

International Sales Conditions – zwissTEX Germany GbmH

Applicable for international (cross-border) transactions with companies and legal persons under public law.

1. General

- 1.1 Any order for the supply of goods shall be accepted and performed subject to the following conditions.
- 1.2 Any general terms and conditions of the Buyer at variance hereto shall not apply to the Seller. These conditions shall apply even if the Seller undertakes delivery without reservation and is aware of conflicting conditions or conditions of the Buyer at variance hereto.
- 1.3 Orders shall be binding for the Seller only if such orders have been confirmed by the Seller in writing. An order in terms of Art. 14 CISG may be accepted by the Seller within 14 days without the Buyer being entitled to cancel (Widerruf) such order. The same shall apply to changes to any order. Oral agreements made prior to or at the time of the concluding of the contract shall not be effective unless such are confirmed in writing by the Seller.
- 1.4 Any estimates (Kostenvoranschlag) shall not be binding unless expressly agreed to the contrary.

2. Object of Purchase

The object of purchase shall be determined initially by the order but definitively on the basis of the order confirmation. Any variations customary in the trade, e.g. minor variations in quantity or colour, shall not constitute a breach of contract.

3. Prices

- 3.1 The prices shall be finally determined on the basis of those contained in the order confirmation.
- 3.2 Prices quoted are always on the basis of EXW in accordance with Incoterms® 2020.
- 3.3 If any agreement is made ex works (EXW), the expenses incurred for packing, freight and insurance may be invoiced separately.

4. Payment Conditions

- 4.1 Unless otherwise agreed in writing or stated in the order confirmation, the purchase price shall be transferred to the bank account specified in the respective invoice within 30 days of the date of invoice and at no charge to the Seller and without any rebate.
- 4.2 Payments shall be made in the currency given for the price in the invoice. If no currency is stated in the invoice, the price is to be paid in EURO.

- 4.3 Payment shall be deemed to have been made if the amount is available to the Seller. In case of any acceptance of non-cash payment by the Seller, payment shall be deemed to have been made only after an unconditional crediting of the amount to the account or control is given to the amount owed.
- 4.4 Any exceeding of the payment deadline by more than 30 days shall constitute a material breach of the contract (wesentliche Vertragsverletzung).
- 4.5 Notwithstanding any other legal remedies, the Seller may charge interest to the amount of 8 per cent points above the basis interest rate of the European Central Bank; the Buyer shall be entitled to prove that substantially less damage has been incurred by interest.
- 4.6 If the Buyer is in default delay with payment the Seller is entitled to demand immediate payment of all amounts arising from the business relationship which are due and undisputed.
- 4.7 If the Buyer is in default in accepting, the Seller is entitled, after setting a subsequent deadline of 12 days, to issue an invoice of arrears (Rückstandsrechnung). By issuing the invoice of arrears the full purchase price shall become due for payment. Any further rights of the contract parties shall not be affected hereby.
- 4.8 The Buyer shall be entitled to set off any counter claims only insofar as such counter claims are undisputed, and confirmed by a legally-binding or pending judgment.
- 4.9 Any right of retention shall be available to the Buyer only insofar as its counter claim is undisputed, or confirmed by a legally-binding or pending judgment.

5. Transfer of Risk

Delivery shall be EXW in accordance with Incoterms® 2020 insofar as the order confirmation does not contain any other provision for delivery or insofar as no other place of delivery is stated.

6. Transport; Acceptance

- 6.1 The delivery period shall be determined by the order confirmation.
- 6.2 If the Buyer does not give notice of the carrier in good time, the Seller may, at the expense and risk of the Buyer and notwithstanding any other remedies, conclude a transport agreement with a carrier under the customary conditions.
- 6.3 The commencement of and compliance with agreed delivery deadlines shall be subject to the Buyer fulfilling its obligations to provide support, and in particular timely receipt of the entire materials, documentation, (customs) permits, examinations, clearances to be provided by the customer and compliance with the agreed payment terms. If these preconditions are not duly met in good time, the delivery deadlines may be extended by a reasonable period; this shall not apply if the Seller is solely responsible for such delay.

- 6.4 If any non-compliance with delivery deadlines is the result of force majeure (höhere Gewalt) or any other disturbances beyond the control of the Seller, e.g. war, terrorist attack, import or export restrictions, including those affecting sub-suppliers, the delivery periods shall be extended by the period of such hindrance. This shall also apply to any employment disputes affecting the Seller and its sub-suppliers.
- 6.5 The Buyer is not entitled to cancel the contract (Aufhebung erklären) in case of delay in delivery in terms of the provisions of law.
- 6.6 In case of any claims by the Buyer resulting from delays in delivery, section 10 shall apply.
- 6.7 Transport, packing and any other type of packing in accordance with the Packing Regulations (Verpackungsverordnung) shall not be taken back by the Seller; this shall not apply to any standard returnable packing such as euro-pallets and lattice boxes. The Buyer shall be responsible for the disposal of packing at its own expense. In this regard, it must comply with all legal, ecological waste regulations (recycling circulation).

7. Receipt

The Buyer is not entitled to refuse the receipt of any delivery due to minor defects. The Seller shall be obliged to accept delivery even if there are minor variations in the quantity of the goods or if the goods are delivered slightly earlier than agreed.

8. Objections and Defect Notices

- 8.1 The Buyer shall lose any right to claim for goods or documentation which are apparently in breach of contract if the Buyer does not give notice to the Seller of such without undue delay and no later than within 15 days of the acceptance at the location of the branch of the Buyer or any agreed place of delivery, and describe exactly the nature of the breach. Any stickers on cartons, labels as to content and any other delivery documents are to be returned with such defect notice. Other defects shall be notified by the Buyer without undue delay in writing upon discovery.
- 8.2 If after acceptance of the goods at the location of the branch of the Buyer or any other agreed place of delivery it becomes apparent that there may be a possible breach of contract (apparent or latent defect), the Buyer shall lose any right to claim for such breach of contract if the Buyer does not carry out without undue delay the necessary inspections and give notice of the contract breach within 15 days of its discovery.
- 8.3 The liability of the Seller for any breach of contract in relation to goods or documents shall be excluded if notice of such breach is not duly given in good time in accordance with sections 8.1 or 8.2 or any resulting remedies are not claimed by written notice within a limitation period of 12 months after the acceptance of goods by the Buyer.
- 8.4 Such an exclusion of remedies shall also apply even if the Buyer has a reasonable excuse for not duly providing notice.

8.5 If any defect notice is incorrect, the Seller is entitled to demand compensation for expenses from the Buyer unless the Buyer can prove that it is not at fault in relation to the incorrect defect notice.

9. Defects/Defects of Title

9.1 The limitation period for any claims for defects shall be 12 months.

9.2 The limitation period for defects shall commence upon the acceptance of the object (section 5). In case of any subsequent performance (Nacherfüllung) or substitute delivery (Ersatzlieferung) the limitation period shall not recommence insofar as such action takes place on a good will basis.

9.3 Any right of the Buyer to cancel a contract (Vertragsaufhebung) for goods already delivered shall be excluded unless the contract breach constitutes a material breach of the contract and is not corrected by the Seller within a reasonable deadline set by the Buyer, such deadline being not less than 4 weeks.

9.4 Any claims of the Buyer for expenses, and in particular those related to transport, carriage, work and material, necessary for the purposes of subsequent performance shall be borne by the Seller. Such claims shall, however, not apply insofar as the expenses are increased by the fact that the object delivered has been subsequently transported to a place other than the branch of the Buyer unless such movement corresponds with the Buyer's intended use.

9.5 In case of any non-material defect (unwesentlichen Mangel) in the goods the Buyer shall be entitled only to a reduction of the purchase price. A non-material defect is to be assumed if the goods have a reduced value not exceeding 10% of their respective value.

9.6 Defects do not include

- natural wear and tear,
- the nature of the goods or any damage after the transfer of risk resulting from incorrect handling, storage, servicing or excessive use or application;
- the nature of the goods or any damage which results from force majeure in particular external influences which are not envisaged by the contract or which, on the basis of the use of the goods, are beyond the intended or normal use of such goods;

claims for defects shall be excluded if the goods are changed by any third party unless the respective defect is not caused by such changes or the third party is expressly instructed by the Seller.

9.7 The Seller is not liable for any qualities of the goods which relate to the design or the choice of materials insofar as the Buyer has determined the design or the materials and such are different from those specified in our normal range of supply.

9.8 Warranty claims by the Buyer on the basis of defects are excluded insofar as the Buyer has allowed an unqualified third party to undertake repairs on the defect.

9.9 Warranty claims may be made only by the Buyer. The Buyer is not entitled to assign its warranty claims in relation to the Seller unless the Seller has expressly agreed to such in writing.

9.10 In relation to any defects of title which do not constitute an infringement of third party property rights, the provisions of this section 9 shall apply correspondingly.

10. Claims for Damages

- 10.1 Any strict liability in relation to damages under CISG is hereby excluded. The parties to the contract shall be liable in terms of the following provisions only in case of fault in terms of wilful acts or negligence.
- 10.2 In case of any material contract breach in terms of Art. 25 CISG the Seller shall be liable to the extent that the Buyer claims damages for wilful acts or gross negligence including wilful acts and gross negligence by agents or representatives. Insofar as no wilful breach of contracts is involved the damages to be paid by the Seller shall be limited to a total amount of 100 % of the full purchase value.
- 10.3 Liability as a result of personal injury, physical injury or injury to health shall not be affected hereby; this shall also apply in cases of mandatory liability in accordance with the (German or European) product liability laws in so far as such are applicable.
- 10.4 Any further or additional liability of the Seller for damages beyond that described in 10.1 to 10.3, and without regard to the legal nature of such, is hereby excluded. This shall apply in particular but not exclusively to claims for damages arising from liability related to fault in the concluding of a contract, or any other breach of obligations or any other torts resulting in claims for damages.
- 10.5 Insofar as any liability for damages in relation to the Seller is excluded, this shall also apply to the personal liability of employees, representatives and agents of the Seller.
- 10.6 Changes in the burden of proof to the disadvantage of the Buyer are not made by the above provisions.

11. Retention of Title

The delivered goods shall remain the property of the Seller until full payment of the purchase price has been made. To ensure a retention of title the Buyer shall undertake all necessary measures, including comparable measures for obtaining a security interest in the country in which the Buyer's branch is located or in any other country of destination, and shall prove that such measures have been taken to the Seller upon request. Any non-compliance shall constitute a material breach of contract.

12. Contract Cancellation

- 12.1 In case of any conduct by the Buyer in breach of contract and in particular in case of any default in payment, the Seller is entitled, notwithstanding any other contractual or legal remedies, to cancel the contract after a reasonable grace period. Such grace period shall not be necessary insofar as the conditions of section 4.4 are satisfied.
- 12.2 The Seller shall be entitled to cancel the contract without a grace period if the Buyer ceases making payment or it commences insolvency procedures or applies for comparable procedures for cancelling debt in relation to the Buyer's assets.

12.3 After any cancellation notice (the Buyer shall grant the Seller or its agents access to the property subject to retention of title without undue delay and shall return such property. After timely notification the Seller may dispose of the property subject to retention of title in any manner in order to satisfy the amounts owing from the Buyer. The income from such disposal shall be calculated against the amounts owing by the Buyer – minus any reasonable expenses.

12.4 Any legal rights and remedies shall not be limited by the provisions of this section 12.

13. Confidentiality

13.1 The Buyer undertakes to treat the respective agreements as strictly confidential. The Buyer shall treat as a commercial secret all non- public, commercial and technical details of which it becomes aware during the business relationship.

13.2 Drawings, template patterns, samples or similar objects may be used only for the purposes of performing a contract and shall not be made available to third parties or otherwise made accessible. Any copying of such objects is permitted only in so far as such is commercially necessary and permitted in accordance with intellectual property laws.

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14. Duty to Cooperate

The parties to the contract shall undertake all reasonable measures necessary to achieve the purpose of the contract and shall not undertake anything which hinders the achievement or performance of the contractual purpose.

15. Applicable Law

All contracts made in terms of the business relationship between the Seller and the Buyer as well as the concluding of such contracts shall be subject to United Nations Sales Law (Convention on the International Sale of Goods - CISG). Any matters which are not regulated in the above Convention or which cannot be decided in accordance with its principles shall be decided in accordance with the applicable law at the place of the Seller.

16. Arbitration/Jurisdiction

16.1 In relation to all legal disputes arising out of or in connection with this contract and its performance the parties to this contract have the right to choose between the ordinary courts and arbitration.

16.2 If the ordinary courts are selected by the parties the exclusive place of jurisdiction for all legal disputes arising out of or in connection with this contract and its performance shall be ELLWANGEN (for district court proceedings the District Court at Heidenheim a.d. Brenz), Germany. The Seller is however entitled to also make a claim at the seat of the Buyer.

16.3 In the event that arbitration is decided upon by the parties all disputes arising out of or in connection with this contract shall be finally decided in accordance with the Arbitration Rules of the Germany Institute of Arbitration (DIS) e.V.. The Arbitration Rules may be accessed at <http://www.disarb.de/de/16/regeln/uebersicht-id0> in various languages such as German, English, French, Spanish, Chinese, Russian and Turkish.

16.4 The arbitration court shall consist of three arbitrators. Unless otherwise agreed by the contract parties, at least one of the arbitrators shall be a lawyer. The arbitrators must be able to use the language of arbitration.

16.5 The language of arbitration shall be German in so far as the parties do not agree on any other arbitration language.

16.6 The place of arbitration shall be STUTTGART, Germany.

17. Place of Performance/Miscellaneous

17.1 In the event that any provision of a contract concluded on the basis of these International Sales Conditions is ineffective or impracticable in part or in whole the effectiveness of the remaining provisions shall not be affected thereby. In such case the parties shall replace the ineffective or impracticable provision with an effective and practical provision which most closely reflects the originally-intended commercial purpose to the extent that such is permissible.

17.2 The German language version of these Sales Conditions shall constitute the authentic version and shall prevail in case of any conflict with any other version.