

General Purchasing Conditions of Zschimmer & Schwarz Chemie GmbH and its affiliated companies in Germany

1. General

1.1. These General Purchasing Conditions of Zschimmer & Schwarz Chemie GmbH and its affiliated companies in Germany ("General Purchasing Conditions" hereafter) form part of all contracts on deliveries and services between the supplier and/or service provider ("Contractor" hereafter) and Zschimmer & Schwarz Chemie GmbH or its affiliated companies in Germany ("Customer" hereafter).

1.2. The Contractor's general terms and conditions will only apply if and to the extent the Customer has expressly agreed to their application in writing. A mere reference to correspondence from the Contractor referring to or containing general terms and conditions does not constitute acceptance of such general terms and conditions by the Customer. Application of the Contractor's general terms and conditions is also excluded if the Customer unconditionally accepts the Contractor's delivery or service in awareness of general terms and conditions of the Contractor that are contrary to or different from these General Purchasing Conditions.

2. Sustainability

2.1. The Contractor shall abide by the principle of sustainable development and observe internationally recognized fundamental standards in occupational health and safety, environmental protection, human rights, labour rights and responsible corporate governance. The Customer has set out its own understanding of these standards in the Supplier Code of Conduct (available at www.zschimmer-schwarz.com). The Customer expects the Contractor to endorse these standards. The Customer also calls on the Contractor to demand implementation of similar standards from its own subcontractors.

2.2. The Contractor must comply with all applicable health, safety and environmental principles and regulations. The Contractor must observe the Customer's internal health, safety, and environmental regulations while being present on the Contractor's company grounds. A breach of the Contractor's obligations from sentences 1 and 2 shall authorize the Customer to rescind the contract. This is without prejudice to the Customer's further and additional claims.

3. Offers

3.1. The Contractor's offers are free of charge and non-obligatory for the Customer.

3.2. The Contractor will explicitly point out any differences between its offer and the Customer's request and offer the Customer alternatives that are technically superior or more cost-effective than those originally requested.

4. Contract performance, delivery date, shipment, transfer of risk

4.1. The Contractor must adhere to the dates agreed for the respective deliveries and services. Decisive for deadline adherence of the delivery date or deadline shall be receipt of the defect-free goods together with the necessary consignment papers to the Customer during ordinary business hours at the place specified in the order ("destination" hereafter). If delivery is agreed to include assembly/installation/service, adherence to the agreed date shall be determined by the time the defect-free goods are handed over following proper completion of the assembly/installation/service. Insofar as acceptance is a statutory or contractual requirement, the date and time acceptance was granted shall be authoritative. Any early deliveries/services or partial deliveries/services shall require prior written approval from the Customer.

4.2. The Contractor must promptly inform the Customer in writing together with reasons and the expected duration of the delay if the Customer expects to be unable to perform all or part of its contractual obligations, or to perform them in due time.

4.3. Goods shall be delivered "DAP destination (Incoterms 2020)" unless agreed differently. Shipments must, unless agreed differently, be accompanied by a delivery note, packing list, cleaning certificates, and inspection/testing certificates in accordance with the agreed specifications, as well as any other necessary documents. All shipping documents must - if known - state the complete order number, gross and net weight, number of packages, type of packaging (single-use/re-use), manufacturing date, destination (unloading point) and consignee. Packaged goods must have the same details affixed on the outer packaging.

4.4. The Contractor shall prudently assure the Customer's interests when shipping goods. Using packaging materials approved at the destination, the goods must be packaged in a manner that prevents transport damage. The Contractor shall be liable in accordance with the statutory provisions for damages caused by inappropriate packaging.

4.5. The Customer must package, label, and ship dangerous products in compliance with national and international regulations. The Contractor shall satisfy all obligations incumbent on suppliers (within the meaning of Article 3 no. 32 EC Regulation 1907/2006/EC ("REACH" hereafter)) pursuant to REACH with respect to the delivery of the goods. The Contractor shall, in particular, furnish the Customer with a safety data sheet pursuant to Article 31 REACH in the destination country's language in all cases where a safety data sheet is required pursuant to Article 31 no. 1 to no. 3 REACH.

4.6. The risk of loss or damage shall be borne by the Contractor until the contractually agreed goods have arrived at the destination together with the documents specified in clause 4.3. If delivery is agreed to include assembly/installation/service, the risk shall pass upon proper performance of the assembly/installation/service and handover.

4.7. Insofar as acceptance is a statutory or contractual requirement, the risk shall pass upon the Customer granting acceptance. If formal acceptance has been agreed, the risk shall not transfer before the Customer has confirmed successful acceptance in an acceptance report. Payment of invoiced amounts does not substitute formal acceptance.

5. Involvement of subcontractors

The involvement of third parties (in particular subcontractors at any point along a subcontracting chain) in the performance of the contract as well as the replacement of subcontractors shall require the Customer's prior written approval. The Contractor's offer must inform the Customer of any set intention to involve third parties in the performance of the contract.

6. Statutory minimum wage (Minimum Wage Act)

6.1. The Contractor must warrant that its own personnel and personnel of the subcontractors or personnel services agencies involved in the performance of the contract with the Customer are paid the statutory minimum wage pursuant to the German Minimum Wage Act (MiLoG), or the respective industry's prescribed minimum wage in cases where the deliverable performances are governed by the German Law on the Posting of Workers (AEntG). The Contractor must also warrant to make compulsory payments of contributions to social security bodies, employers liability insurance associations and other institutions, such as the joint bodies of the collective bargaining parties provided for in Section 8 AEntG.

6.2. When selecting subcontractors and personnel services agencies, the Contractor shall assess their satisfaction of the requirements pursuant to clause 6.1 and obtain a written undertaking to compliance from them. The Contractor must also obtain their written confirmation that they will demand compliance with said requirements from their own subcontractors or personnel services agencies.

6.3. The Contractor shall indemnify the Customer against legitimate claims from an employee of the Contractor or an employee of an involved subcontractor (anywhere along the subcontracting chain) for payment of the statutory minimum wage or industry-specific minimum wage in the capacity of a guarantor or claims from joint bodies of the collective bargaining parties provided for in Section 8 AEntG.

6.4. The Customer is authorized to terminate the contract with the Contractor without observing a notice period if the Customer is found to bear guarantor liability under the German Minimum Wage Act (MiLoG) or German Law on the Posting of Workers (AEntG).

6.5. The Contractor shall further bear liability for all damages suffered by the Customer as a result from a culpable breach of the obligations pursuant to clauses 6.1 and 6.2.

7. Origin and status of goods

7.1. The Contractor must state the goods' non-preferential country of origin in the commercial documents. The Contractor will furnish the Customer with a certificate of origin /attestation for the goods' (preferential) country of origin.

7.2. Goods delivered must meet the source requirements under the bilateral or multilateral preference agreements or the unilateral origin conditions of the general system of trade preferences (GSP), where applicable.

8. Energy Management

The Contractor undertakes to comply with all energy-related statutory and regulatory requirements relevant to its services and to support the Customer's energy management system in accordance with ISO 50001. Upon request, the Contractor shall provide all information required for the evaluation of energy-related performance without undue delay and shall take into account energy-related criteria as well as economically reasonable efficiency measures. The Customer is entitled to request appropriate evidence in the course of internal or external audits. If the Contractor becomes aware of circumstances that may materially impair energy-related performance, it shall inform the Customer without undue delay.

9. Quality

The Contractor shall implement and maintain an effective quality assurance system and evidence the system to the Customer upon request. The Contractor will for this purpose use a quality assurance system that comprises the elements set out in ISO 9000 et. seq. or similar system. Subject to prior notice, the Customer is authorized to inspect the Contractor's quality assurance system or have the system inspected by third parties commissioned by the Contractor.

10. Quality of deliveries and services, notice of defects, defect rights

10.1. The Contractor's deliveries and services must be free from defects, comply with the agreed product and performance specifications, and possess the contractually guaranteed properties and characteristics. The Contractor is further responsible for assuring that the deliveries and services reflect the current state of technology and - if relevant - the generally accepted state of security technology as well as occupational health and hygiene, are performed by qualified personnel, and conform with all applicable legal regulations at the destination location. Machines, equipment or systems that are part of the delivery must bear a CE mark and comply with the specific safety requirements for machines, equipment and systems as applicable at the time of contract performance.

10.2. The Contractor must warrant that all substances contained in the goods are effectively pre-registered, registered (or exempt from compulsory registration) and, if applicable, approved in accordance with the relevant requirements under REACH. If the goods are products within the meaning of Article 7 REACH, the preceding sentence shall apply to substances released by these products.

10.3. The Customer will, insofar as it owes a duty to inspect deliveries and notify defects in commercial transactions pursuant to Section 377 German Commercial Code, notify the Contractor of apparent defects by submitting a notice of defects within ten days from delivery. Other defects that only become apparent at a later time must be notified within ten days from their discovery.

10.4. Insofar as acceptance is a statutory or contractual requirement, the Customer may refuse acceptance and withhold a progress payment due upon acceptance if the performance is incomplete or defective. This also applies to cases where an acceptance date was agreed or the Contractor has set the Customer a deadline to issue acceptance.

10.5. Defects shall authorize the Customer to demand subsequent performance in accordance with the statutory provisions. The mode of subsequent performance shall be determined at the Customer's discretion. The Customer may elect the place of subsequent performance to be at the goods' destination or, if acceptance is a statutory or contractual requirement, the place of acceptance, or a different shipping destination for the goods known to the Contractor at the time of contracting. The necessary expenses for subsequent performance shall be borne by the Contractor. The Contractor must render the works associated with subsequent performance in accordance with the Customer's operational requirements. The Customer may claim its further statutory rights for defects if the Contractor does not render subsequent performance within a reasonable grace period, if subsequent performance has failed, or if setting a grace period was not compulsory.

10.6. If the Contractor does not render subsequent performance within a reasonable grace period, if subsequent performance has failed, or if the setting of a grace period was not strictly required, the Customer shall - in addition to the rights stipulated in clause 9.5 - be authorized to rectify the defect at the cost and risk of the Contractor, or arrange for it to be rectified by a third party, and claim compensation of the necessary expenses. The Customer's further and additional rights from liability for defects under the statutory provisions or a guarantee assumed by the Contractor remain without prejudice.

10.7. Unless a longer period is prescribed under the statutory provisions, claims for defects shall become time-barred after 30 months from the date the risk has transferred. A waiver of a claim for defects by the Customer shall only have binding legal effect if it was declared expressly and in writing.

11. Industrial property rights

The Contractor shall bear liability for the delivery and/or service and their contractually agreed use not to infringe against patent rights, copyrights, or other third-party property rights. The Contractor indemnifies the Customer against all third-party claims for an infringement against the aforementioned property rights if the violation was caused by a culpable breach of duty on the part of the Contractor. License fees, expenses and costs incurred by the Customer for the purpose of preventing and/or rectifying violations of property rights shall in this case be borne by the Contractor.

12. Liability

The Contractor shall take out sufficient liability insurance to cover its liability for damages caused by its own personnel and its vicarious agents and other agents and maintain said insurance cover at its own cost. The cover amount per damage event must be evidenced to the Customer upon request. The amount and scope of the Contractor's insurance cover is without prejudice to the Contractor's statutory and contractual liability.

13. Invoicing, payment

13.1. The agreed prices are net prices and exclusive of VAT, which is charged at the statutory rate, if applicable. Invoices issued for deliveries and services must conform with the relevant statutory requirements for invoices under the national VAT law governing the invoiced deliveries and services.

13.2. The Contractor must issue a separate auditable invoice for each order placed with the Contractor. This invoice must contain all mandatory information required under German law. The invoice must state the Customer's full purchase order number and, if available, the Contractor's delivery note number. The invoice must be accompanied by evidence for delivery/performance and other supporting documents. Invoices must correspond to the order details with respect to item description, price, quantity, item sequence and item number.

13.3. Unless agreed differently, payment terms are 60 days after receipt of the invoice, subject to the invoice satisfying the aforementioned requirements. Payment is made conditional subject to completeness and contractual conformity of the delivery / service.

14. External order fulfilment, assignment, change of company name

14.1. The Contractor is only authorized to assign the rights and obligations stemming from the contract with the Customer to third parties with the Customer's prior written approval.

14.2. The Contractor must notify the Customer in writing and without delay of any transfer of contract and change of company name.

14.3. The Contractor may at any time assign the rights and obligations stemming from the contract with the Customer to Zschimmer & Schwarz Chemie GmbH, Lahnstein, Germany or one of its affiliated companies in Germany without obtaining the Customer's prior approval.

15. Documents, confidentiality, rights of use, data protection

15.1. Models, samples, drawings, data, materials, and other documents the Customer makes available to the Contractor ("Customer's proprietary documents" hereafter) shall remain the Customer's property and must be returned to the Customer upon request at any time. Any right of the Contractor to withhold the Customer's proprietary documents is excluded. The Contractor must respect the Customer's copyrights to the Customer's proprietary documents.

15.2. Subject to compulsory disclosure under a statutory provision, court order or order from a public authority, the Contractor undertakes to keep all technical, scientific, commercial, and other information the Contractor directly or indirectly obtains in connection with the contract, particularly including Customer's proprietary documents ("confidential information" hereafter) strictly confidential, to refrain from exploiting them for commercial gain, claiming industrial property rights over them, transfer them into the possession of a third party, or make them accessible to a third party in any other way. The Contractor is authorized to disclose confidential information to subcontractors approved by the Customer insofar as the information is strictly required by such subcontractor to render contract performances. Confidential information must not be used for any other purpose than rendering contractual performances. The above undertaking to confidentiality shall continue to bind the Contractor for a period of ten years after the contract has ended.

15.3. The Contractor shall assure suitable contractual agreements that impose the obligation to confidentiality on its employees and other vicarious agents respectively involved in the performance of the contract in accordance with the preceding provisions pertaining to confidentiality. The Contractor shall furnish the Customer with written evidence of its compliance with these obligations upon request.

15.4. The Contractor undertakes to implement all necessary and expedient precautions and measures aimed at protecting the obtained confidential information at all times against loss and unauthorized access. This includes, in particular, the installation and maintenance of suitable and necessary entry and access controls for premises, containers, IT systems, data carriers, and other carriers of information that contain confidential information, as well as the performance of suitable training measures for persons who are authorized to handle confidential information. The Contractor undertakes to notify the Customer in writing and without delay if the Contractor has suffered a loss of and/or unauthorized access to confidential information.

15.5. The Contractor grants the Customer the exclusive right of use and right to exploitation to the work results the Contractor or a third party has produced individually for the Customer. The Contractor shall procure any third-party rights that may be required for this purpose from such third party. This is without prejudice to any prior rights of the customer or third parties.

15.6. The following provisions apply if the Customer provides the Contractor with personal data about the Customer's employees ("personal data" hereafter) for purposes related to the performance of the contract, or if the Contractor gains knowledge of said personal data in any other way. The Contractor shall not acquire any rights to the personal data and at all times be bound by the statutory provisions requiring the correction and deletion of personal data and/or imposition of a restriction on the processing of personal data. Any right to withhold personal data is excluded.

16. Force majeure

16.1 "Force majeure" means an externally originated, unforeseeable and uncontrollable event that is unrelated to the business and unavoidable even with extreme reasonable prudence. A force majeure event makes compliance with the contract difficult or impossible, even if the greatest possible degree of prudence is exercised. In the absence of evidence to the contrary, force majeure events include, but are not limited to:

- a. (Declared or undeclared) war or warlike conditions, civil unrest, terror attacks, extensive military mobilisation, civil war, riots, rebellion or revolution, sabotage or piracy;
- b. Currency or trade restrictions, embargoes, sanctions, import and export bans;
- c. compliance with laws and orders from public authorities (whether lawful or unlawful), expropriation, confiscation of works, nationalisation;
- d. Epidemics, natural disasters or extreme weather events;
- e. Explosions, fire, destruction of equipment, transport impediments, malfunction of telecommunication systems or energy supply;
- f. general operational malfunctions, boycotts, strikes and lockouts, occupation of factories and premises.

16.2. The Customer may immediately rescind from its contractual obligations without incurring liability for damages insofar as a force majeure event or other circumstances not attributable to the Contractor prevent or significantly impede the customer from accepting and/or processing the ordered goods or services.

The Customer must promptly inform the Contractor of the contract rescission and underlying reasons.

17. Severability clause, applicable law, place of jurisdiction

17.1. In the event individual provisions stipulated in these General Purchasing Terms are legally ineffective or infeasible, or become so after conclusion of the contract, the effectiveness of the remaining provisions of the contract shall remain without prejudice. The legally ineffective or infeasible provision shall be replaced by such legally effective or feasible provision as, in its effect, comes closest to the commercial intentions the contracting parties were pursuing with the ineffective or infeasible provision.

17.2. The contract is governed by the substantive law of the Federal Republic of Germany under exclusion of the United Nations Agreement on Contracts for the International Sale of Goods from 11 April 1980 ("CISG") and the conflict of law rules applicable in Germany.

17.3. The Customer may elect the place of jurisdiction to be the court with jurisdiction for the Customer's place of registered office, or the court with jurisdiction pursuant to the applicable provisions under general law.