



Zschimmer & Schwarz, Inc. – Terms and Conditions of Purchase

1. AREA OF APPLICABILITY

1.1 The following General Terms and Conditions of Purchase (hereinafter the "Terms") are the only terms that shall govern the purchase of products ("Products") and the services ("Services") to Zschimmer & Schwarz, Inc. (hereinafter "BUYER"). Any change to these terms and conditions shall be valid only if has been confirmed in writing by BUYER. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with this Agreement.

1.2 The purchase order (the "Purchase Order") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of the seller of Products and Services ("Seller") general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of or other performance under the Purchase Order constitutes acceptance of these Terms.

2. CONCLUSION OF CONTRACTS AND RIGHT OF WITHDRAWAL

2.1 BUYER can revoke an order if the Seller has not accepted the order in writing within 2 weeks of its receipt.

2.2 If the order confirmation deviates from the order, BUYER shall be bound only if it has consented in writing to the change.

2.3 BUYER may request changes with respect to the Products or Services to be provided, including, but not limited to, changes in method of shipping or packing, time or place of delivery and increases or decreases in delivered quantity. Seller must notify BUYER if such changes result in an increase or decrease of cost, and BUYER may choose to (i) rescind the request for change, or (ii) accept any price adjustments.

2.4 BUYER may, by written notice to Seller, terminate its purchase of any quantity of Products or Services (i) for convenience, (ii) if Seller fails to complete or deliver any part thereof when required, and/or (iii) if Seller is in breach of any term of the Agreement. If terminating for convenience, BUYER will pay Seller termination charges equal to the cost of materials and labor incurred (and not otherwise mitigatable) on ordered Products and Services prior to the date of BUYER's termination notice; provided Seller takes all steps reasonably necessary to mitigate such costs. Seller will notify BUYER, in writing, specifying the actual termination charges within ten (10) days after termination. If termination is due to a failure of completion of delivery or breach of any material term of the Agreement, no termination charges will apply, and BUYER may procure substitute Products and Services and Seller will be liable to BUYER for all costs incurred by BUYER as a result of such failure or breach.

3. DELIVERY TIMES AND PERFORMANCE TIMES

3.1 THE TIMELINESS OF DELIVERY AND PERFORMANCE IS OF THE ESSENCE. All deliveries must occur at the times specified in the order or otherwise agreed with BUYER in writing. The failure to adhere to such times shall constitute a material breach by the Seller.

3.2 If the Seller becomes aware that a delay may be possible, the Seller shall inform BUYER immediately.

3.3 The statutory remedies shall apply to claims of BUYER in the event of delay. Acceptance of a late delivery shall not constitute a waiver of such claims.

3.4 A demand for damages in lieu of performance shall not supplant, or serve as a waiver of, BUYER's legal right to performance; such right shall expire only when BUYER has received damages in full.

4. DELIVERIES, PACKAGING AND MARKING

4.1 The Seller shall execute the deliveries ordered by BUYER in full. Partial or advance deliveries shall not be permitted without BUYER's written consent.

4.2 The Seller shall affix BUYER's order number on all contractual documents (including bills of delivery, accompanying documents, shipping tickets and other correspondence), including documents prepared by the Seller.

4.3 Seller shall affix BUYER's material code onto containers and other packaging units.

4.4 Seller will deliver to BUYER a certificate of analysis for each shipment, and within each shipment for every separate lot individually. Delivery shall not occur until the COA and any other documents have been provided to BUYER.

4.5 The delivery shall be effectuated in appropriate packaging, taking into account relevant laws (including environmental laws). Packing materials may be returned by BUYER at the expense and risk of the Seller. Reusable packaging shall be designated as such. Nonreusable packaging shall be returned by BUYER at its own discretion.

4.6 The Seller shall mark Products and packing materials with hazardous materials designations as customary in international commerce and also, as applicable, with additional such designations as required by law and governmental requirements. Additionally, all packaging and contract documents shall set forth the required hazard warnings in English.

5. PRICES

5.1 The prices specified by BUYER in the purchase order shall be fixed prices. If the contract is based on a cost estimate by the Seller, such estimate shall be binding. Amendments must be agreed in writing. Unless otherwise specified in the purchase order, the price includes all packaging, transportation costs to the delivery Point, insurance, customs duties, fees and applicable taxes.

5.2 If no price is specified in a purchase order, the Seller shall specify the price, including any applicable discounts, in the order confirmation. In such case, a contract shall come into existence only when BUYER has consented to the price in writing.

5.3 All deliveries shall be DAP BUYER's designated location for domestic shipments and DDP BUYER's designated location for international shipments, per INCOTERMS 2020, and shall include unloading at the location designated by BUYER in each individual case. BUYER shall pay for packaging only if BUYER expressly agreed to do so in the purchase order; in such case, the costs of packaging shall be identified separately in the invoice.

5.4 BUYER shall reimburse the Seller for insurance premiums only if BUYER expressly requested insurance in the purchase order.

6. PAYMENT

6.1 Payments shall be made in accordance with the terms designated on the purchase order.

6.2 The payment period shall commence as soon as the delivery has been made in accordance with the contract. BUYER has declared its acceptance, and the properly issued invoice has been received by BUYER. The invoice must indicate BUYER's order number and the date of the order. A separate invoice shall be issued for each delivery. The invoice shall also indicate the mode of shipping and place of dispatch, country of origin of the Products and, if applicable, transport and packing charges.

6.3 BUYER may set off any amount owing at any time from Seller or any of Seller's affiliates or subsidiaries to BUYER or any of BUYER's affiliates or subsidiaries against any amount payable at any time by BUYER.

7. QUALITY

7.1 Seller shall deliver all Products and render all Services free of quality defects.

7.2 Seller will not change the manufacturing process, raw materials or the source of such raw materials, proportions of raw materials used in delivered to Buyer, or the specifications provided unless Seller notifies BUYER in writing of the change at least ninety (90) days before its implementation and BUYER agrees to the change in writing. Seller will be liable for all costs, losses, and damages that BUYER, its affiliates and subsidiaries may incur or suffer if Seller does not comply with the requirements of the preceding sentence. At BUYER's request, Seller will provide samples of Products produced with the proposed change to test in BUYER's manufacturing process.

7.3 Seller will participate in programs implemented by BUYER with respect to quality in manufacturing and delivery of Products and Services, including, without limitation, at BUYER's request, (i) the completion of regulatory questionnaires within thirty (30) days of such request, and (ii) the execution of a more detailed quality assurance agreement for the Products purchased hereunder.

7.4 All Products delivered by Seller shall have a remaining shelf life of at least 75% unless otherwise agreed by BUYER.

8. ACCEPTANCE AND NOTIFICATION OF DEFECTS

8.1 Seller will maintain an inspection and testing system and will keep records of all inspection and testing data and, with respect to Products, samples of each lot shipped, for five (5) years after delivery or six (6) months after shelf-life expiration, whichever is later.

8.2 BUYER shall have the right to verify conformity of deliveries through random sampling. BUYER has the right to inspect the Products on or after the delivery date.

8.3 Formal acceptance shall be required for deliveries of Products that are assembled or installed, for deliveries of individualized items that the Seller has newly manufactured or created, and for the supply of deliverables. Passage of the risk shall occur upon acceptance by BUYER.

8.4 Notice of defects shall be given within ten (10) business days after delivery and notice of hidden defects can be given within five (5) days after they are discovered.

8.5 All of the requirements in respect of deliveries communicated by BUYER to the Seller shall be deemed contractually agreed. The Seller guarantees that the purchased good satisfy the warranted specifications.

8.6 A delivery shall be defective in its entirety if the random sampling of the Products revealed defects.

8.7 In the event that BUYER notifies Seller of a defect, Seller shall investigate and respond in writing within ten (10) business days from BUYER's notice. The response shall detail the root cause, corrective and preventive actions.

9. PASSAGE OF TITLE

Title to the Products passes to Buyer upon delivery of the Products.

10. TRADE SECRET PROTECTION AND CONFIDENTIALITY

10.1 Drawings, samples, formulas, tools and other documents and materials that BUYER made available, delivered, paid for or for which BUYER has been invoiced in connection with an offer or in implementation of a contract shall remain the property of BUYER and may not be copied nor used for any purpose inconsistent with the contract and shall be returned to BUYER after rejection of the offer or performance of the contract. The Seller shall properly safeguard such materials, keep them free of encumbrances by third parties and at its own expense shall insure them for their replacement value. In the event of loss or diminution of value, except for ordinary wear and tear, the Seller shall pay restitution.

10.2 If the Seller receives information from BUYER that is designated as confidential or as needing to be kept secret, otherwise proprietary to Buyer (hereinafter, "Confidential Information"), the Seller shall not disclose such Confidential Information to third parties or use the Confidential Information for any purpose inconsistent with this Agreement for a period of five years after such notice without the prior written consent of BUYER; the foregoing shall not apply, however, if it can be substantiated that the Confidential Information was known to the Seller prior to its disclosure that such Confidential Information became generally publicly known during the period of the non-disclosure obligation, provided that such disclosure was not caused by the Seller's breach. The Seller shall impose such obligation on its employees accordingly. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Seller warrants that the delivery and use of the Products and Services do not infringe third-party Intellectual Property Rights domestically or abroad. The Seller shall indemnify BUYER for all claims asserted against BUYER for infringement of Intellectual Property Rights. In the event of an infringement of Intellectual Property Rights, BUYER shall be entitled to assert claims against the Seller for damages and all statutory and contractual claims, including for parts of the delivery that the Seller procured from third parties. In the event of a grant of licenses or sublicenses, the Seller shall ensure that BUYER is allowed to use the Products in all countries in which corresponding Intellectual Property Rights exist.

11.2 Intellectual Property Rights to or processes that the Seller develops on behalf of BUYER shall accrue exclusively to BUYER. Upon delivery, the Seller shall deliver to BUYER all samples, drawings, formulas, tools, software (including source codes) and similar items. Insofar as Intellectual Property Rights arise in the sphere of the Seller, the Seller shall assign such rights to BUYER together with the delivery.

11.3 Seller shall defend, or at Buyer's option cooperate in the defense of, hold harmless and indemnify, including legal fees, Buyer and its representatives (collectively, the "Buyer Indemnitees") from and against all losses arising out of any third-party claim alleging that any of the Products or Buyer receipt or use thereof infringes any Intellectual Property Right. In addition, if such a Claim is or is likely to be made, Seller shall, at its own expense, exercise the first of the following that is practicable, (a) obtain for Buyer the right to continue to use the Products consistent with this Agreement; (b) modify the Products so they are non-infringing and in compliance with this Agreement; (c) replace the Products with non-infringing ones that comply with this Agreement; or (d) at Buyer's request, accept the cancellation and return of infringing Products without Buyer having any cancellation liability and refund to Buyer any amount paid for such infringing Products. If the Products, or any part of the Products, become, or in Seller's opinion are likely to become, subject to a claim that qualifies for intellectual property indemnification coverage under this Section, Seller shall, at its sole option and expense, notify Buyer to cease using such Products. Buyer shall notify Seller of third-party claims against Buyer and reasonably cooperate in the investigation, settlement, and defense of such claims at Seller's expense.

12. CONSIGNED PRODUCTS

12.1 Where agreed, BUYER shall deliver Products to the Seller that the Seller shall use in the manufacture of Products or the provision of Services (hereinafter, "Consigned Products").

12.2 The Seller shall store the Consigned Products separately and mark them as the property of BUYER.

12.3 Except as specifically permitted otherwise, Consigned Products may be used only for the manufacture of the Products or Services ordered by BUYER, and BUYER shall be deemed the manufacturer and owner of the new product. If several of such manufacturers' clauses apply contemporaneously, BUYER shall be deemed co-manufacturer and accordingly co-owner of the new in the proportion that the value of BUYER's Consigned Products bears to the total value of the processed Products of all co-manufacturers.

12.4 Surplus Consigned Products shall be returned by the Seller on its own initiative or can be picked up by BUYER at any time. Additionally, the Seller may retrieve Products from third parties that are consigned for the account of BUYER only to its own address or the address specified by BUYER. Ownership of the Consigned Products shall pass to BUYER immediately upon delivery to the Seller, and the Seller shall act as bailee for BUYER.

13. FORCE MAJEURE

13.1 Any non-performance or delay in performance of any obligation of Seller or BUYER under the Agreement will be excused to the extent such failure or non-performance is caused by "Force Majeure." "Force Majeure" means any cause preventing performance of an obligation under the Agreement which is beyond the reasonable control of the Seller or BUYER, and which, by the exercise of due diligence, could not be overcome, resulting from the following events: pandemic, fire, flood, sabotage, shipwreck, embargo, explosion, riot, acts of a governmental authority, and acts of God. In no event shall Seller's ability to sell Products or Services at a better price or Seller's economic hardship in buying raw materials necessary to manufacture Products at a commercially reasonable price constitute Force Majeure or an event of commercial impracticality.

13.2 If BUYER or Seller is affected by Force Majeure, it will (i) promptly provide written notice to the other party, explaining the full particulars and the expected duration of the Force Majeure and (ii) use its commercially reasonable efforts to remedy and mitigate the interruption or delay. In the event of Force Majeure, notwithstanding any other provision of the Agreement, BUYER will have the right to purchase Products and Services from other sources during the period of Force Majeure. If a Force Majeure extends for more than sixty (60) days, the Agreement may be terminated by BUYER upon written notice without any liability on its part. (c) If a Force Majeure compels Seller to allocate deliveries of Products or Services, Seller will make such allocation in a manner that ensures BUYER at least the same proportion of the Seller's total output as was purchased by BUYER prior to the Force Majeure. Seller will use best efforts to source Products, at Seller's expense, from its own or its affiliates' and/or subsidiaries' global operations or the market in order to meet BUYER's required delivery dates.

14. INDEMNIFICATION

Seller will fully defend, indemnify, hold harmless and reimburse BUYER and its shareholders, customers and assigns from and against all claims, suits, actions, proceedings, damages, losses and expenses, including but not limited to litigation costs and expenses and attorneys' fees, arising out of, related to, or resulting from: (i) any breach of any representation, warranty, certification, or covenant made by Seller in the Agreement; (ii) any negligence or willful misconduct of Seller, its affiliates, subsidiaries and/or their respective officers, directors, employees and/or agents in connection with performance of the Agreement; (c) any litigation, proceeding or claim by any third party, including but not limited to any of the Seller, relating to the obligations of Seller within the Agreement; and (d) any of the Seller's use, control, ownership, or operation of their respective businesses and facilities. Seller shall not enter into any settlement without Buyer's prior written consent.

15. INSURANCE

15.1 Seller shall maintain in full force and effect from the date of first sale of Products and for three (3) years following the date of BUYER's last acceptance of Products or Services, the following minimum insurance coverages: (i) Commercial General Liability insurance on an "occurrence" basis including coverage for premises, contractual, and completed operations liability with a combined single limit of \$2,000,000 for bodily injury and property damages; and (ii) Umbrella insurance with a limit of \$5,000,000 that follows form over the Commercial General Liability policy. The policies shall provide a worldwide coverage territory, respond to claims made anywhere in the world, and shall name the BUYER as "additional insured" on a primary and noncontributory basis.

15.2 Seller shall add BUYER as additional insured on all policies, add a waiver of subrogation in favor of additional insured, provide 30 day written notice to certificate holder in the event of policy cancellation or nonrenewal and a 10 day written notice of nonpayment of premium.

16. WARRANTIES

16.1 In addition to any warranty implied by fact or law, Seller represents, warrants, certifies and covenants that all Products and Services will be: (i) free of any claims by third parties; (ii) in strict accordance with the specifications, samples, drawings or other descriptions approved by BUYER; (iii) free from any and all defects, latent or patent; and (iv) to the extent that BUYER relies on Seller to specify the Products or Services, fit for their intended purpose. Seller further warrants it has good title to the Products and that all Products will be merchantable. These warranties survive any delivery, inspection, acceptance or payment of or for the Products by Buyer. Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

16.2 If any Products or Services fail to conform to the above representations, warranties, certifications and covenants, then Seller, at BUYER's option, will: (i) with respect to Products, replace or repair the nonconforming Products; (ii) with respect to Services, re-perform all Services necessary to correct any such nonconformity; or (iii) refund the purchase price of the nonconforming Products or Services and any related costs incurred by BUYER. Any replacement Products or Services also will be subject to the above representations, warranties, certifications, and covenants. Seller further warrants that Products are produced in compliance with any applicable health statutes, regulations and ordinances and that they are properly packaged and labeled in accordance with any applicable statutes or regulations. Any rights or remedies of Buyer set forth in the Agreement are not exclusive and Buyer also has all rights and remedies available under applicable law. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Products or Services with the foregoing warranties.

17. COMPLIANCE WITH LAWS

Seller represents, warrants, certifies and covenants that Seller will comply with all applicable laws, rules, regulations and orders in performing its obligations hereunder, including, but not limited to, environmental, health and safety laws and regulations, immigration laws and those dealing with equal employment opportunity. To the extent that any Products transferred hereunder contain hazardous materials, Seller will provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910,1200, as amended, if applicable, including a completed Safety Data Sheet (OSHA Form 20), and any other applicable law, rule or regulation, and mandated labeling information, or any similar requirements in any other jurisdictions to which BUYER informs Seller the Products are likely to be shipped. To the extent applicable, (i) the provisions of the Equal Opportunity Clauses at 41 CFR § 60-1.4(a), 41 CFR § 60-250.5(a) and 41 CFR § 60-741.5(a) are hereby incorporated herein by reference; and (ii) all nonexempt contractors and vendors will comply with the provisions of 29 CFR Part 470 (Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees). From time to time, at BUYER's request, Seller shall provide certificates to BUYER relating to compliance with any applicable legal requirements.

18. COMPLIANCE WITH EXPORT CONTROL LAWS / SELLER DECLARATIONS PAGE

The Seller shall furnish BUYER, upon demand and free of charge, Seller declarations for Products with or without preferential origin of Products and certificates of origin in accordance with the definition applied by the customs authorities, and shall present substantiation for its declarations to the customs authorities upon demand. The Seller also shall furnish BUYER, upon demand and free of charge, a list of product ingredients of the Products delivered to BUYER.

19. MOST FAVORED TREATMENT

19.1 By accepting an order from BUYER, the Seller warrants that the terms for Products and Services afforded to BUYER are at least equal to those that the Seller grants to other customers for the same or similar Products or Services in the same or similar quantities. The Seller shall keep BUYER informed of any price reductions. In the event of a particular price reduction for Products and Services by the Seller, BUYER shall be entitled to a corresponding reduction of the price of all still outstanding deliveries.

19.2 If, at any time during the term of the Agreement, BUYER notifies Seller, in writing, that a third party has made a competitive offer to sell Products or Services pursuant to one or more terms (including, but not limited to, price, volume, quality and/or payment terms) that are more favorable to BUYER than the terms then in effect, then Seller will meet, or notify BUYER that it will not meet, such competitive offer within seven (7) days of receipt of BUYER's notice thereof. If BUYER is obligated to buy certain quantities of Products from Seller, and Seller does not meet the competitive offer as provided above, then BUYER will be released from its obligations with respect to any quantities of Products or Services available from the third party under the competitive offer.

20. TERMINATION

In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Products or the Seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted and Services accepted by Buyer prior to the termination.

21. GENERAL PROVISIONS

21.1 The place of performance in each case shall be the address specified for BUYER for delivery or performance.

21.2 The exclusive jurisdiction and venue for any legal suit, action or proceeding arising out of or relating to this Agreement shall be in the federal courts of the United States of America or the courts of the State of Georgia in each case located in the City of Atlanta and County of Fulton.

21.3 All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

21.4 Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

21.5 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21.6 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21.7 These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.