

§ 1 Validity

1. These general terms and conditions (hereinafter referred to as "GTC") form the sole basis for any contracts concluded by us (ZIMMERMANN PV-Tracker GmbH) with our contracting partners (hereinafter also referred to as "Customers") for the goods and services provided by us (regardless of whether we manufacture the goods ourselves or purchase them from suppliers (§ 433 BGB (German Civil Code), § 650 BGB). The GTC apply solely to companies within the meaning of § 310 Para. 1 BGB.

2. Any contradictory or deviating conditions of the Customer shall not be recognised, even if we do not object separately to their validity in an individual case. Even if we refer to a letter containing the Customer's terms and conditions, or make reference to such, or perform the delivery without reservation in full awareness of such terms, this shall not in any way constitute consent to the validity of those terms.

3. Legally-relevant declarations and announcements made by the Customer relating to the contract (e.g. deadlines, defect notifications, termination, price reduction) must be made in writing under the statutory provisions on form, i.e. in written or text form (e.g. letter, email, fax).

§ 2 Offer and contract conclusion

1. Our offers are subject to change and non-binding, unless expressly indicated to the contrary. We shall accept orders or contracts from the Customer within fourteen days of receipt – expressly or through conclusive action.

2. Any information provided by us in relation to the contractual object (e.g. weights, measures, utility values, capacity, tolerances and technical data) and any representations of the same (e.g. drawings, photos) apply only approximately, unless their usability for the contractually intended purpose requires precise conformity. They are not guaranteed characteristics, but descriptions or indications of the delivery or service. Deviations which are customary in the trade and deviations resulting from legal regulations or constituting technical improvements, as well as the replacement of components with equivalent parts, are permitted, in so far as they do not impair usability for the contractually agreed purpose.

§ 3 Prices and payment

1. The prices apply to the scope of service and supply specified in the order confirmations. Additional or special services shall be charged separately. The prices are stated in EUROS ex works plus packaging and, where applicable, shipping, VAT in the amount valid at the time of invoicing, customs duty in the case of exports and fees and other public charges.

2. Unless otherwise indicated in the order confirmation, the purchase price must be paid, without reduction, within 14 days of invoicing and transfer of risk. However, we are entitled at any time during current business relations to perform a delivery or service either fully or in part exclusively in return for advance payment. We shall make a corresponding declaration of reservation at the latest with the order confirmation. The date of payment is considered to be the date on which payment is received. The legal regulations regarding default of payment apply.

3. Offsetting of the Customer's counter-claims or retention of payments owing to such claims is only permitted in so far as the counter-claims are undisputed or have been legally upheld; moreover, when a right of retention is exercised, the counter-claim must be based on the same contractual relationship.

4. If, following the conclusion of the contract (e.g. due to an application to open insolvency proceedings), it becomes apparent that our payment claim is at risk due to the Customer's inability to pay, we shall be entitled under the legal regulations to refuse service and – after setting a deadline – to withdraw from the contract. In the case of orders involving the manufacturing of non-fungible goods (one-off production), we are entitled to declare withdrawal immediately; the legal regulations regarding the dispensability of deadline-setting remain unaffected.

§ 4 Delivery, delivery and performance period, scope of service, Customer's obligation to cooperate

1. Deadlines and dates for deliveries and services are determined individually or indicated by us in our acceptance of the contract. If this is not the case, the delivery period is approx. 6 weeks from contract conclusion. In each case, the beginning of the period presupposes that all technical issues have been clarified by the Customer, that all of the documents, authorisations and approvals required from the Customer have been received in time and that the agreed terms of payment and any other obligations of the Customer have been complied with. If a sales shipment has been agreed, compliance with the deadline depends on the time of transfer to the forwarder, carrier, or the third party commissioned for transportation.

2. We are entitled to provide partial deliveries and partial performance, if
a) the partial delivery or partial performance can be used by the Customer within the scope of the contractually determined purpose,
b) delivery of the remaining ordered goods or the remaining service is ensured and
c) no significant additional work or costs are incurred by the Customer as a result (unless we state that we are prepared to bear these costs).

3. The occurrence of delay of delivery or service will be determined by law.

However, a written reminder from the Customer is required in each case. In the event that we default on a delivery or service, or if it becomes impossible for us to perform a delivery or service, regardless of the reason, our liability for damages shall be limited in accordance with § 6 of these GTC.

4. In the event that we are contractually obliged to perform installation or assembly work at the Customer's address or at a location specified by the Customer, an additional precondition for the beginning of the obligation to perform shall be that any preliminary work and duties of the Customer to cooperate, in particular the obtaining of all necessary planning authorisations, have been fulfilled and the Customer has ensured barrier-free access/entry to the place of destination via track with trailer. The Customer is also obliged to ensure the safety of the work/installation area and compliance with the existing safety regulations, appropriate working and installation conditions and also insurance against loss of the delivery objects. The Customer must also ensure that the equipment (e.g. forklift, front loader, etc.) required for working is available for installation and that a power connection is available at a maximum distance of 25 metres from the installation location.

5. The Customer is obliged to observe the product instructions issued by us with care and forward them to any potential users and its customers with a special note.

6. We are entitled to grant subcontracts.

§ 5 Place of fulfilment, shipping, packaging, transfer of risk, acceptance, default of acceptance

1. Deliveries are made ex works. The place of fulfilment for all obligations arising from the contract is our main office, unless otherwise determined.

2. On request of the Customer and at its expense, the goods can be sent to another destination (sales shipment). We shall select the shipping method, transport company, packaging, etc. in accordance with our professional judgement. This also applies if the Customer requires the collection or delivery of the contractual object for the services to be performed.

3. The risk is transferred to the Customer at the latest on transfer of the contractual object to the Customer, in the case of a sales shipment on transfer to the forwarder, carrier or the third party commissioned for transportation; this is determined by the beginning of the loading process. This also applies if partial deliveries are made or we have agreed to provide other services (e.g. shipping or installation). In the case of shipping or transfer delays for which the Customer is responsible, the risk is transferred at the time when the goods are ready for dispatch and we have notified the Customer of this.

4. In the event that acceptance must take place in an individual case, this determines the transfer of risk; acceptance is deemed to have occurred if

a) the service or delivery and, if we are also required to perform installation, the installation has been completed,

b) we have informed the Customer of this with notification that this implies acceptance and we have requested the Customer's acceptance,

c) ten working days have passed since the delivery, installation or service or the Customer has begun to use the purchased item (e.g. has put the delivered item into operation) and in this case five working days have passed since delivery, installation or service and

d) the Customer has failed to declare acceptance within this time period for a reason other than a defect reported to us that makes it impossible to use the item or substantially impairs its use.

5. If the Customer delays performance or acceptance or if the delivery is delayed for reasons for which the Customer is responsible, we shall be entitled to demand compensation for any storage costs incurred in the amount of 0.25% of the invoice amount of the stored delivery items per week elapsed. The right to claim for, and proof of, additional or lower storage costs and any further legal claims remain reserved to both parties.

6. The export of certain goods may require official permits in specific cases. It is the Customer's obligation to verify this and to strictly observe the regulations and embargos applicable to these goods, in particular those of the European Union (EU), the Federal Republic of Germany and other EU Member States and, where applicable, USA or ASEAN states and all of the third countries involved in the import or export. In the case of an agreed delivery outside the Federal Republic of Germany, the Customer shall, at its own expense, ensure that all of the national import regulations relating to the goods to be delivered by us have been fulfilled. The Customer releases us from responsibility for any damage and expenses incurred due to a culpable breach of duty in that respect.

§ 6 Warranty, liability

1. The purchaser's warranty rights in relation to defects of quality and title, and our liability owing to the infringement of contractual and non-contractual obligations, are determined in accordance with the statutory regulations, unless otherwise agreed. The special regulations that apply in the case of final delivery of the unprocessed goods to a consumer remain unaffected, even if the consumer has further processed them (supplier's recourse, § 478 BGB). However, claims for supplier's recourse are excluded if the defective goods have been subjected to additional processing by the purchaser or another contractor, e.g. by installation into another product.

2. If the delivered item is defective, we shall be entitled to choose whether we provide supplementary performance by remedying the defect (rectification) or

by delivering a non-defective item (replacement delivery). Our right to refuse supplementary performance in accordance with the statutory requirements remains unaffected. Furthermore, we are entitled to make the supplementary performance conditional on payment by the Customer of the amount due. The Customer is, however, entitled to withhold an appropriate portion of the payment that is proportionate to the defect. In the case of remedying of the defect or replacement delivery, we are obliged to bear all the costs necessary for the fulfilment of the supplementary performance, in particular transportation, travel, labour and material costs, provided these costs are not increased owing to the goods having been taken to a place other than the place of fulfilment, if a defect is actually present. Alternatively, we are entitled to request compensation from the Customer for the costs arising from the unjustified request for the remedying of a defect (in particular testing and transportation costs), unless the non-defective condition was not recognisable for the Customer.

3. If the supplementary performance is unsuccessful, or if an appropriate deadline for supplementary performance has expired or is unnecessary, the Customer's right to withdrawal or price reduction remains unaffected.

4. We accept liability in accordance with the statutory regulations if the Customer claims for damage compensation based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. In the case of ordinary negligence, we only accept liability

a. for damages resulting from injury to body, life or health,
b. for damages resulting from significant breaches of the essential contractual duties (i.e. obligations whose fulfilment allows the contract to be properly implemented in the first place and on whose fulfilment the customer ordinarily relies and may rely), whereby our liability is limited to the replacement of the foreseeable, typically occurring damage.

5. The foregoing limitations to liability do not apply if we have fraudulently concealed a defect or have accepted a guarantee for the nature of the goods and for claims made by the purchaser under the German Product Liability Act. The purchaser can only withdraw from or terminate the contract due to breach of an obligation which does not consist of a defect if we are responsible for the breach of the obligation. An unrestricted right of termination on the part of the purchaser (in particular in accordance with §§ 650, 648 BGB) is excluded. Otherwise the statutory requirements and legal consequences apply.

6. The foregoing regulations also apply if the Customer claims for the reimbursement of expenditure instead of claiming for damages.

7. To the extent that our liability for compensation is excluded or restricted, this also applies to the personal liability of our workers, employees, staff, representatives and vicarious agents.

§ 7 Limitation period

1. By way of derogation from § 438 Para. 1 No. 3 BGB, the general limitation period for claims for defects of quality and title is one year from delivery. If an acceptance has been agreed, the limitation period begins with acceptance.

2. However, if the commodity is a building or an item that is used for a building in accordance with its ordinary mode of use and has caused the building's defective condition (construction material), the limitation period is 5 years from delivery in accordance with the legal regulation (§ 438 Para. 1 No. 2 BGB). Any other special regulations relating to the limitation period (in particular § 438 Para. 1 No. 1, Para. 3, §§ 444, 445b BGB) remain unaffected.

3. The foregoing limitation periods under the sale of goods legislation also apply to contractual and non-contractual claims for damages made by the purchaser that are based on a defect of the goods, unless the application of the ordinary legal limitation period (§ 195, 199 BGB) would lead to a shorter limitation period in a particular case.

4. The foregoing limitation periods do not apply to claims for damages made by the Customer owing to injury caused to body, life and health or owing to intentional or grossly negligent violations of obligations, or to claims made under the German Product Liability Act, which are time-limited in accordance with the legal regulations.

§ 8 Retention of title/extended right of lien

1. The following agreed retention of title serves as security for all our current and future claims against the Customer on the basis of the supply relationship between the contracting parties.

2. The goods delivered by us to the Customer remain our property until all secured payments have been made in full. The goods and any goods that replace them in accordance with the following provisions and which are also subject to retention of title are known hereinafter as "reserved goods".

3. The Customer stores the reserved goods on our behalf free of charge. It is obliged to handle them with care and to insure them adequately at its own cost against damage caused by fire, water and theft. The Customer is obliged to perform any necessary maintenance and inspection work in a timely manner and at its own cost.

4. The Customer is entitled to process and sell the reserved goods in the regular course of business until such time as the reservation of ownership is enforced. Pledging and transfer of ownership by way of security are not permitted.

5. If the reserved goods are processed by the Customer, the processing shall be performed in our name and for our account as manufacturer and we shall immediately acquire ownership or – if processing is performed using materials with several owners or the value of the processed item is higher than the value of the reserved goods – joint ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should be made by us, the Customer, as a security, already transfers its future ownership or joint ownership – in the foregoing ratio – of the newly created item to us with immediate effect.

6. If the reserved goods are inseparably mixed with other objects that do not belong to us or combined into a single item, we shall acquire joint ownership of the new item proportionally in accordance with Para. 5 S. 1. If the combination or mixing is carried out in such a way that the Customer's item is considered to be the principal item, it shall be deemed to have been agreed that the Customer has transferred proportional ownership to us. The Customer preserves the single or joint ownership created in this way on our behalf.

7. If the reserved goods are resold, the Customer shall assign the resulting claim against the purchaser to us as security with immediate effect. If we have joint ownership of the reserved goods, the transfer is effected proportionally in accordance with the joint ownership share. The same applies to any other claims that take the place of the reserved goods or arise otherwise in relation to the reserved goods, such as insurance claims or claims resulting from unauthorised acts in the case of loss or destruction. The Customer is revocably entitled to collect the transferred claim; our authorisation to collect the claim ourselves remains unaffected by this. However, we shall waive this right, providing the Customer meets its payment obligations from the revenues it receives, is not in default of payment and in particular no application for the initiation of insolvency or bankruptcy proceedings are filed or payments terminated. If this is the case, we are entitled to demand that the Customer informs us of the transferred claims and the corresponding debtors, provides all the information required for collection, surrenders all the relevant documents to us and notifies the debtors (third parties) of the transfer.

8. If any third parties lay claim to the reserved goods, in particular by distraint, the Customer shall immediately inform them of our ownership and inform us of this so that we can enforce our property rights, and in particular lodge a claim in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is unable to compensate us for the judicial or out-of-court costs arising in this context, the Customer shall be liable to us for these costs.

9. We shall release the reserved goods and any substitute items or claims provided their value exceeds the value of the secured claims by more than 50%. The objects to be released accordingly shall be selected by us.

10. If, in the event of behaviour by the Customer in breach of the contract – in particular delayed payment –, we withdraw from the contract (enforcement of reservation of ownership), we are entitled to request return of the reserved goods and revoke the direct debit authorisation in accordance with Para. 7.

§ 9 Concluding provisions

1. If the Customer is a merchant, a legal entity under public law or a special fund under public law or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction – including internationally – for any disputes arising out of the contractual relationship will, at our own discretion, be our main office, i.e. 88436 Oberessendorf, or the main office of the Customer. However, our main office is the exclusive place of jurisdiction for claims against us. Mandatory legal provisions regarding exclusive jurisdiction remain unaffected by this provision.

2. Relations between the contracting parties are subject exclusively to the law of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

3. If the contract or these General Terms and Conditions contain any regulatory deficiencies, such legally effective regulations shall be deemed to have been agreed as the contracting parties would have agreed in view of the financial objectives of the contract and the purpose of these GTC, if they had been aware of the regulatory deficiencies. The effectiveness of the remaining terms and conditions is not affected by this.