

## Conditions of Payment and Delivery

### A Area of Validity and Conclusion of Contract

- a) The following conditions are applicable to all our offers, contracts, sales and other services, but only if the business relationship is with a customer who is a contractor.  
b) Contractors are natural or legal persons or a partnership having a legal capacity in the case of pursuing or acting in their business, trade or their independent professional capacity during the act of legal business.
- If we do not accept or confirm in writing explicitly, we completely reject any other differing or additional conditions of the customer either partly or in their entirety, even if we should know or be aware of them.
- Even if not explicitly referring to them, our conditions of payment and delivery are valid for all current or future contracts in so far as the latest version if the conditions were valid for an earlier contract and in so far as the customer was informed about the latest version.
- Our offers are made subject to alteration. We reserve the right to make reasonable technical modifications.
- The customer has a binding obligation to purchase the goods when ordering an article. We have the right to accept the offer of a contract implicit in the order by a written letter of confirmation within one week after its admission. There is also no separate confirmation of order admission, when ordering by electronic commerce.
- The contract is concluded with the reservation that we are supplied both correctly and in time by our subcontractor. This is valid just in the case of us not being responsible for a non-delivery especially when agreeing to a congruent hedging transaction with our supplier.  
The customer will be informed without delay if the service/goods are not available. The payment or such, will be reimbursed without delay.

### B Place of Fulfilment and Performance

- The place of delivery and performance for services to be provided by us is the location of our establishment, or one of the external or freight warehouses of ours which we have made available, depending on the place the delivery started from.
- The place of delivery and performance for the customer's duties is always the location of our establishment, irrespective of No. 1.
- If there is a differing agreement concerning the place of delivery and fulfilment in a contract, it only refers to the business lying at the basis and has no influence on consequent business deals. In this case, the general conditions in No. 1 and No. 2 are applicable for the venue named.

### C Risk of delivery

- As far as we agree to delivering articles, the risk of any accidental destruction or deterioration of items of delivery goes over to the customer at the moment after we or our auxiliary person hand them over to the person performing the transport.
- This is also valid for deliveries from other external warehouses.

### D Delivery

- Incoterms 2000 are applicable to delivery/supply. Provided nothing to the contrary is agreed, delivery takes place EXW.
- We dispatch articles uninsured, unless there is another agreement. The dispatch occurs according to our best estimates and without a guarantee of it being the quickest or cheapest way of delivery.
- We put packing and loading aids, e.g. pallets at the customer's disposal. The customer is obliged to return them undamaged and cost free to the location of our establishment or one of our external and/or freight warehouses within a period of 30 days which begins with the date of delivery. If it does not occur, we are entitled to invoice the customer for each piece of packing and/or loading aids an amount of € 0,50 (plus VAT) for each item leased from the 31. day after delivery. The customer is not invoiced more than € 25,- (plus VAT).
- Delivery dates and time for delivery can be agreed either as binding or not binding.
- Where a not binding delivery date is not kept we are obliged to make the delivery within a period of three weeks which begins with the receipt of a formal warning from the customer. We are in default after this deadline has passed.
- If obstacles occur because of official measures at home or abroad or a lack of energy resources we can not influence or control and if their duration can not be foreseen, we are formally in default upon expiry of a period of four weeks which begins with the receipt of a formal warning, differing from No. 5. Being formally in default when falling behind in the case of a binding delivery date being agreed remains unchanged by this.
- A date of delivery designated as binding does not, unless expressly agreed otherwise, constitute a relative or absolute transaction at a fixed date.
- If a delivery date or time for delivery is agreed as binding and we do not keep because of our actual default or in case of being formally in default otherwise the customer can demand damages caused by delay of 0.5 Percent of the value of invoice referring to the goods in delay for each week, but 5 % at most. The customer is expressly permitted to prove that the actual damages are higher.
- a) Any slight differences in weight and measure between those agreed and actually supplied are reasonable for the customers and to be accepted by them.  
b) A slight difference means a weight and measurement variation not exceeding more than 0.75 percent of the amount stated.
- We are allowed to deliver in parts without need of a special agreement, as far as is reasonable to the customer. If a time for delivery is agreed as binding, the above is valid only if the deliveries are within this period.
- If we have an agreement to deliver in parts (delivery on call), in the absence of agreements otherwise, the customer is obliged to order the supplies in approximately equal monthly instalments.

### E Payment

- Prices are net ex the place of delivery and performance. Transport, packages, VAT as well as import and export duties are invoiced separately. The regulation in letter G is untouched.
- In the absence of agreement otherwise we sell for the list prices valid the day the customer orders.
- Differing from regulation No. 2, contracts containing an agreement about partial supplies depending on the customers need, those prices which are valid at the time of the order.
- Bills of exchange and cheques are considered as payment only when honoured. Discount and exchange fees are chargeable to the customer.
- Where a bill of exchange or a cheque is not honoured or if the customer is in default or falls behind with payment of an invoice or reasonable doubt exists in relation to his ability to pay, we are – as desired alternatively or cumulatively – entitled to demand immediate payment of all unpaid invoices, including those not yet due, to demand damages and to refuse any delivery or service, until we receive service in return or equal security is provided for.
- Unless expressly agreed otherwise, the customer is formally in default and falls behind with payment even without any reminder (§ 286 Abs. 2 BGB, German Civil Code) if we do not receive payment within a period of 14 days which begins with customer delivery.
- From the point of being formally in default with the payment legal interest is payable on the sum of the invoice. Interest is payable on the rate of eight percent over the basic rate of interest for remuneration demands. Each party can show that interest is actually higher and the other one must pay these costs so established and proved.

### F Rights of ownership

- The goods supplied remain our property until the complete payment of the sale price and all claims we have in relation to the business with the customer have been satisfied.
- Where within his business, the customer sells on or processes the goods delivered, this may be undertaken in the ordinary course of business as long as the customer does not fall behind with payment. Any pawning or transferring for security is prohibited. In the event of resale or processing, the customer hereby assigns now to us, to the extent of claims by us arising out of this contract, all claims accruing to the customer from its sale or services agreement with its customer. The same applies for any secondary or surrogate claims, both as contracted or not, including ancillary rights which accrue to the customer from its sale or services agreement with the customer. With this we accept the customers transfer.  
The transfer reaches the extent of all claims being made in the ordinary course of business. Until revoked, the customer remains entitled to collect the claims assigned to us for own account and on their own behalf. This collection authorisation is revocable only if the customer does not meet its payment obligations related to us in accordance to the contract.
- Where the value of any security provided to us exceeds our claims in relation to the customer by more than ten percent, we are obliged, at the demand of the customer, to release the excess security. We are entitled to decide on the kind of security to be released.

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- Any execution of seizure or act by third parties in relation to the goods delivered under retention of title must be notified forthwith in writing to us by the customer. This is also applicable in case of a transfer of claims to us in advance. The customer is obliged to inform the organ of enforcement as well as the creditor about the retention of title or the transfer of claims. The customer must ensure to appeal to court, take legal measures or pursue any other possible remedy. Our legal costs or any other counteractive measures arising from any compulsory enforcement measures must be borne by the customer.

### G VAT

In case of the VAT increases between the period of conclusion of the contract and delivery, we are entitled to alter the price correspondingly.

### H Warranty

- a) We deliver goods in correspondence with our product description.  
b) They are not classified as statement of guarantee in the legal sense, unless they are marked as guarantee explicitly.  
c) The composition and property of our articles are exclusively according to the measurements in the latest product description.  
Any sample or specimen of goods sent to the customer beforehand is not relevant to the contract and does not create any obligations or constitute any claims. We reserve the right to make alterations in regard to this.  
d) Processing and application may only be done by specialised and skilled craftsmen. Only the data sheet in combination with the instructions on the packaging of an article contain a precise description of application, unless a special agreement was agreed.  
It is incumbent on the customer to get information from us about the use and application of goods.
- a) When the customer is supplied with technical support by us, our employee or auxiliary person, the customer takes full risk if the processing work is faulty or unsuccessful. Technical information and recommendations we provide within the framework of technical support is without obligation and is not part of the sales or any other contract, unless expressly agreed otherwise.  
b) We do not issue any guarantee.  
c) Hereby, possible claims of the customer in accordance with letter I are not ruled out.
- It is incumbent on the customer to examine the goods promptly after receiving and before the processing or application of goods. In view of the variety of application purposes of our products it is necessary to examine the article by testing a sample of the delivered product to the customer's intended purpose.
- a) If a deficiency appears when examining the goods, the customer must notify us forthwith in writing of any apparent defects and send us a sample of the article complained about within a period of two weeks beginning with the receipt of the goods.  
b) Where a defect is not apparent initially, although the customer examined the goods promptly and in accordance with the regulations, the customer must notify it forthwith within a period of two weeks beginning with the discovery of the defect.  
c) Where delivery is agreed abroad, the periods in 4. a) and b) are extended by one week each.  
d) No. 3, 4. a), b) and c) are equally applicable including foreclosure for notification, in the case of a quantity variance between 0.75 and 1.5 percent compared to the ordered amount. If this happens the customer is not obliged to send us a sample of the insufficient goods.
- If we are not notified by the customer in the cases of No. 4, the received goods are classified as approved by the customer.
- If the customer is not a "Kaufmann" in the meaning of the German Handelsgesetzbuch (similar to businessman or commercial including legal persons) and the defect is not apparent, the foreclosure in Nos. 4 a), b) and 4 d) is replaced by the period of the statute of limitation in letter H 9. A defect is apparent if an average non-skilled person would typically notice it.
- a) If the notice of defects is reasonable and within the specified time, remedial action or delivery of goods without a defect can be demanded at the customer's option. The customer must choose within a period of ten days which begins with notifying us about the defects. When this term is exceeded, the customer must leave the choice to us.  
b) If the deficiencies should not be remedied after at least two attempts of remedial action or subsequent delivery within a reasonable time or if both kinds of subsequent performance should be refused (§ 439 Abs. 3 BGB, German Civil Code), the customer can demand abatement of the purchase price or cancellation of the contract.
- a) We are not liable for anything not resulting from our actual default.  
b) We are only liable for damages that are caused by wilful or grossly negligent breach of duty by us, our legal agents or servants. This limitation of liability does not apply to any damages being transferred to us causing violation of life, mayhem, bodily harm or impairment of health. It also does not apply to product liability. There is no limitation or ruling out of liability in any aforementioned case.  
c) In case of demanding "Schadensersatz statt der Leistung" (damages instead of performance) in the meaning of § 281 BGB (German Civil Code), there is an appropriate deadline of at least three weeks for the performance or subsequent performance beginning with the customers demand in writing.
- a) The limitation of the customer's claims because of defects concerning goods in the meaning of § 438 Abs. 1 Nr. 3 BGB (German Civil Code) occurs upon expiry of a period of one year beginning with the delivery of the goods.  
b) In exception to No. 9 a), the limitation of the customer's claims because of defects concerning goods that the customer has used for a building and caused its defectiveness, with the assumption that this application of the goods is customary (§ 438 Abs. 1 Nr. 2 b) BGB, German Civil Code), occurs upon expiry of a period of two years beginning with the delivery of the goods.

### I Other Claims for Damages

- The limitations of liability in H 8. letters a) and b) are equally applicable to other claims for damages.
- If we should be entitled to claim for damages instead of performance in the meaning of § 281 BGB (German Civil Code), our claim for performance does not cease before the buyer/purchaser has actually paid the damages.
- In so far as our liability is limited subject to No. 1, this applies to our employees if a claim is made against them personally by the customer.

### K Offsetting

- The customer is entitled to set off counter claims only if and in so far as they are not disputed or the subject of enforceable judgements.
- The customer is moreover entitled to set off a counter claim only if this is announced by the customer at least one month before the payment date of the counter claim.

### L Legal venue

The legal venue for all claims arising from the business connection, including claims referring to bills of exchange or cheques is our principal place of business (Ulm) or the customer's general legal venue, at our choice if the customer is either a "Kaufmann" (similar to businessman or commercial legal person including legal persons), a public body, public legal person or separate estate, and if there is not an exclusive legal venue that is set by the law. This is equally applicable if the customer does not have any general legal venue in Germany, or we do not know the address or customary place of their whereabouts when taking a legal action against the customer.

### M Applicable Law

The law of the Federal Republic of Germany applies to this contract under exclusion of the United Nations Convention on International Sales of Goods. Where the customer has its principal place of business abroad, and then, at UZIN UTZ AG's choice, the law of the country in which the customer has its principal place of business will apply instead of German law.

### N Final Chapter

If any regulation of the contract with the customer including this conditions of sales and delivery should be or become ineffective in law partly or in its entirety, the validity of the others is untouched. Should the regulation be ineffective in law partly or in its entirety, it shall be replaced by an effective one which as far as possible serves a similar economic purpose.