

# **General Terms and Conditions**

## **Company ZinoPac GmbH - Falkensee,**

### **Hereinafter called "Supplier"**

**Date of validity, as of December 1st, 2011**

#### **§ 1 Area of Application**

1. As of the date of validity, the following terms and conditions are a component of all offers, contracts, deliveries and services of our company for current and future business relations.

These are considered as accepted upon placement of order, latest upon acceptance of our service.

Without our explicit, written confirmation, other contrary general terms and conditions have no validity, even if we do not explicitly object to these.

#### **§ 2 Offer and Contract Conclusion**

1. Our offers are without obligation. This is valid for offers in price lists, circulars, printed material, electronic media and publications.

A contract is concluded by means of our explicit confirmation or upon delivery of the ordered goods.

If in question for the content of the contract, our written order confirmation is decisive; if a written confirmation is lacking, our written offer is decisive.

2. Technical changes, especially revisions to pictures, shapes and colours, as well as weights, dimensions and illustrations with identical quality and prices are reserved to an extent that is reasonable.

We reserve ownership rights and copyrights to all samples, illustrations and other offer documents.

They may not be made available to third parties and if an order is not placed, these must be returned upon our request.

#### **§ 3 Delivery Times and Delayed Delivery**

1. Information from the Supplier regarding delivery times is approximate and non-binding. Business transactions with firm and binding terms are excluded unless otherwise specially agreed.

2. If delivery from the Supplier is not possible due to force majeure or another circumstance for which the Supplier is not responsible or the delivery will be executed with an extreme delay, the delivery time is extended for the duration of the circumstance.

3. The Supplier has the right to make partial deliveries and may invoice these.

#### **§ 4 Delivery and Transfer of Risk**

1. All deliveries and services are executed at the risk and account of the Purchaser. In the case of shipment of the goods, the risk of accidental loss and deterioration is transferred to the Purchaser upon execution of the shipment; this also applies to partial deliveries and deliveries "free domicile".

The delivery shall be made to the designated location. If instructions regarding the delivery location are revised, the occurring additional costs shall be borne by the Purchaser.

The determination of the shipping method shall be determined by the Supplier.

2. The Purchaser is obliged to check delivered goods immediately after receipt and to notify the Supplier of possible complaints.

The risk of transport during shipment/transport shall be borne by the Purchaser.

3. If the delivery is delayed due to reasons for which we are not responsible, the risk is transferred to the Purchaser at the time notification of readiness for delivery is made.

This also applies if we make use of our legal right of retention.

#### **§ 5 Delay in Delivery Acceptance by the Purchaser**

1. If the Purchaser does not accept our service or goods upon delivery, we have the right to stipulate a grace period of two weeks and then withdraw from the contract and make claims for damages.

In the latter case and without requirement of evidence, indemnification for the amount of 30% of the agreed price is to be paid. However, the Purchaser has the right to provide evidence that damages were not incurred or were incurred at a much lower amount.

On the other hand, we then have the right to claim damages higher than 30% if we provide evidence of these.

## **§ 6 Payments**

1. In the absence of other special provisions, the prices are valid - unpacked, loaded, ex warehouse Germany. The prices do not include the applicable rate of value added tax.
2. If not otherwise agreed, payments must be transferred to the Supplier's account without deductions. The exact payment conditions can be found in the order confirmation.
3. The Purchaser may only withhold payments or compensate counterclaims if the counterclaims are undisputed and legally established.
4. If the Purchaser is in arrears, we have the right to only execute cash on delivery shipments and demand immediate payment of all open, also deferred, invoice amounts.

## **§ 7 Retention of Title**

1. The Supplier retains ownership of all delivered goods until payment of all outstanding accounts from the respective concluded contract have been made. This also applies to individual or all outstanding accounts of the Purchaser from current accounts and those where the balance is drawn and accepted.
2. The Purchaser is obliged to handle the object of purchase carefully. Insofar as maintenance or other work is necessary, the customer must have these executed at his/her own expense.
3. The Purchaser may only resell, pledge, assign securities, rent or transfer the goods subject to retention with our prior, written approval.  
If the resale to third parties is part of the Purchaser's normal business, he/she has the right, by way of exception, to sell the delivered goods in the ordinary course of business.
4. In advance, the Purchaser transfers all demands and claims for compensation concerning the goods subject to retention in the amount of the invoice to the Supplier.  
The Purchaser is entitled to withdraw claims against customers as long as he/she meets his/her payment obligation to the Supplier in a correct manner and does not default in payment.
5. If the goods subject to retention are accessible to third parties, the Purchaser must immediately notify these that it is the property of the Supplier.
6. The Purchaser is obliged to notify the Supplier immediately of possible attempts of third parties to access the goods subject to retention and shall bear the cost of possible intervention processes of the Supplier (§ 771 ZPO (Civil Procedure Code)).

## **§ 8 Liability for Performance Deficiency, Liability for Ancillary Obligations and other Liabilities**

1. Delivery of used goods takes place with the exclusion of a warranty.
2. If the Purchaser is a merchant as defined by the HGB (Commercial Code), claims by the Purchaser arising shall imply that he/she fulfilled his/her examination obligations and obligation to report correctly according to § 377 HGB.  
The claim must be made in writing.
3. If there is a shortcoming of the purchased object, the Supplier has the right to decide whether he/she will remove the shortcoming or deliver a flawless object.  
If the supplementary performance is not possible or unreasonable, the Supplier has the right to refusal.  
If the supplementary performance is not possible, the Purchaser has the right to reduce the price or withdraw from the contract.
4. Insofar as not otherwise agreed in the following, extensive claims from the Purchaser, irrelevant of the legal reason and as with regards to fault on the part of the Supplier in the fulfilment of contractual ancillary obligations and respectively independent of the type of damage, are excluded.

The aforementioned provisions are also valid for deliveries of other objects or a smaller amount, as well as for cases of compensation for expenses.

5. The rights to supplementary performance, damages or compensation for expenses come under the statute of limitations after one year after transfer of risk.

The claims to reduction and the exertion of the right of withdrawal are excluded insofar as the claim to supplementary performance is barred.

6. The legal right to withdraw is neither excluded nor limited by infringements outside of the liability for defects.

The Supplier can withdraw from the contract if the total amount of services becomes impossible - also in cases of inability.

Withdrawal is excluded if the Purchaser is responsible for the situation, which made a withdrawal justified to a large extent or if he/she defaults in acceptance.

In these cases, we reserve our right to compensation.

7. Claims in cases of delivery regress according to §§ 478,479 remain unaffected.

## **§ 9 General Limitation of Liability**

1. Liability of the Supplier is excluded for minor, negligent breach of duty as long as these are not damages attributable to us, which arise from injury to life, limb, health or an essential contract obligation (cardinal obligation).

2. Insofar as the Supplier is liable for contractual infringements on the merits of the case, the liability is limited - except for cases of wilful intent - to the foreseeable, direct, contract-typical, immediate damages.

For minor negligence, the liability is limited to the amount of the purchase price.

3. For damages caused by delay, the Supplier is only liable to the amount of 1/20 of the agreed sales prices for minor negligence.

4. If the liability of the Supplier is excluded or limited according to these provisions, liability is also excluded for legal representatives or vicarious agents.

5. Especially, we are not liable for lost profits or other financial losses of the Purchaser.

6. Possible claims of the Order from product liabilities do not effect these limitations of liability.

## **§ 10 Final provisions**

1. Place of performance for all services from this contract is Falkensee. Place of jurisdiction for all disputes arising from this contractual relationship is the responsible court for the location of the vendor according to the amount in dispute.

2. The laws of the Federal Republic of Germany apply. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply.

3. If any provisions of these Terms and Conditions or the concluded contract are or become invalid in whole or in part, this shall have no effect on the validity of the remaining provisions.