

§ 1 Area of Validity, Form

1. These General Terms and Conditions of Purchase (GTCP) shall apply to all business transactions with our business partners and suppliers ("Seller"). The GTCP shall only apply if the Seller's business is a legal entity under public law or represents special funds under public law.
2. The GTCP shall apply, in particular, to contacts related to the purchase and/or delivery of movable items ("goods") regardless of whether the Seller manufactures the goods itself or purchases them from suppliers (§§ 433, 650 German Civil Code). Unless otherwise agreed, the GTCP shall also apply at the time of the buyer's order in their respective valid version and/or, at least, in the last version sent to the buyer in text form as a framework agreement even for similar future contracts without us having to refer to these again in each individual case.
3. These GTCP shall apply exclusively. Deviating, contrary or supplementary General Terms and Conditions of Business of the Seller shall only become part of the contract if and insofar as we have explicitly agreed to their validity in writing. This approval requirement shall apply in any case, for example, even if we accept the Seller's deliveries without reservation with the knowledge of the Seller's General Terms and Conditions of Business.
4. Individual agreements made with the Seller in an individual case (including collateral agreements, supplements and amendments) shall have precedence over these GCTP in all cases. Subject to proof of the contrary, a written contract and/or our written confirmation shall be decisive for the contents of such agreements.
5. Legally relevant declarations and notifications from the Seller with regard to the contract (e.g. setting deadlines, reminders, withdrawal) shall be in written or text form (e.g. letter, e-mail, fax).
6. References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these GTCP.

§ 2 Conclusion of Contract

1. Our order shall be deemed binding at the earliest with a written declaration or confirmation. The Seller shall point out any obvious mistakes (e.g. misspellings and calculation errors) and incompleteness of the order to us for the purpose of correction and/or completion; otherwise, the contract shall be regarded as not concluded, see § 154 German Civil Code.
2. The Seller is obliged to confirm our order in writing within a deadline of 2 weeks. A late acceptance shall be deemed a new offer and this offer shall require our acceptance.

§ 3 Prices and Terms of Payment

1. The price in € specified in the order shall be binding. Specified prices are net prices without any possible value added tax. Cost estimates shall be binding and shall not be subject to compensation unless otherwise agreed in writing.
2. Price changes that are caused by changes to contractual products or by changes to the requirements of the contractual product shall be negotiated and specified after a joint cost analysis.
3. Unless otherwise agreed in a particular case, the price shall include all services and ancillary services of the Seller (e.g. set-up, assembly, installation, delivery DDP Rheinau as per Incoterms to the specified delivery address) as well as all ancillary costs (e.g. proper

- packaging, transport costs including possible transport and liability insurance, travel costs, provision of tools and per diem rates).
4. The agreed price is due and payable within 30 calendar days from the completed delivery and service (including potentially agreed acceptance) as well as a receipt of a proper invoice (order and article number(s), article designation(s), etc.). If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. The invoice may not be included with the shipments. For a bank transfer, the payment is considered on time when our remittance order is submitted to our bank before the end of the payment deadline. We are not responsible for payment delays from the participating banks in payment processing.
 5. We shall not be liable for any default interest. The statutory provisions shall apply to the payment delay.
 6. We are entitled to the rights of offset and retention as well as to the right to object to the unfulfilled contract to the extent allowed under the law. In particular, we shall be entitled to withhold due payments as long as we still hold claims arising from incomplete or faulty services with regard to the Seller.
 7. The Seller shall only have a right of offset or retention in the event of res judicata or undisputed counterclaims.

§ 4 Delivery Time and Delivery Default

1. The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and unless otherwise agreed, then it is 4 weeks from the conclusion of the contract. The Seller is obligated to inform us immediately in writing when the agreed delivery times – for whatever reasons – will likely not be met.
2. In the event that the Seller shall not provide his service or not provide his service within the agreed delivery time or is in default, then our rights shall be determined according to the legal regulations – in particular regarding withdrawal and compensation for damages. The provisions in Section 3 remain unaffected. The unconditional acceptance of the delayed delivery or service does not imply a waiver of any compensation claims due to us because of the delay.
3. In the event that the Seller is in default, we can demand – in addition to further statutory claims – a lump-sum compensation of our default damage in the amount of 0.25% of the total net price per calendar day, but no more than 5% of the net price of the goods delivered behind schedule. We reserve the right to prove that higher damage was caused. The Seller reserves the right to prove that we have incurred absolutely no damages or significantly less damages.

§ 5 Scope of Services, Changes to Deliveries, Transfer of Risk, Acceptance Delay, Inspection, Shipping

1. The Seller shall bear the procurement risk for his services unless otherwise agreed in individual cases.
2. The Seller shall guarantee within the scope of the technical specifications made available by us that all services and deliveries conform to the latest standards of technology, the relevant national and international statutory provisions and the regulations and directives of authorities, professional associations and specialist bodies. If deviation from said regulations is necessary in individual cases, the supplier must obtain our written consent to this. Liability for defects of quality shall not be restricted by consent of this nature.
3. The delivery within Germany shall take place "carriage paid" to the location specified in the order. If the point of destination is not specified and unless otherwise agreed, then the delivery shall be made to our registered office in Rheinau. The respective point of destination is also the place of fulfillment for the delivery and any rectification.
4. A delivery note indicating the date (issue and dispatch), contents of delivery (article number and quantity, weight, remaining quantities for partial deliveries) and our order identifier (date and number) as well as a consignment note shall be attached to the delivery in a clearly visible manner. If the delivery note or consignment note is missing or the respective accompanying documents are incomplete, we are not responsible for any resulting delays in processing and payment. A shipping notice must also be sent to us with the same content separately from the delivery note. We may refuse acceptance of goods without proper accompanying documents. If we accept these goods nevertheless, we reserve the right to invoice a lump sum for the resulting extra costs (e.g. increased processing or administrative costs).
5. The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of fulfillment. Insofar as acceptance is agreed, this is authoritative for the transfer of risk. As for the rest, the legal regulations of the law applicable to work and services shall also apply accordingly. Default of acceptance by us shall be equivalent to handover and/or acceptance.
6. The statutory provisions shall apply to the occurrence of our default of acceptance. The Seller must, however, expressly offer its performance even if a specific or definable calendar date has been agreed for an act or contribution on our part (e.g. provision of material). If we are in a default of acceptance, the Seller can demand compensation for its additional expenses according to the statutory provisions (§ 304 German Civil Code). If the contract concerns non-fungible goods (custom-made items) that are to be produced by the Seller, then the Seller shall only be entitled to further-reaching rights if we are obliged to provide assistance and are responsible for the failure to provide the assistance.
7. The scope of the contract and delivery shall be defined by our specifications, service descriptions or other documents provided on conclusion of the contract. Drawings stipulated by us, including tolerance specifications, shall be binding. The Seller shall point out to us any obvious mistakes (e.g. misspellings and calculation errors) and incompleteness of the documentation provided by us for the purpose of correction and/or completion, see § 154 German Civil Code.

8. If deviations from the original specifications are required or appropriate when performing the contract, then the Seller must inform us of this immediately. Any subsequent changes may only be made with our written consent. If they result in an increase or a reduction in cost, both we and the Seller shall be entitled to request an adjustment to the prices to which the Seller is entitled.
9. If delivery of fully assembled units has been agreed, the Seller shall undertake to subject said units, before delivery, to inspection regarding completeness, (electrical) function as well as fastening and assembly as prescribed, in accordance with our drawings or any other instructions where applicable. The Seller shall present corresponding inspection plans on our request.
10. Transportation must take place without any additional costs and with exchangeable packaging units. Lattice box pallets and Euro pallets shall be exchanged with the forwarding agent responsible for delivery at our incoming goods location. The Seller must ensure that any other exchangeable packaging units are returned without any additional costs arising for us. The Seller must observe the regulations of the forwarding agent in question. The supplier shall be liable for damage arising as a result of defective packaging.
11. Where software that is included in the scope of delivery is concerned, plus its documentation, we shall have not only the right to its use as far as is legally permitted, but also the right to its use with the agreed performance features and within the scope required for contractual use of the product. We may create a backup copy even without express consent.
12. In the event of serious events, particularly, force majeure, pandemics, labor disputes, unrest, military conflict or terrorist attacks that have unforeseeable consequences on the performance of the contract, the contracting parties are released from their contractual obligations for the duration of the interference and to the extent of its effects, even if they should be in default. An automatic cancellation of the contract shall not be associated with this. The contracted parties are obligated to inform each other of such impediments and to adjust their obligations in good faith to the changed circumstances.

§ 6 Confidentiality, Retention of Title

1. We reserve property rights and copyrights, as well as the right to register industrial property rights to figures, diagrams, drawings, calculations, execution instructions, product descriptions and any other documents. Documents of this kind shall be kept confidential and used exclusively for contractual performance and shall be returned to us after completion of the contract. The documents (in the sense of Clause 1) must not be disclosed to third parties during the contract or after termination thereof. The confidentiality obligation still applies another 5 years beyond the duration of the business relationship. Furthermore, this obligation shall expire if and to the extent to which the knowledge contained in the provided documents has become generally known. Without our prior written consent, said documents, information or data may not be duplicated or used for commercial purposes, except where this involves deliveries made to us and for the purpose of fulfilling our order. On our request, all documents specified in Clause 1 – including any copies or records that have been made and any items provided on a loan basis – must be returned to us without delay and in full. The Seller shall undertake to adhere to all regulations relating to data protection.
2. The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished products and semi-finished products) as well as to tools, templates, samples and other objects we provide to the Seller in connection with the manufacture of the goods. Except where they are processed, objects or material of this kind are to be kept separately by the Seller at his expense and insured to the customary extent against destruction and loss. At the same time, the Seller shall immediately assign to us all damage compensation claims arising from this insurance (fire, breakage, water, theft). We hereby accept this assignment.
3. The Seller may not use, offer to third parties or deliver to third parties any products that have been developed or produced according to documents we have drafted, according to our specifications or using our tools or tools modeled on our tools. The same shall apply to our print orders. This shall continue to apply even after the order has been processed.
4. The Seller shall undertake to perform any maintenance and inspection work required on our tools both promptly and at its own cost. Repair work shall be performed according to written agreement. The tools must be kept in a serviceable condition at all times, and must be handled and stored correctly and professionally. We must be notified immediately regarding malfunctions. If the Seller fails to adhere to these duties, it shall be obligated to compensate us for the damage arising from this.
5. Processing, mixing or combining (further processing) the materials made available shall be carried out on our behalf by the Seller. The same applies to further processing of the delivered goods by us so that we are considered the manufacturer and acquire ownership of the product at the latest with the further processing according to the statutory provisions.
6. Title to goods shall be transferred to us unconditionally and regardless of whether the purchase price has been paid. If, however, in individual cases we accept an offer by the Seller conditional upon payment of the purchase price for the transfer of title, the retention of title by the Seller shall expire at the latest upon payment of the purchase price for the delivered goods. We remain authorized within the proper course of business to resell the goods before the purchase price is paid via an advance assignment of the resulting claim (alternatively, the application of the simple retention of title extended to resale). This excludes all other forms of retention of title, in particular the extended retention, the transferred retention and the extended retention of title for further processing.

7. Once the order has been processed, the Seller must return our tools and any other documents to us on our request.

§ 7 Defective Delivery

1. The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly and defective assembly instructions, operating instructions or operating manuals) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.
2. According to the statutory provisions, the Seller shall be liable to ensure, in particular, that the goods have the agreed quality upon the transfer of risk to us. In any event, those product descriptions that are the subject matter of the respective contract or have been incorporated in the contract in the same way as these GTCP – in particular due by designation or reference in our order – shall be valid as an agreement on the quality. In this regard, it makes no difference whether the product description originates from us, the Seller or the manufacturer.
3. We are not obligated to inspect the goods or make special inquiries regarding possible defects upon the conclusion of the contract. Therefore, partially contrary to § 442 Sec. 1 P. 2 German Civil Code, we are entitled to claims for defects without restriction even if we failed to detect a defect through gross negligence upon conclusion of the contract.
4. The commercial duty to inspect and give notice of defects shall be governed by the statutory provisions (§§ 377, 381 German Commercial Code) with the following provision: Our obligation to inspect is limited to defects that are obviously apparent during our incoming goods inspection under external appraisal including the appraisal of the accompanying delivery papers (e.g. transport damage, incorrect and short delivery) or that are recognizable during our quality control by random sampling. Insofar as acceptance has been agreed, there is no obligation to inspect. Apart from that, it depends on the extent to which an inspection is feasible according to proper business procedures, taking into account the circumstances of the particular case. Our duty to give notice of defects discovered later remains unaffected. Regardless of our obligation to inspect, our objection (notification of defects) shall in any case be deemed prompt and timely if it is sent in writing within 7 business days of discovery (hidden defect) or, in the case of obvious defects, within 3 business days from delivery.
5. Rectification also includes the removal of the defective goods and the re-installation, provided that the goods were installed in or attached to another item in accordance with their type and intended use; our legal claim to compensation for corresponding expenses remains unaffected. The costs for inspecting the goods and remedying defects shall be borne by the Seller, even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request for the repair of defects remains unaffected. However, we shall only be liable if we realized or failed to realize through gross negligence that there was no defect.

6. Regardless of our legal rights and the provisions in Sec. 5, the following apply: If the Seller fails to meet its obligation to remedy defects – at our discretion either by remedying the defect (improvement) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and require the Seller to compensate us for the necessary expenses or request a corresponding advance payment. If Seller’s attempt to remedy defects fails or is unreasonable for us (e.g. because of particular urgency, risks to operational safety or the likelihood of disproportionate damage occurring), no deadline need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.
7. Apart from that, in the event of material defects or defects of title to goods, we are entitled to a reduction in the purchase price or to withdraw from the contract according to statutory provisions. In addition, we are also entitled to compensation for damages and expenses in accordance with the statutory provisions.

§ 8 Supplier Recourse

In addition to claims for defects, we shall have unrestricted entitlement to our legally determined rights of recourse within a supply chain (regress against suppliers according to §§ 445a, 445b, 478 German Civil Code). In particular, we are entitled to demand from the Seller the exact type of remedy (improvement or replacement delivery)

1. which we owe to our buyer in the individual case. Our legal option (§ 439 Sec. 1 German Civil Code) is not limited by this.
2. Before we recognize or satisfy a claim for defects from one of our buyers (including reimbursement of expenses as per §§ 445a Sec. 1, 439 Sec. 2 and 3 German Civil Code), we shall notify the Seller and request a written statement from them, giving a brief description of the circumstances. If a substantiated statement is not made within an appropriate deadline and no amicable solution is reached, the claim for defects effectively granted by us is regarded as owed to our buyer. In this case, the Seller is responsible for supplying counter evidence.
3. Our claims for supplier recourse also apply when the defective goods were further processed by us or another company, e.g. via installation into another product.

§ 9 Manufacturer Liability

1. If the Seller is responsible for product damage, it shall release us from damage compensation claims asserted by third parties insofar as the cause is within its sphere of control and organization and it is liable in respect of the external relationship.
2. In the context of its indemnity obligation, the Seller shall reimburse us as per §§ 683, 670 German Civil Code for expenses incurred from or in connection with a third-party claim, including product recalls made by Zimmer. Where possible and reasonable, we shall inform the Seller of the content and scope of the recall actions and provide the supplier with the opportunity to submit a statement. Further legal claims remain unaffected.
3. The Seller shall obtain and maintain a global business and product liability insurance policy with a lump-sum coverage of at least €5 million per personal injury/material damage. On our request, the Seller shall present the insurance policy.

§ 10 Property Rights

1. The Seller shall be responsible for ensuring that no commercial property rights and copyrights of third parties are breached in the context of its delivery.
2. If a third party asserts a claim against us relating to the delivery as a result of property rights being breached or a violation of the law against unfair competition, the Seller shall be obligated to release us from said claims upon first written demand and to support us in defending against such a claim. In addition, it shall compensate us for all damages thus incurred, including lawyer fees and legal costs.
3. The Seller shall reserve the right to provide evidence that it is not responsible for breaching the rights of the third party.

§ 11 Work on Other Business Premises

1. Persons who carry out work on our business premises within the context of performing the contract must observe statutory provisions, accident prevention regulations and the provisions of the applicable company rules.
2. If damage or injury is suffered by said persons on the business premises, we and our legal representatives or vicarious agents shall only be liable in cases of deliberate or grossly negligent breaches of duty, injuries to life, body or health and any culpable breaches of duty.

§ 12 Statute of Limitation

1. The reciprocal claims of the contracting parties shall lapse according to statutory provisions unless otherwise agreed.
2. Contrary to § 438 Sec. 1 No. 3 German Civil Code, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period starts upon acceptance. The 3-year limitation period also applies accordingly for claims for defect of title, whereby the statutory limitation period concerning in rem third-party claims (§ 438 Sec. 1 No. 1 German Civil Code) remain unaffected. Furthermore, claims regarding defects of title shall in no case lapse as long as the third party can still assert the right - in particular in the absence of limitation - against us.
3. The limitation periods applying under the law governing the sale of goods, including the above extension, shall apply to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period and the respective statutory start of the limitation period (§§195, 199 German Civil Code) shall apply in each case, unless the application of the limitation periods under the law governing the sale of goods leads to a longer limitation period in a particular case.

§ 13 Compliance with Ethical Standards and the German Minimum Wage Act

1. The Seller shall assure us that it and any subcontractors it uses in order to perform the contract shall consistently comply with the following standards:
 - Zero tolerance of forced labor, child labor, unlawful discrimination and corruption
 - All legislation and regulations that apply within the context of performing the contract, particularly in respect of working hours, compensation, occupational safety, hygiene, environmental protection and freedom of assembly.
2. The Seller shall undertake to adhere to the specifications of the German Minimum Wage Act (MiLoG) where applicable; this means, in particular, that it shall pay its employees the minimum wage prescribed by the MiLoG when they carry out any work - or services for us. The same shall apply in respect of any minimum-wage regulations that are in force in other countries. Under no circumstances shall the Seller commission subcontractors to carry out work for the purpose of performing the contract if it is aware or – for reasons of negligence – is not aware that said subcontractors would breach the specifications of the MiLoG or other minimum-wage regulations in performing this work. The Seller shall use suitable means to ensure that any subcontractors it uses do not carry out any breaches of minimum-wage regulations either. On first demand, the Seller shall release us from any liability for paying the minimum wage to employees of the Seller and to employees of any subcontractors it uses.
3. If requested to do so, the Seller shall provide us with evidence of compliance with the aforementioned standards and specifications.

§ 14 Choice of Law, Legal Venue, Miscellaneous

1. These GTCP and the contractual relationship between us and the Seller are subject to the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods.
2. Should the contract contain an omission or a contract provision should be or become ineffective in whole or in part, this shall not affect the remaining terms of the contract. The parties shall agree on an appropriate provision in place of the ineffective provision or to correct an omission which, as far as legally possible, comes closest to what the parties intended or would have intended in accordance with the purpose of this contract if they had considered the point when concluding this contract.
3. Changes and additions to this contract are only effective in writing and must be signed by both contracting parties.
4. Unless otherwise stipulated in these GTCP, communication via fax or e-mail can be used to comply with the written form requirement.
5. All disputes arising from the current contract shall be settled before the court responsible for our business location. However, we are also entitled to file suit at the Seller's headquarters. Any mandatory provisions of applicable law providing for exclusive places of jurisdiction shall remain unaffected by this regulation.
6. The appointment of a provisional liquidator and the application for opening insolvency proceedings entitles us to withdraw from the contract completely or partially and to demand the immediate return of all documents and tools in the sense of § 6 of these GTCP.