remaining delivery portions have been delivered within an agreed-upon delivery time and this is not unreasonable to the Ordering Party.

§ 10: Force Majeure; Self-supply

1. We shall not be responsible for delays in delivery and service – even in the case of binding deadlines that have been agreed upon – due to force majeure as well as extraordinary events we could neither foresee nor prevent despite our reasonable care in accordance with the circumstances of the event, and events that temporarily make it considerably difficult or even impossible for us to provide the delivery or service. Here we list the following as examples of these kinds of events: Significant interruptions of operations, measures taken as part of labor disputes, in particular strikes and lockouts, energy supply difficulties, shortage of raw materials or delay in the delivery of essential raw and building materials, intervention by authorities, in particular government or supranational export control provisions, delivery embargoes or other sanctions, mobilization, war, rebellion, etc. The above shall also apply if the aforementioned events occur for our suppliers or their subsuppliers. Hindrances such as the aforementioned shall entitle us to postpone the delivery or service for the duration of the hindrance plus an appropriate lead time. If the hindrance lasts longer than three months, we shall be entitled to withdraw from the contract entirely or in part due to the part that has not

been fulfilled. We may appeal to the aforementioned circumstances and legal consequences only if we notify the Ordering Party of them immediately after we ourselves learn of them.

2. If the hindrance in the cases specified under No. 1 lasts longer than three months, the Ordering Party is likewise entitled – after an appropriate deadline extension – to withdraw from the contract with respect to the part of the contract not yet fulfilled.
3. If, in the cases specified under No.1, the delivery time is extended or we are released – in whole or in part – from our contractual obligation to provide service in accordance with No. 1 and 2, the Ordering Party is not allowed to make any claims against us for damages.

§ 11: Shipping; Shipping and Transport Costs; Transfer of Risk; Insurance

1. Our delivery items are always shipped and transported uninsured and at the expense of the Ordering Party. Insofar as the Ordering Party does not desire any special shipping method, we will choose the one that appears to us to be least expensive.
2. The Ordering Party shall bear the risk of accidental loss or accidental deterioration of the delivery items as soon as we have handed them over to the person carrying out the transport, but no later than when the delivery items leave our factory or warehouse for the purpose of being shipped. This shall apply regardless of whether the shipment is made from the place of performance and of who bears the shipping/transport costs. The above shall also apply in the case that shipment takes place using our company-owned vehicles or our own personnel. The above shall also apply in the case of partial deliveries and if we have also taken over other services, e.g. the shipping/transport costs or the delivery and installation of the delivery items. Insofar as acceptance must take place, this is authoritative for the transfer of risk. It must be carried out by us immediately on the acceptance date or, alternatively, after the report of the willingness to accept. The Ordering Party may not refuse acceptance due to the presence of a non-significant defect. All material agreements concerning the payment of transport costs shall be deemed to be mere expense clauses that do not affect the passing of risk.
3. If the delivery item is ready for shipping or acceptance and notification of willingness to ship and/or accept is given to the Ordering Party and if shipment or acceptance is delayed for reasons for which we are not responsible, the risk of accidental loss or accidental deterioration of the delivery items is transferred to the Ordering Party upon being notified of the willingness to ship and/or accept.
4. At the wish of the Ordering Party, at the Ordering Party's own cost, we can insure the shipment against transport, fire and water damage as well as breakage, theft, pilferage and other insurable risks.

§ 12: Warranty

1. We shall be liable for defects of our delivery items (material and legal defects) without the possibility of further claims – but subject to the regulations under § 13 – as follows:
2. Customer rights arising from defects require that the customer properly comply with its obligation to examine and provide notification of defects owed according to § 377 of the German Commercial Code (HGB). Thus, our delivery items must be inspected for damage by the Ordering Party immediately upon receipt and, if reasonable, also by using or processing the samples. The Ordering Party must inform us immediately in writing about any visible defects, at the latest, two weeks after receiving the delivery items. Defects that cannot be discovered immediately, even after careful inspection, must be disclosed to us in writing immediately after their discovery. Our deliveries shall be considered approved if notice of defects is not given in a timely manner.
3. If a defect of our delivery items is present, we shall have the choice to rectify by either eliminating the defect or delivering a new item free of defects. If the claim proves to be justified, for the purpose of rectification, we shall bear all required expenses, in particular shipping, transport, transit, labor and material costs, so long as they do not increase due to the delivery items having been brought to a location other than the delivery address. The Ordering Party shall bear any additional costs or expenses resulting from bringing the delivery item to a location other than the delivery address. Replaced parts are property of Zimmer GmbH and must be returned to us.

4. The Ordering Party shall give us the necessary time and opportunity to carry out all measures we deem necessary for rectification as defined by No. 3; otherwise, we shall be released from liability for the consequences resulting therefrom. Only in urgent cases that endanger operational safety and for the purpose of defending against disproportionately large damages, the Ordering Party shall have the right to remove defects independently or have them removed by a third party and to demand from us reimbursement of the necessarily resulting expenses. In the last cases mentioned, the Ordering Party must notify us immediately.
5. If we allow an appropriate deadline for rectification set by the Ordering Party to pass without action, the Ordering Party shall have a right to, at its option, withdraw from the contract or demand a reduction (decrease) of the contractually agreed price. Furthermore, Ordering Party shall be entitled to withdraw from the contract or demand a decrease of the contractual price if rectification fails, is unreasonable for the Ordering Party or is delayed for an unreasonable length of time for a reason for which we are responsible. The same shall apply if we earnestly and finally refuse rectification or are incapable of rectification, as well as if special circumstances exist that justify immediate withdrawal considering the interests of both parties. However, in case of only minor infringement of the contract, particularly for only minor defects, the Ordering Party shall have only the right of decrease.
6. Further extensive claims of the Ordering Party shall be based exclusively on § 13 of these Terms and Conditions.
7. For remedial work and replacement shipments as defined by No. 3, we shall be liable to the same extent as for the original delivery item.
8. We shall not be liable
 - for damages caused by improper or unsuitable use of the delivery objects, particularly due to overuse or excessive strain, incorrect or negligent handling, improper maintenance, in- correct installation or commissioning of the objects of delivery by the Ordering Party or third parties, use of unsuitable operating materials, use of consumables that do not conform to the original specifications, faulty construction work, an unsuitable foundation, the effects of chemical, electrochemical or electrical factors – unless the circumstances of the aforementioned nature are our responsibility;
 - if statutory directives or directives issued by us with regard to installation, operation, maintenance and cleaning are not complied with by the Ordering Party or third parties, such as the Ordering Party's own end customers, unless the respective defect in question is not the result of such failure to comply;
 - for the consequences of improper remedial work by the Ordering Party or a third party commissioned by the Ordering Party or if the Ordering Party or a third party commissioned by the Ordering Party has made changes to the delivery objects or replaced parts without our consent - unless the respective defect in question is not the result thereof;
 - if the delivery item has been produced or modified based on specifications provided by the Ordering Party, particularly based on drawings it has provided and the defect in the delivery item is attributable to these specifications/drawings or for the solution to a design task specified by the Ordering Party which, at the time of its implementation, was the state of the art;
 - for natural wear and tear of the delivery items;
 - for whether the delivery items comply with standards or regulations of other countries, unless we provided specific assurance of such.
9. If the Ordering Party has made a claim against us in relation to alleged defect rights and it transpires that either there is no defect or the claimed defect is due to circumstances for which we are not liable, particularly if one of the cases listed above under No. 8 applies, the Ordering Party shall be obligated to reimburse us for all costs incurred in conjunction with examining the defect claim and/or rectification, unless we invoke this without justification and the Ordering Party is not responsible for this.

§ 13: Other Liability of Zimmer GmbH; Exclusions / Disclaimers of Liability

Zimmer GmbH shall be liable for damages – regardless of the legal reason – only in accordance with the following standards:

1. We shall be liable in accordance with statutory regulations to the extent that the Ordering Party asserts claims for damages based on intentional action or gross negligence. If we are not being accused of intentional breach of contract, however, our liability for damages shall be limited to those damages typically expected as part of the contract.
2. In the event of a breach of major contractual obligations (= obligations that must be fulfilled for the contract to be fulfilled properly in the first place and that the contractual partner regularly expects and may expect to be fulfilled), we shall already be liable in case of simple negligence. In case of a breach of these obligations or default or if fulfillment is impossible, however, our liability for damages shall be limited to those damages typically expected as part of the contract.
3. The abovementioned limitations and exclusions of liability shall not apply to claims arising from culpable injury to life, body or health or in case of damages due to malicious actions on our part, in the case of our mandatory legal liability in accordance with product liability law and for damages that fall within the protection area of a warranty we have issued or to the extent we have assumed a procurement risk.
4. Any negligence on the part of our legal representatives or vicarious agents is to be attributed to us.
5. Unless other provisions are made in the preceding sections, any claims for compensation for damages is excluded, regardless of the legal nature of the asserted claim.
6. Insofar as Zimmer GmbH is excluded from liability, the same exclusion shall apply to the personal liability of its staff, employees, colleagues, legal representatives and agents.
7. The statutory provisions for burden of proof are not affected by the above provisions.

§ 14: Statute of Limitation

1. Unless other provisions are made below, the statute of limitations period for claims of the Ordering Party arising from material and legal defects shall be one year. The statute of limitations period begins with delivery of the delivery items. This period also applies to contractual and non-contractual claims for compensation for damages based on a defect.
2. The statutory limitation periods apply
 - to defects of a structure and defects of delivery items that were used for a structure according to their usual type of use and have caused its defectiveness;
 - for claims arising from impermissible actions based on a defect of the delivery items;
 - insofar as we are liable for damages arising from injuries to life, body or health;
 - insofar as we are liable for damages due to intentional actions or gross negligence;
 - insofar as our liability is based on the fact that we have assumed a warranty for the quality of the delivery items or the procurement risk
 - or we are liable due to malicious action;
 - for our legal liability in accordance with the German Law on Product Liability;
 - for claims in rem of third parties (§ 438 (1) No.1 of the German Civil Code (BGB));
 - for claims in delivery recourse (§§ 478, 479 of the German Civil Code (BGB)).
3. Any statement made by Zimmer GmbH concerning a defect claim asserted by the Ordering Party shall not be construed as entering into negotiations about the claim or the circumstances on which the claim is based insofar as we refute the entire scope of the defect claim.

§ 15: Retention of Title

1. The objects we deliver (hereinafter referred to as “goods subject to retention of title”) shall remain property of Zimmer GmbH until such time as all our claims arising from the business relationship with the Ordering Party have been paid in full.
2. The inclusion of individual claims in an open account and the establishment and recognition of balances shall not affect this reservation of title.
3. Payment shall be deemed to have been made only when we receive the equivalent value.

4. The Ordering Party is obligated to handle the goods subject to retention of title with care for as long as title is retained. Insofar as maintenance and inspection work is required, the Ordering Party must carry these out in a timely manner and at its own expense.
5. The Ordering Party is obligated to adequately insure, at its expense, the goods subject to retention of title against damage by fire, water, breakage and theft. The Ordering Party immediately assigns its claims to compensation for damages to which it is entitled from the insurance company based on a corresponding insurance policy to Zimmer GmbH. If the assignment is not permissible, the Ordering Party shall hereby instruct the insurance company to make any and all payments to Zimmer GmbH only. This is without prejudice to any other claims of Zimmer GmbH. Upon our request, the Ordering Party must provide us with proof of having taken out the insurance policies mentioned above. We shall be entitled to ourselves insure, at the Ordering Party's expense, the goods subject to retention of title against damage by fire, water, breakage and theft (including break-ins and armed robbery) insofar as the Ordering Party does not provide proof of a corresponding insurance policy upon being prompted to do so.
6. Ordering Party shall be entitled to sell the goods subject to retention of title as part of the normal course of business. However, pledging the goods as collateral, assigning or ceding them as security shall not be permitted without our consent.
7. The Ordering Party is obligated to secure the rights of Zimmer GmbH when reselling the goods subject to retention of title on credit.
8. The Ordering Party shall now and hereby cede to us all claims resulting from the resale of the goods subject to retention of title to its own end customers or third parties in the sum of the final invoice amount (including sales tax), regardless of whether the delivery items or goods subject to retention of title are sold with or without further processing. In the event that the Ordering Party and its end customers have a current account relationship, the advance assignment of accounts receivable shall also refer to the acknowledged balance and, in the event of the bankruptcy of the end customer, to the "causal" balance that then exists. Zimmer GmbH hereby accepts this cession. If the assignment is not permissible, the Ordering Party shall hereby instruct its own end customers to make any and all payments to Zimmer GmbH only. The Ordering Party is granted a revocable power of attorney to collect the receivables assigned to Zimmer GmbH in its own name as a fiduciary acting on our behalf. The collected amounts shall be remitted to us immediately. Our authority to demand payment for the receivables ourselves shall remain unaffected by this; however, we pledge to the Ordering Party not to demand payment for the receivables as long as the Ordering Party duly fulfills its payment obligations, does not default in payments, does not open or apply for insolvency proceedings over its assets or a comparable proceeding for settlement of debts and we do not become aware of circumstances that give us reason to doubt the Ordering Party's ability to pay or creditworthiness and through which our payment claims for the service we are due in return appear to be jeopardized.
9. The Ordering Party shall undertake any modification or processing of the goods subject to retention of title on our behalf without any obligation arising on our part from this. If the goods subject to retention of title are processed, mixed or combined with goods that do not belong to us, we shall be granted co-ownership in the newly created products in the ratio of the invoiced value of the processed goods (final invoice value including sales tax) proportional to the invoice value of the processed, mixed or combined goods at the time of the processing, mixture or combination. If the buyer acquires sole ownership of the new product, the parties to the contract are in agreement hereby that the buyer grants us co-ownership of the new product in a proportion of the value of our processed, combined, or intermixed goods subject to retention of title (final net invoiced amount including value-added tax) to the other processed, combined or intermixed objects and shall store the product for us without charge.
10. If the goods subject to retention of title are resold along with other items, regardless of whether they are resold without or after processing, mixture or combination, then the assignment in advance agreed upon above is valid only for the amount of the invoice value of our goods subject to retention of title (final net invoiced amount including value-added tax) that are resold together with the other items.
11. To secure our receivables as expressed above, the Ordering Party shall also assign to us receivables that accrue to the Ordering Party from a third party due to the combination of the goods subject to retention of title with a property.
12. In the case of a blanket assignment by the Ordering Party, the claims assigned to us as

- defined by No.8 - 11 are to be expressly removed.
13. If the Ordering Party violates the contract, particularly by delaying or ceasing payments, refusing to pay checks, applying for insolvency proceedings over its assets or for a comparable proceeding for settlement of debts, the authorization of the Ordering Party to dispose of goods subject to retention of title and to collect assigned claims shall lapse. The same shall apply if we become aware of other circumstances that give us reason to doubt the Ordering Party's ability to pay and through which our payment claims for the service we are due in return appear to be jeopardized.
 14. In the cases specified under No. 13, after having given a reminder and simultaneously set an appropriate extended deadline for payment of the contract price, we shall be authorized to repossess the goods subject to retention of title after the extended deadline has passed without action. However, if the Ordering Party has applied for insolvency proceedings over its assets, we are also authorized to withdraw from the contract immediately and to demand the immediate return of the goods subject to retention of title. In the event that we demand a return, the Ordering Party shall be obligated to give us the goods subject to retention of title without delay. Our acceptance of the returned goods subject to retention of title constitutes a withdrawal from the contract. After taking possession of the goods subject to retention of title, we shall be entitled to make use of them. The proceeds from such usage shall, minus reasonable usage costs, be credited to the Ordering Party's obligations.
 15. In the cases specified under No. 13, we have the right to demand that the Ordering Party notify us of the assigned claims and their debtors. Upon our request, the Ordering Party must provide us with the information required for collecting the assigned claims, submit the associated documents to us and inform the (third-party) debtors of the assignment. In this case, the Ordering Party is particularly obligated to provide us with the names and addresses of the (third-party) debtors as well as the amount of the claims along with the date of the invoicing. Furthermore, we shall also be entitled to notify the (third-party) debtors of the assignment ourselves.
 16. Upon request of the Ordering Party, we shall undertake to release the securities to which we are entitled in accordance with the aforementioned provisions, insofar as the realizable value of the securities exceeds our receivables to be secured from the business relationship with the Ordering Party by 10% or more, insofar as these have not yet been paid. We reserve the right to choose which securities to release.
 17. For deliveries to locations governed by different legislation, where this provision concerning retention of title does not provide the same security as in the Federal Republic of Germany, the Ordering Party shall hereby grant us a corresponding security interest. Insofar as further measures are required for this, the Ordering Party shall undertake all necessary measures to grant Zimmer GmbH such a security interest without delay. The Ordering Party will participate in all measures that are required and conducive to the effectiveness and enforceability of such security interests.

§ 16: Software Use

In as far as software is included in the scope of delivery, the Ordering Party is granted a non-exclusive right to use this software including its documentation. The software is transferred exclusively for use on the delivery item intended for this. This right is non-transferable. The Ordering Party is not permitted to grant use rights to third parties. Any use of the software on more than one system is prohibited. The Ordering Party may reproduce, revise, translate or convert the object code into the source code only to the extent legally authorized (§§ 69 a ff. German Copyright Act (UrhG)). The Ordering Party undertakes not to remove existing manufacturer information, particularly copyright or registration marks, such as registration numbers in the software, or to modify it without our express, prior approval. The other rights to the software and the documentation, including copies, remain vested in Zimmer GmbH as seller or in the software provider.

§ 17: Data Protection; Declarations of Consent of the Ordering Party

1. Note in accordance with § 33 German Data Security Law (BDSG):

The data required for order fulfillment, in particular the name and address or business location of the Ordering Party, will be stored by us electronically and likewise be used and processed by our company for handling the orders, particularly for communicating with the Ordering Party or processing corresponding inquiries of the Ordering Party, as well as further advertising purposes (mailings, sending brochures, etc.). Furthermore, the contract data will be used to initiate a credit check, if necessary, from a business credit reporting agency. We shall store and process the Ordering Party's data under strict observation of the German Data Protection Act.

2. Declarations of consent of the Ordering Party:

The Ordering Party declares its consent to the storage of its data specified under No. 1 by making an inquiry to us, but no later than when a contract is established. Furthermore, the Ordering Party declares its agreement that, if it violates the contract, we are allowed to forward this data to companies and persons whom we entrust with enforcing our own claims and rights. Furthermore, the Ordering Party declares its agreement that, insofar as a mailed item was unable to be delivered to the previously known address, the postal service company we use may provide us with the Ordering Party's applicable address (§ 5 German Postal Service Data Protection Ordinance). The Ordering Party has the option of revoking its consent to the aforementioned storage, use and processing of its data at any time. It can demand in writing at any time that its data be deleted. The Ordering Party has the right to demand information at any time about stored data concerning it, the origin and recipient of the data, the use of the data and the purpose in this regard.

§ 18: Applicable Law; Language of the Contract; Place of Jurisdiction; Place of Fulfillment

1. These General Terms and Conditions as well as all the legal relationships between the Ordering Party and Zimmer GmbH resulting from this contract are subject exclusively to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
2. The language of the contract is German.
3. The place of fulfillment of all mutual obligations arising from the contractual relationship shall be the official location of business of Zimmer GmbH in 77866 Rheinau, Germany.
4. The place of jurisdiction for both contract parties for all legal disputes arising from the contractual relationship and concerning its origin and efficacy shall be the competent court for the registered office of Zimmer GmbH. However, we reserve the right also to choose to file an action at the registered office of the Ordering Party or at any other permitted competent court.

§ 19: Partial Nullity

If a provision in these General Terms and Conditions or a provision in other agreements between us and the Ordering Party shall at any time be deemed either entirely or partially invalid or unfeasible, or if these General Terms and Conditions should contain any gap, the validity of all other provisions and/or agreements shall not be affected. The effective or feasible provision most closely approaching the purpose of the ineffective or unfeasible provision shall apply in its place as agreed upon. In the case of a gap, the provision corresponding to what would have been agreed upon in accordance with the purpose of these General Terms and Conditions, insofar as the parties to the contract would have taken the matter in question into account from the outset, shall apply.