

# ZinCo GmbH

## General Terms of Sale, Delivery and Payment

### (Version 06/2013)

#### Section 1 Scope of applicability

1. These Terms of Sale, Delivery and Payment shall apply exclusively to all offers, sales and deliveries from ZinCo GmbH (hereinafter also: "we", "us", "our"). We will accept terms which deviate from or are contrary to our Terms of Sale, Delivery and Payment solely if we confirm them in writing as a supplement to our Terms of Sale, Delivery and Payment.
2. Our Terms of Sale, Delivery and Payment shall also apply if we carry out delivery without reservation, even if we are aware that the Purchaser's terms contradict or deviate from our Terms of Sale, Delivery and Payment. We hereby expressly object to any reference or counter confirmation by the Purchaser with reference to its Conditions of Purchase.
3. Specific agreements concluded with the Purchaser in individual cases (including side agreements, addenda and amendments) shall always take precedence over these Terms of Sale, Delivery and Payment. A written contract or our written confirmation shall be decisive for the contents of such agreements.
4. Our Terms of Sale, Delivery and Payment shall also apply to all future transactions with the Purchaser.
5. Our Terms of Sale, Delivery and Payment shall apply solely with regard to companies within the meaning of Section 310 (1) German Civil Code (BGB).

#### Section 2 Offer and Conclusion of contract

1. Our offers are subject to confirmation and are non-binding. This applies even if we have provided catalogues, technical documentation (e.g. product data sheets, drawings, diagrams, calculations, references to DIN standards, etc.), other product descriptions or documentation to the Purchaser - also in electronic form - in which we reserve ownership and copyrights.
2. A product order by the Purchaser is deemed to be a binding offer to contract. To the extent not otherwise provided in the order, we are entitled to accept such an offer to contract within 14 days following receipt. Our acceptance is made in writing, by telex, fax, e-mail or electronic data transmission unless we directly make a delivery or issue an invoice.
3. Information contained in our specification is exclusively decisive for the quality of the product we are obligated to supply. Assumption of guarantees and of a procurement risk requires express written agreements of the parties that expressly use the terms guarantee and procurement risk.

#### Section 3 Prices

1. To the extent not otherwise agreed, prices shall apply ex works including loading at the plant for the quantities/volumes requested by the Purchaser, plus statutory VAT.
2. Additional costs for packaging, transport including unloading, insurance, customs, fees, taxes or other public charges shall be borne by the Purchaser; they will be charged separately.
3. If the Purchaser subsequently orders other quantities, other prices may result. This particularly applies if the Purchaser makes subsequent quantity changes for substrates.
4. If the Purchaser wishes a delayed dispatch, it shall bear the costs thereof, which will also be charged separately.

#### Section 4 Payment

1. The full purchase price must be paid in advance. To the extent no other payment arrangement has been made in writing, the purchase price is due for payment at the latest within 30 days after receipt of invoice or a corresponding payment list and must be made without deduction.  
Repair and assembly costs, as well as service invoices, must be paid immediately after receipt of invoice without any deduction.
2. In case of outstanding accounts of the Purchaser, payments shall be used respectively for covering of the oldest debt due.
3. Payments by bill of exchange and cheque are not cash payments. They will be accepted only on account of payment. All discount and collection charges, fees and taxes incurred by acceptance, transfer and collection of bills of exchange shall be borne by the Purchaser. We are not obligated to a timely presentation of bills of exchange, cheques and other payment instructions. If a bill of exchange is not discounted or not honoured in time, our entire or residual claim shall be due for payment.
4. If the Purchaser fails to fulfil its payment obligations, in particular if it fails to cash a cheque or bill of exchange or if it suspends payment, we shall be entitled to declare the entire residual claim to be due immediately, even if we accepted cheques or bills of exchange. In such cases, we shall also be entitled to refuse our outstanding supplies of goods and services until the Purchaser provided consideration or provided sufficient security for the outstanding deliveries and services.
5. The Purchaser shall only be entitled to set-off rights if its counter-claims are uncontested, have been finally determined by a court or have been confirmed in writing by us. Furthermore, the Purchaser shall be entitled to assert its right of retention only to the extent its counter-claim is based on the same contractual relationship.

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#### Section 5 Scope of delivery

1. The information in our order confirmation shall be decisive for the scope of delivery. Side agreements and amendments require our written confirmation.
2. Partial deliveries and corresponding invoice are permissible as far as they are reasonable for the Purchaser.
3. We shall have the right to make technical changes to the subject of the delivery if this does not affect the technical functions or is customary and reasonable for the Purchaser. We shall also have this right with regard to technical changes to facilities ready for operation.

#### Section 6 Delivery; Delivery period

1. Periods we specified are non-binding unless they have been determined expressly and in writing in our order confirmation.
2. Compliance with the delivery period is subject to correct and timely delivery to us.
3. A delivery period shall be considered to be met if the subject of the delivery has left our factory prior to its expiry or, in case of collection by the Purchaser, the Purchaser has been informed about our readiness for dispatch.
4. Unless otherwise agreed, the Purchaser is, in case of delivery contracts on call, obligated to determine in advance deliveries covering at least 3 months and to give notice of call accordingly in good time before the respective delivery date. If the Purchaser fails to fulfil this obligation completely or as determined, we will set a reasonable period of time after expiry of which we shall be entitled to carry out call-off and/or planning ourselves, to deliver the goods, to make a prior sale or to withdraw from the contract.
5. If we prove that one of our suppliers failed to supply us in good time, despite careful selection of suppliers and conclusion of the necessary contracts under reasonable conditions, the delivery period shall be extended by the period of delay resulting from the untimely delivery by our supplier. If the above hindrance lasts more than one month, the Purchaser shall be entitled to withdraw from the contract with respect to the yet unfulfilled part. We may only invoke the above conditions if we have immediately informed the Purchaser about them, i.e. within 3 working days after becoming aware of them.
6. In case of default of acceptance by the Purchaser, it must compensate us for the damage resulting from this breach of duty, in particular for the costs resulting from storage of the subject of the delivery and/or for the costs of the waiting time until unloading of the delivery vehicle. This shall not apply if the Purchaser is not responsible for the breach of duty. In this case, assumption of costs by the Purchaser is limited to our costs resulting from storage of the subject of the respective delivery. After fruitless expiry of a reasonable period of time for purchase, we shall furthermore be entitled to otherwise dispose of the subject of the delivery and to supply the Purchaser within a reasonably extended period.
7. Notwithstanding its warranty rights, the Purchaser must accept delivered items even if they have negligible defects.

#### Section 7 Allocation of risk; Purchaser duties to make advance payments and to cooperate; Unloading

1. The risk of accidental loss and accidental deterioration of the goods passes to the Purchaser at the latest with hand-over or from the moment in which the Purchaser is in default of acceptance for the first time. In case of a sales shipment, the risk of accidental loss and accidental deterioration of the goods and the risk of delay pass upon delivery of the goods to the carrier, freight forwarder or any other third party engaged for purposes of delivery.
2. To the extent we deliver goods to the Purchaser, the Purchaser shall be obligated to ensure traffic safety of the respective locality. The Purchaser must particularly ensure that the access route for deliveries is sufficiently tarred, can be used unlimitedly also with heavy lorries (up to 40 tons of total weight and/or up to 10 tons of axle weight) and is legally permissible. The Purchaser must furthermore ensure that there is enough space enable unobstructed unloading in a timely manner.
3. If goods are delivered by dry bulk tankers, the Purchaser must make arrangements so that the goods can be sufficiently washed out with water upon unloading (blowing out). For this purpose, the Purchaser must, at its own cost, provide sufficient technical equipment and personnel.
4. To the extent not otherwise agreed, the Purchaser must carry out the unloading itself.

#### Section 8 Retention of title

1. The goods shall remain our property until full and irrevocable receipt of all payments. In case of breach of contract by the Purchaser, including delayed payment, we shall be entitled to withdraw from the contract in accordance with legal provisions and to request that the goods be returned on the basis of the reservation of title and the withdrawal. If the Purchaser does not pay the purchase price due, we may assert these rights only if we have first fruitlessly set a reasonable payment deadline for the Purchaser or if setting such a deadline can be dispensed with in accordance with statutory requirements.
2. The Purchaser must treat the goods with care, insure them adequately and, if necessary, maintain them.
3. Until full payment of the purchase price, the Purchaser must inform us immediately in writing if the goods are encumbered

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with the rights of third parties or are subject to other interventions by third parties.

4. The Purchaser shall be entitled to resell the goods subject to retention of title in the ordinary course of business. However, in this case it shall assign all claims from any such resale to us, irrespective of whether it takes place before or after a possible processing of the goods delivered subject to retention of title. Notwithstanding our authority to collect the claim ourselves, the Purchaser shall be authorised to collect the claim even after the assignment. We undertake in this context not collect the claim as long as and as far as the Purchaser fulfils its payment obligations, there has been no request for opening of an insolvency or a similar procedure and there is no suspension of payments.
5. In so far as above securities exceed the secured claim by more than 10%, we are obligated to waive the securities at our choice upon request of the Purchaser.
6. A petition to open insolvency proceedings with respect to the Purchaser's assets shall entitle us to withdraw from the contract and to demand the immediate return of the subject of the delivery.

#### Section 9 Insurance

We shall be entitled to insure the subject of the delivery against theft, breakage, fire loss, water and/or other damages at the expense of the Purchaser, unless the Purchaser proves to have taken out the insurance itself.

#### Section 10 Obligation of product monitoring and warning

1. In order to protect the end-customer against every form of danger, the Purchaser shall be obligated to constantly monitor our products with respect to safety (obligation of product monitoring). The Purchaser is obligated to provide us immediate written notice if it becomes clear that the product is dangerous. (Obligation of product warning).
2. If third parties assert a claim against us due to the breach of the obligation of product monitoring and/or warning, and this breach of the obligation of product monitoring and/or warning is the result of a breach of the obligation of product monitoring and/or warning for which the Purchaser is responsible, the Purchaser must compensate us for damages incurred by us as a result of its breach of duty.

#### Section 11 Warranty

1. Legal regulations apply to the Purchaser's rights in case of material and legal defects (including mis-deliveries and short deliveries as well as incorrect assembly or inadequate assembly instructions), unless otherwise specified below. Special legal provisions that apply when the goods are delivered to the end-consumer shall remain unaffected in all cases (supplier's redress according to Sections 478, 479 BGB). If the subject of the deliveries are second-hand items, all warranty claims shall be excluded, to the extent not expressly agreed otherwise in writing.
2. The primary basis of our liability for defects shall primarily be the agreement made concerning the quality of the goods. Specifications provided to the Purchaser shall exclusively constitute the agreement as to the quality of the goods. If quality has not been agreed upon, the evaluation of whether a defect exists or not shall be carried out in accordance with the provisions of applicable law (Section 434 (1) sent. 2 and 3 BGB).  
We assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
3. The Purchaser's rights in relation to defects require it to have first complied with its duties to inspect and object to defects (Sections 377, 381 German Commercial Code (HGB)). We must be informed in writing without delay in the event a defect is found during inspection or thereafter. Independent of the duties to inspect and object to defects, the Purchaser is required to provide written notice of obvious defects (including mis-deliveries and short deliveries) without delay, whereby timely mailing of the notice is sufficient to comply with this deadline.  
Where larger quantities of goods of the same kind are to be delivered, the entire lot delivered may only be returned as defective if the defects were determined based on recognised, representative random sampling method.  
Our liability is excluded with regard to defects for which notice is not given in the event the Purchaser fails to make a proper inspection and/or provide proper notice of a defect.
4. If the product delivered is defective, the Purchaser may, at its option, initially request subsequent performance in the form of elimination of the defect (cure) or delivery of a non-defective product (replacement delivery). In the event the Purchaser does not state which of the two rights it elects, we may provide the Purchaser a reasonable period to do so. The right to make an election passes to us in the event the Purchaser does not make an election within such period.
5. We are entitled to subject our subsequent performance obligation to the requirement that the Purchaser pay the purchase price due. However, the Purchaser shall be entitled to deduct a reasonable share of the purchase price in proportion to the defect.
6. The Purchaser is required to provide us sufficient time and opportunity to satisfy our obligation to effect subsequent performance; in particular the Purchaser must provide us the goods complained of for inspection. In the case of a replacement de-

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- livery, the Purchaser must return the defective item to us subject to the provisions of applicable law.
7. We will bear the necessary expenses for cure, especially transportation, infrastructure, labour and material costs in the event there is in fact a defect. However, in the event the Purchaser's demand for cure proves to be unjustified, we may demand that the Purchaser reimburse the resulting costs.
  8. In urgent cases, e.g. risks to operational safety or in order to prevent excessive damages, the Purchaser has the right to eliminate the defect itself and to demand that we reimburse it for expenses objectively required for such purposes. In such cases, we must be informed without delay, if possible in advance, in the event the Purchaser elects to cure a defect itself. The Purchaser has no right to act itself if we would have been entitled to refuse an attempt at cure pursuant to applicable provisions of law.
  9. If an attempt at cure fails, or if a reasonable period which the Purchaser is entitled to establish for effecting cure expires without success or is not required by statute, the Purchaser may revoke the purchase contract or reduce the purchase price. However, the right to revoke the contract does not arise if the defect is insignificant.
  10. The Purchaser has no right of revocation with regard to goods produced in accordance with specifications provided by the Purchaser or which have been modified to meet its particular needs or which could spoil quickly based on their particular characteristics (e.g. perishable plants).
  11. The Purchaser's claims for compensation or reimbursement of futile expenditures shall be solely as provided in Section 12 and shall otherwise be excluded.

#### Section 12 Other liability

1. To the extent not otherwise provided in these Sales, Delivery and Payment Terms, including the provisions set out below, we are liable pursuant to the applicable provisions of law with respect to violations of contractual and non-contractual duties.
2. We are liable to pay compensation for damages - irrespective of the legal basis - in the event of wilfulness and gross negligence.
3. In the event of ordinary negligence, we are only liable
  - a) for damages arising from injury to life, body or health.
  - b) for damages arising from the breach of a material contractual obligation (duty the fulfilment of which is a prerequisite to the proper performance of the contract and the fulfilment of which the other party regularly does and is entitled to rely upon); however, in such cases our liability is limited to compensation for damages which are foreseeable and typical to the contract.
4. The limitations on liability set out in the foregoing Section 12 (3) shall not apply to the extent we have fraudulently concealed a defect or have undertaken a guarantee as to the quality of the goods. The foregoing applies likewise with regard to rights of the Purchaser under the German Product Liability Act (Produkthaftungsgesetz).
5. In the event of a breach of duty not attributable to a defect, the Purchaser may only withdraw or provide notice of termination if we are at fault for such breach. A discretionary right to terminate the contract on the part of the Purchaser (in particular pursuant to §§ 651, 649 German Civil Code (BGB)) is excluded. Provisions of law and legal consequences apply in all other respects.
6. In the event a claim is asserted against us for a violation of third party property rights, the Purchaser may prove this defect of title only by having a final judgement by a court of law entered against it. The foregoing is without prejudice to the Purchaser's right to provide us with notice of the dispute.

#### Section 13 Limitations periods

1. The general period of limitations for claims based on material defects and defects in title is one year from delivery. To the extent acceptance has been agreed upon, the limitations period commences upon acceptance.
2. However, in the event the goods constitute a building, or an object which has been used for a building in accordance with its customary manner of use and which has caused it to be defective (building materials), the limitations period is 5 years from delivery as provided by statute. Likewise unaffected are the special provisions of law related to claims for the return of property on the part of third parties, related to fraud on the part of the Purchaser and for claims of seller redress in the case of delivery to an end-consumer.
3. The foregoing limitations periods likewise apply to contractual and non-contractual claims for damages on the part of the Purchaser which relate to a defect in the goods unless application of the normal statutory limitations periods (§§ 195, 199 German Civil Code (BGB)) would result in a shorter limitations period in a specific case. Limitations periods provided for in the German Product Liability Act (Produkthaftungsgesetz) remain unaffected in all cases. Except as otherwise provided, the statutory limitations periods are applicable to the Purchaser's rights to compensation for damages as provided in Section 12 in all other cases.

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#### Section 14 Force Majeur

1. In the event we are prevented from performing our obligations following conclusion of a contract due to exceptional circumstances which we could not foresee upon conclusion of the contract and which we are unable to avoid in spite of reasonable effort in relation to the nature of the circumstances, in particular as a result of regulatory sanctions and intervention, delays in delivery of important parts or raw materials, energy supply problems, natural disasters, etc., the delivery period is extended by the period of delay caused by the relevant impediment. We are released from our obligation to deliver in the event any of the foregoing circumstances render delivery impossible.
2. The provisions of the foregoing par. (1) likewise apply in the event of lock-out or strike.
3. If an impediment described above continues for more than one month, both parties are entitled to revoke any portions of the contract which have not yet been performed.  
The Purchaser may not assert claims against us for compensation for damages caused by a force majeure event.  
We may only rely upon the provisions set out above in the event we have provided notice of such circumstances to the Purchaser without delay.

#### Section 15 Business secrets

1. Product data sheets, plans, drawings and technical documentation which we provide to the Purchaser remain our property. The Purchaser may not use, copy, duplicate or provide or disclose such materials to third parties absent our consent. The foregoing applies likewise even if any of the foregoing are not marked as confidential.
2. The Purchaser must ensure that its employees, consultants, shareholders and other persons who learn of any such business secrets are subject to a written obligation to maintain confidentiality with regard to our business secrets to the degree described above.
3. These obligations shall survive the termination of this the parties' contractual relationship.

#### Section 16 Place of performance; Applicable law; Jurisdiction

1. The place of performance for deliveries and payment is the ZinCo GmbH registered office.
2. The laws of the Federal Republic of Germany, subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), are applicable to these Sale, Delivery and Payment Terms and the entire contractual relationship between us and the Purchaser.
3. The exclusive place of jurisdiction for all disputes directly or indirectly related to the contractual relationship is the court competent for the location of the ZinCo GmbH registered office. If we appear as plaintiff or petitioner, we are also instead able, but are not obligated, to seize the court competent for the location of the Purchaser's registered office.

#### Section 17 Side agreements/Amendments; Pending negotiations

1. Side agreements, reservations, amendments or additions must be made in writing.
2. Negotiations concerning liability for material defects or other claims for damages shall only be considered to be pending if the parties have stated in writing that they are negotiating such claims. Where invoking the foregoing written form requirement represents improper behaviour under law, neither party shall be able to invoke compliance with such written form.

#### Section 18 Severability clause

In the event a provision of these General Sales, Delivery and Payment Terms is or becomes invalid, all remaining provisions shall remain in full force and effect. In the event any other agreements related to collaboration with the Purchaser are or become invalid, all remaining agreements shall remain in full force and effect. In such cases, the invalid provision is to be interpreted or supplemented in such a manner so that the economic purpose of the invalid provision may be achieved in a legally permissible manner.