

## **General terms and conditions**

### **Version 02-17**

1. All business transactions between M. Zellner GmbH and the customer are subject to the following conditions in the version which is valid at the time any order is placed. Divergent provisions applied by the customer will only be recognised by M. Zellner GmbH if their validity has the express written agreement of M. Zellner.

2. These terms of business also apply to future sales transactions with the purchaser or his legal successor.

3. The place of fulfilment is Michelau in Oberfranken (Upper Franconia)

4. The place of jurisdiction is Coburg. This also applies to actions involving bills of exchange and cheques.

#### 5. Contractual condition

5.1 All offers made by the supplier are subject to confirmation with regard to price, quality, delivery date and supply possibility. Orders placed by the customer become binding on him as soon as they have been confirmed by the supplier.

5.2 Block orders can be agreed.

5.3 Any changes in orders which have been placed can only be made with the agreement of both parties.

#### 6. Delivery

6.1 Where there is no agreement to the contrary, delivery will be from the M. Zellner GmbH stores to the delivery address given by the customer. The method and route of delivery will be determined by the supplier, unless the customer has issued other express instructions. In every case the transport risk will be borne by the customer.

6.2 In the case of delivery from an external store the freight costs will be charged from the supplier's works.

6.3 Customers whose place of business is in the same location as that of the supplier will not be liable for transport costs.

6.4 Packing will only be charged for where the customer requests a special form of packaging. Where returnable containers are used, the customer will be responsible for freight and rental costs.

6.5 Cardboard cylinders are not subject to the regulations on packaging materials. These are supplementary production materials and the customer is responsible for disposing of them.

6.6 Where there is no agreement to the contrary, the goods will be dispatched without insurance cover. If the customer fails in his responsibility to take delivery of the goods at the agreed time, the statutory provisions of §326 BGB (German Civil Code) will apply.

6.7 Delivery dates are indicated within the supplier's foreseeable operational possibilities but are

non-binding. For all order we must reserve the right to deliver up to 10% above or below the specified quantity. The precondition for production and delivery is that the raw materials and energy required to cover the order are available to the supplier in accordance with existing agreements. If problems arise the customer will be informed without delay that the ordered product will not be available and any payments made in advance will be refunded immediately.

6.8 Where an order is executed in the form of part shipments (call-off or contract orders) over a specific period of time, the customer agrees to inform the supplier in writing about the distribution of individual shipments. Such information must be provided at a reasonable time in advance of the required delivery date. In case of call-off or contract orders without a fixed final date, delivery and acceptance must take place at the latest within 6 months after the conclusion of the contract.

## 7. Obstacles to delivery

7.1 In the event of force majeure, industrial disputes, official intervention or operational breakdowns for which the supplier is not responsible and which have lasted or will probably last longer than 1 week, the delivery period for acceptance will automatically be extended by the length of the obstacle, to a maximum of 5 weeks together with the extension period agreed in Par. 8 below. No extensions will be granted if the other party is not immediately informed about the reasons for the delay. Such information must be provided as soon as it becomes clear that the agreed delivery period cannot be met.

7.2 In the above case no claims for damages will be accepted.

## 8. Extension period

8.1 If the supplier cannot deliver on time, the customer will grant him an extension to the delivery period of 6 weeks, which can be made in writing after the expiry of the delivery period.

8.2 With the exception of liability resulting from gross negligence or deliberate breach of contract, any claims for damages will be limited to a maximum of 5% of the net price. Claims for remote loss are excluded.

## 9. Complaints

Complaints regarding faulty or incomplete deliveries must be made by registered post within 5 days from the receipt of the goods at their destination. The goods which are complained about must be stored free of charge, because otherwise the right to make a claim will be forfeited. No claims will be recognised on the basis of divergences in quality, colour, width, weight and equipment which should be acceptable to the customer or are unavoidable for technical reasons.

In the case of hidden defects the period for making a complaint is one month.

Where the claim is justified the goods will be taken back. The right to a replacement delivery is lost if delivery is not made within one month from the execution of the return. Only then will the customer have the right to claim damages on the basis of lost profit (to a maximum of 5% of the net price of our goods), less any expenses saved.

The customer has the right to insist on a reduction in the purchase price instead of the return of the goods. Claims for further loss are excluded.

The liability of the supplier will on no account exceed the invoice value of the delivered goods which

are the subject of complaint. Complaints and claims under guarantees are excluded in the case of goods which are expressly sold as second-choice product or as a special offer.

The supplier accepts no liability for claims on the basis of defects which are intrinsic to the material used and are not the responsibility of the supplier. Liability is also excluded if the customer uses the textiles for the manufacture of goods for which they are not suited in accordance with the respective technical standard.

Any claims which are made do not remove the customer's duty to meet his payment obligations in accordance with the agreements made.

The period of limitation is twenty-four month from the date of delivery

#### 10. The supplier's liability

10.1 Where there is no agreement above to the contrary, the supplier's liability for damages - on any legal basis whatsoever - is excluded. Accordingly the supplier does not accept liability which are not directly related to the delivered goods themselves; in particular he accepts no liability for loss of profits or other financial damage which the customer may sustain. The above exclusion of liability does not apply to cases where the cause of the damage is due to deliberate actions or gross negligence, or where a claim is exerted on grounds of damage to life, limb or health. Nor does it apply to claims for damages which are made on the basis of the absence of a warranted property or a guarantee which has been made by the supplier. Finally it does not apply if the supplier negligently breaches a cardinal duty or a significant contractual provision. In this event the supplier's liability is limited to damages which would be predictable as being typical for the contract concerned. Where such liability is excluded or limited, this also applies to personal liability on the part of the supplier's officers, employees, representatives and assistants.

10.2 The above provisions do not apply where claims are exerted under §§ 1.4 of product liability regulations.

#### 11. Invoice and payment

Where there is no express agreement to the contrary, all prices quoted are without VAT. The customer will pay the VAT at the rate which is legally prescribed on the day of delivery. Any subsequent legal changes will be debited or credited later, depending on the statutory requirement. The invoice will be issued on the day when the goods are delivered or made available. Payments will be offset against the oldest existing debt, including any accrued interest on arrears, regardless of whether the debt concerns goods, supplementary costs, discounting costs or other debts. The date of postage will determine the day on which payment is processed. For bank transfers the day before the amount is credited by the supplier's bank will be regarded as the date of payment.

#### 12. Delay in payment

Where payment is not made by the due date, interest will be charged on arrears from the date of reminder at the level of the costs which the supplier would incur for bank credit. In this case the costs of reminders and collection will also be due for payment. If the customer is in arrears, the net amount of any invoices which are not yet due will also become due immediately. The supplier has no obligation to make further deliveries before the complete payment of outstanding invoice amounts together with interest on arrears.

If there is a significant deterioration in the customer's financial situation, the supplier has the right to

demand payment in advance for any outstanding deliveries. Only counterclaims which are undisputed or have been legally confirmed may be offset by the customer against the claims of the supplier.

### 13. Method of payment

Payment can be made in cash, by bank transfer, post office bank transfer and by cheque, which may not be post-dated. Payment may also be made by credit card, if the supplier agrees to this when the order is accepted. Where bills of exchange are accepted for payment the customer will be responsible for refunding any costs and expenses which arise.

Any other form of payment will require the agreement of both parties.

### 14. Retention of title

14.1 All goods which have been supplied, including those already paid for, remain the property of the supplier until all claims arising out of the business relationship have been met, in particular any current account balances, and until any cheques or bills of exchange submitted in payment have been credited. This applies irrespective of whether the claims arise from the supply of goods, supplementary claims, or demands arising from other legal transactions.

14.2 The customer is responsible for insuring the goods against fire and theft, and to provide the supplier with evidence on request that such insurance cover has been obtained. If the customer does not meet such a request without delay, the supplier has the right to obtain insurance cover at the customer's expense.

14.3 The customer has the right, in the normal course of business, to sell to third parties any goods to which title is retained, or to use such goods in other ways, provided that the customer is not in arrears with his payments and assigns to the supplier any claims arising from the sale in accordance with Sections 14.3 and 14.4.

14.4 Retention of title to processed goods. If goods to which title is retained are processed, the following provision is agreed between the parties: the customer carries out the processing on the instructions and on behalf of the supplier. In accordance with this agreement the producer forgoes the acquisition of title by processing, and this title is acquired by the supplier. In addition the producer assigns the finished goods to the supplier (loan) in the form of anticipated constructive possession of chattels based on agreement. If materials are processed to which different suppliers have agreed extended retention of title, the supplier will, in accordance with the above agreements, acquire part title to the new goods at the moment such intermediate or finished products are created. Where processing takes place the agreements under Sections 14.2 and 14.3 will apply to the new goods.

14.5 Extended retention of title. As security for the supplier the customer will, on agreeing to purchase goods to which title is retained, assign to the supplier any claims which accrue to him out of the sale of goods to which title is retained. This applies regardless of whether the goods are in an unprocessed or processed condition, or have been processed together with other goods into a new product, to which the supplier has the right of title or partial title in accordance with the above agreements. The purchaser is granted authority to collect payment for the goods, provided he meets his payment obligations to the supplier punctually. If the customer is in arrears in meeting his payment obligations to the supplier, the supplier has the right to carry out the collection of payment for the goods. At his request he is to be provided with information about the customers and the

amount etc. of the claims.

14.6 At the supplier's request the seller of the goods to which title is retained agrees to reassign any value which exceeds the claim by more than 20%.

14.7 If the customer is in arrears with payments, the supplier can at his discretion withdraw without delay from any or all of the contracts which exist between the parties. In this event, or if the customer stops making payments, or if the supplier has any other reason for assuming that the customer is not creditworthy or has lost his creditworthiness, the supplier has the right to demand the immediate return of any goods to which title is retained as security. If the supplier has seen good reason to exert his right of retention of title and to demand the return of goods already supplied or assigned as security, he can make use of the goods in accordance with the statutory regulations on the sale of pledged property, and to claim compensation for any deficiency in the proceeds together with any costs which arise.

#### 15. Data protection

The customer agrees to personal data relating to his order being recorded electronically and processed for purposes of the business transactions in accordance with the relevant statutory provisions.

#### 16. Applicable law

German law will apply, to the exclusion of UN law on contracts in the international sale of goods.

17. Supplementary special provisions relating to purchases through our e-shop 17.1 M. Zellner GmbH agrees to accept orders from the customer on the terms of the website. If there are errors in print or calculation on the website, M. Zellner GmbH has the right to withdraw from the order.

17.2 Right of revocation or return of the goods in accordance with § 3 FernAbsG For his part the customer can in writing (including email) or by returning the goods within two weeks after their receipt (or by returning the first part shipment) revoke the contract concluded with M. Zellner GmbH. Where the order including the valid rate of VAT amounts to more than 40 euros, M. Zellner GmbH will refund the return costs.

It is hereby agreed that M. Zellner GmbH can withhold any reduction in the value of the goods resulting from the fact that the goods have been taken into use.

17.3 No right of revocation or return in accordance with § 3 FernAbsG exists for goods which have been produced to the customer's specifications or are provided with additional features.

17.4 Consumer complaint agency In the case of online sales to private individuals, we are prepared to take part in dispute settlement proceedings before a consumer slaying point. The competent arbitration body is:

Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e. V.

Straßburger Str. 8, 77694 Kehl

Phone: +49 7851 79579 40

Fax: +49 7851 79579 41

Internet: [www.verbraucher-schlichter.de](http://www.verbraucher-schlichter.de)

E-mail address: [mail@verbraucher-schlichter.de](mailto:mail@verbraucher-schlichter.de)

If any of the above provisions should prove to be invalid, the parties will replace it with a provision

which will be valid and will come closest to the business purpose for which the invalid provision was conceived.

#### Applicable language

If these general terms of business are applied in differing languages, the German version will be the authoritative one with regard to their contents and interpretation.