

I. General Provisions

1. Deliveries and services of Zimmermann PV-Stahlbau GmbH & Co. KG – (in the following: ZPV) are made solely on the basis of the following Conditions and Sale and Delivery.
2. With the acceptance of an offer, an order confirmation, or at the latest with the issuance of an order or receipt of a service the Ordering Party recognises that the Conditions of Sale and Delivery shall apply to all business relationships with ZPV co. Once agreed to, the Conditions of Sale and Delivery also apply to conclusions of contracts in the future.
3. The Terms and Conditions of ZPV co. are solely applicable; contradictory or deviating terms and conditions of the Contractual Partner are not recognised by ZPV co. unless it expressly agreed to their validity in writing.
4. These Terms and Conditions are also applicable if ZPV co. provides the deliverables with the knowledge of these contradictory or deviating terms and conditions of its Contractual Partner.
5. All agreements that deviate from the printed or written contractual text require the written form. Other deviations and addenda only then become a component of the contract if they are confirmed by ZPV co. in writing.
6. The Terms and Conditions also apply to all future transactions with the Contractual Partner.
7. ZPV co. is entitled to affix a logo or trademark to its products.

II. Issuance of an Order

1. The offers of ZPV co. are subject to change. Insofar as nothing else arises from the order, a contract only arises after an order confirmation from ZPV co. This applies in an analogous way to supplements, changes, or ancillary agreements. Invoicing is considered order confirmation.
2. The order or item numbers relate to the respective newest version of the documents of ZPV co. (catalogues or prospects) from which the main technical information can be deduced. Changes to these technical details are expressly reserved.
3. The drawings, figures, measures, colours, weights, and other information in the prospects and catalogues are approximate values typical of the industry unless they are expressly designated as binding by ZPV co.
4. Samples are merely orientation samples, in the event of sale by sample the characteristics of the sample are not guaranteed.

III. Transfer of Risk and Shipping

1. The risk is transferred to the Ordering Party – even when carriage paid delivery is agreed – as soon as the delivery is ready for the Ordering Party in the warehouse of ZPV co., in the event that shipment is agreed, as soon as the shipment ready-for-use shipment is shipped or picked up.
2. Packing and shipping occur – at the expense of the Ordering Party – with due diligence and prudence. Upon request and at the expense of the Ordering Party, the shipment will be insured by ZPV co. against breakage, shipping, and fire damages.
3. If the goods are not delivered upon request of the Ordering Party or if it is in acceptance arrears, the risk is transferred to the Ordering Party upon warehousing of the goods commissioned by ZPV co. Arising expenses are borne by the Ordering Party. Furthermore, ZPV co. is entitled to withdraw from the contract in the event of late or refused acceptance of its goods by the Ordering Party or demand damages on account of non-fulfilment.

III. Prices and Payments

1. All prices from ZPV co. are in euros, strictly net.
2. Insofar as nothing else arises from the order confirmation of ZPV co., the prices are ex works not including packaging, postage, freight, other shipping expenses, insurance, or duties; these will be invoiced separately.
3. The statutory value-added tax will be calculated and listed separately at the time the deliverable is provided.
4. The basis of calculation are the prices applicable at the time the order is issued. With each new price list of ZPV co., all prior prices lose validity. Unless fixed prices have been agreed upon, the right of reasonable price changes due to a change of wages, material and distribution costs is reserved for deliveries which are not made within 6 months of conclusion of the contract.
5. The deduction of a trade discount depends on a separate agreement.
6. ZPV co. is entitled to credit payments to old debts first despite other instructions of the customer. If expenses and interest arose, ZPV co. is entitled to credit the payments first against the expenses, then the interest, then the main receivable.
7. A payment is only considered made once ZPV co. can dispose of the amount. Payments by cheque are only considered received after final encashment.

IV. Set Off and Rights of Retention

1. The customer only has the right to set off if the counterclaim has been established by court of law or is undisputed.
2. The withholding of payments on account of possible counterclaims of the Contractual Partner against ZPV co. is expressly excluded.
3. If the Ordering Party is a trader and the contract belongs to the operations of the commercial activities, it is not entitled to the right of refusal of performance pursuant to section 320 of the German Civil Code [BGB] and withholding rights. This also applies to rights of retention on account of supposed defects of the delivery or performance or execution of the warranty and for the commercial right of retention pursuant to section 369 of the German Commercial Code [HGB].

V. Delivery Dates and Periods

1. Delivery dates are only binding of ZPV co. if they are confirmed by us in writing. Information with "approx." or "around" etc. do not designate binding deadlines and periods, but rather merely indicate the expected delivery date.
2. An agreed deadline is considered kept upon provision for the Ordering Party. If shipping is agreed, the deadline is considered met when the ready-for-use shipment is shipped. The keeping of an agreed deadline depends on timely receipt of all documents to be provided by the Ordering Party and adherence to agreed payment conditions and other duties of the Ordering Party. If these preconditions are not fulfilled in a timely manner, the deadline is prolonged by a reasonable extent.
2. The keeping of delivery dates or periods depends on the timely receipt of all documents, authorisations, and plans to be delivered by the Contractual Partner as well as adherence to the agreed payment conditions and fulfilment of the Contractual Partner's duty to assist.
3. The delivery period begins at the earliest on the date of order confirmation.
4. Partial deliveries and partial services are allowed in a reasonable scope.
5. The delivery period is prolonged in the corresponding manner upon occurrence of unforeseeable hindrances or those for which ZPV co. is not culpable insofar as they verifiably influence the finishing or dispatch of the goods.
6. In the event of strikes or lockouts demanded by the trade association of the employer – also at suppliers – a reasonable prolongation also comes into effect.
7. Claims of the Ordering Party to compensation for arrears and damages on account of non-fulfilment on account of delay or the inability to delivery on the part of ZPV co. are limited to 10% of the value of that part of the delivery or service that cannot be used or cannot be used in a timely manner on account of the impossibility or the arrears. Claims for compensation that go beyond the limit named above are excluded in all cases of arrears or impossibility, also after expiry of a grace period set by ZPV co. This does not apply insofar as there is compulsory liability by force of law in cases of intention or gross negligence.
8. The objects delivered must be accepted by the Ordering Party even if they have minor defects. Partial deliveries are admissible.

VI. Delivery Period and Delivery Arrears

1. The delivery period agreed by the parties arises from the order confirmation handed over by ZPV co. The delivery date is only binding if the Contractual Partner signs and returns the order confirmation to ZPV co. and the technical clarification has been carried out.
2. If ZPV co. can tell that its deliverable cannot be provided during the agreed period, the Contractual Partner will be informed without delay in writing, the reason will be announced, and the probable delivery time will be named.
3. If the deliverable is delayed by a force majeure or other, objectively non-preventable circumstances for which ZPV co. is not responsible (such as strikes) and or on account of an action or failure to act

on the part of the Contractual Partner, a reasonable prolongation of the delivery period based on the circumstances comes into effect.

4. The Contractual Partner is only entitled to withdrawal from the contract if ZPV co. is responsible for the non-adherence to the delivery date and it has set a grace period for ZPV co. without success.

VII. Assembly, Safety, Aids, and Reworking by the Customer

1. Precondition for the beginning of assembly is that all preparatory work and duties to assist of the Contractual Partner, in particular the obtaining of all building permits, have been fulfilled. Professional and proper assembly is only possible in the case of unhindered access/entrance to the building site with a lorry with a trailer.
2. The Contractual Partner is obligated to ensure the safety of the workplace/assembly site and for observance of existing safety requirements and for reasonable working and assembly conditions. Insofar as nothing else is contractually agreed, the unloading of the elements is in the area of responsibility of the Contractual Partner of ZPV co.
3. The Contractual Partner is obligated to provide technical help at its own expense. This includes in detail the unhindered navigability of the building site, unhindered access to and traffic safety of the assembly location, the provision of a power supply a maximum of 25 m from the assembly site and the provision on short notice of suitable tools (e.g. fork lifts, front loaders...).
4. If the setup, assembly, or start up is delayed on account of circumstances for which ZPV co. is not responsible, the Ordering Party, after determination of the expenses by ZPV co., is to bear reasonable expenses for the waiting period and for additional necessary journeys by the erecting party or the assembly personnel.
5. If ZPV co. has taken over the erection or assembly for individual invoicing, the Ordering Party is to pay remuneration based on the hourly labour rates agreed upon order confirmation - or otherwise those typical for the Supplier.

VIII. Acceptance

1. The acceptance is to occur without delay after announced completion either by the Contractual Partner itself or authorised personnel. The same shall apply to partial performances.
2. If the products of ZPV co. have been put into service in whole or in part or are in use, acceptance is considered to have taken place 14 calendar days after it has been put into service or use (notional acceptance).

IX. Retention of Title

1. The delivered goods remain property of ZPV co. until final fulfilment of all current and future claims from the business relationship with the Contractual Partner.
2. Processing and transformation is always done for ZPV co. as the manufacturer but without any obligation for it. If the co-ownership of ZPV co. lapses on account of blending or mixture, it is already agreed now that the co-ownership of the Contractual Partner of the entire item is transferred proportionally to ZPV co. in the amount of the invoice value. The Contractual Partner shall store the property or joint property of ZPV co. at no charge.
3. The Contractual Partner obligates itself to protect the property/joint property of ZPV co. with the due care and diligence of a businessperson against damage or loss.
4. The Contractual Partner is entitled to process and sell the goods subject to retention of title in the regular course of business. Pledging and assignment as a security are not allowed. The receivables arising from the further sale or for another legal reason with regard to the goods subject to retention of title are assigned now as a precaution to their full extent with all ancillary rights to ZPV co.
5. In the event of seizures by third parties of the goods subject to retention of title, the Contractual Partner shall reference the ownership of ZPV co. and inform it without delay. Expenses and damages are to be borne by the Contractual Partner of ZPV co.
6. In the event of acts in breach of contract on the part of the Contractual Partner, ZPV co. is entitled to take back the goods subject to retention of title at the expense of the Contractual Partner or, as the case may be, demand assignment of the claim to handover of the Contractual Partner against third parties. The taking back and pledging of goods subject to retention of title by ZPV co. do not constitute withdrawal from the contract.
7. If the value of the securities exceeds the demands of ZPV co. by more than 20%, upon request of the Contractual Partner ZPV co. will release securities to this extent according to its choice.

X. Rights Regarding Defects

1. The goods delivered by ZPV co. are to be inspected immediately. Defects of quality, incorrect deliveries, and incorrect amounts, insofar as they can be found by reasonable inspections, are to be reported in writing to ZPV co. without delay, at the latest, though, within 7 days of receipt of the goods. If a defect not found during the first inspection is not found until later, it is to be reported in writing without delay after being found and any processing or alteration is to be stopped immediately. Section 377 HGB applies and takes priority to this extent over the regulations of the BGG.
2. Should the delivered product have a defect present at the time of transfer of risk despite all the care taken, with reservation of timely notice of defects, ZPV shall provide subsequent improvement or a replacement according to its choice. ZPV co. is always to be given the opportunity for subsequent improvement within a reasonable period.
3. Should the subsequent improvement fail, the Contractual Partner - without prejudice to any claims for damages - can withdraw from the contract or reduce the remuneration. Instead of a refund of the down payment or final payment the Contractual Partner shall receive a credit from ZPV co.
4. There are no warranty claims on the basis of merely immaterial deviations from agreed characteristics, merely immaterial limitations on usability, for natural wear and tear, and for damages that occurred after the transfer of risk on account of incorrect or negligent treatment, excessive loads, unsuitable tools, or on account of special external influences not presupposed pursuant to the contract.
5. Should repair work or changes be made by the Contractual Partner or third parties then there are not any warranty claims for them or thereby arising consequences either.
6. The right of the Ordering Party to make claims from defects becomes time barred within six months of transfer of risk, at the latest with the handover of the delivery or service. The warranty period for subsequent improvements is three months and for replacement deliveries or services it is six months. It runs at least until the expiry of the original warranty period for the subject of the delivery or service. The provisions above on warranty periods do not apply insofar as the law prescribes longer periods in a compulsory manner.
7. Additional claims of the Ordering Party are excluded, in particular a claim to replacement of damages that did not arise from the subject of the delivery itself. This does not apply insofar as personal injury or damages to privately used items pursuant to the German Product Liability Act (Produkthaftungsgesetz) occur or to the extent that there is compulsory liability by law in cases of intention, gross negligence, the lack of promised characteristics and for the culpable breach of material contractual duties (cardinal duties).
8. Other claims for damages of the Ordering Parties, in particular from positive breach of contract, from the breach of duties during contractual negotiations, or from civil offences are excluded if ZPV co., its representatives, or its agents are not guilty of gross negligence or intention. The Supplier is not liable from the above-named legal institutions for consequential damages from defects; this is without prejudice to no. X para. 7 clause 2.
9. All claims for damages become time-barred six months after handover of the deliveries or services. If the handover has not occurred yet or if the event causing the damages happens after handover, the time-barring period begins with the occurrence of the damage itself.

XI. Limitation of Liability

1. Insofar as nothing else arises in the following, other and additional claims of the Contractual Partner against ZPV co. are excluded. Therefore, ZPV co. is not liable for damages that did not arise on the delivered goods themselves. It is especially not responsible for loss of profit and other financial losses incurred by the Contractual Partner.
2. The limitations of liability above do not apply in the event of intention, gross negligence on the part of legal representatives or managers of ZPV co. or in the event of the culpable breach of material contractual duties. In the event of the culpable breach of material contractual duties, ZPV co. is liable – except in the event of intention or gross negligence on the part of its statutory representatives or managers – solely for damages that are typical of the contract and reasonably foreseeable.
3. The limitation of liability does not apply to cases in which there is liability for personal injury or material damages to privately used items pursuant to the German Product Liability Act for defects in the delivered product. It does not apply, either, in the event of injury to life, limb, or health and in the event of the lack of promised characteristics if and insofar as the purpose of the promise was to protect the Contractual Partner from those damages that did not arise on the product itself.
4. Insofar as the liability is excluded or limited, this also applies to the personal liability of employees, staff, collaborators, representatives, and agents of ZPV co.

5. The Customer is obligated to observe the operation manual handed over and/or the safety instructions of ZPV co.'s assembly personnel very exactly.

XII. Force Majeure

A force majeure, labour unrest, riots, official measures, the failure of subcontractors to deliver supplies to ZPV co. and other unforeseeable, unpreventable, and severe events release the Contractual Partner from its duty to perform for the duration of the disturbance and in the scope of its effect. This also applies if the events happen at a time in which the concerned Contractual Partner is in arrears. It is obligated within the scope of the reasonable to provide the necessary information without delay and adjust its obligations based on the changed conditions in good faith.

XIII. Instructions and Product Observation

1. The Ordering Party is obligated to observe the product instructions published by ZPV co. and forward them to any users and its customers with a special notice.

2. Should the Ordering Party fail to fulfil its duties pursuant to no. XIII para. 1 and this results in product or manufacturer liability claims against ZPV co., the Ordering Party shall release ZPV co. from these claims in the internal relationship; if circumstances for which ZPV co. is co-responsible contributed, the release is based on the degree of cause.

3. The Ordering Party is obligated to monitor the products of ZPV co. and their use in practice. This also applies after further sale. The product monitoring duty relates in particular to damaging characteristics of the product not known yet or to uses and consequences of use that create a dangerous situation. ZPV co. is to be informed of knowledge gained without delay.

XIV. Export

The re-exporting of the delivered goods from the Federal Republic of Germany is subject to German export regulations and may be subject to official authorisation. The export of the delivered goods from the territory of the Federal Republic of Germany requires the written permission of ZPV co.; regardless of that the Ordering Party is responsible itself for the obtaining of all official import and export permits. The Ordering Party bears responsibility for compliance with the relevant provisions up to the end user.

XV. Security Rights of the Supplier (ZPV Co.)

1. The delivered goods remain property of ZPV co. until fulfilment of all current and future claims that ZPV co. has against the Ordering Party regardless of legal basis.

2. The Ordering Party is entitled to process the delivered goods in the scope of its regular business operations. The processing of the goods occurs for ZPV co. without this creating obligations for it; the new items become property of ZPV co. In the event of processing with other goods that do not belong to ZPV co., ZPV co. acquires co-ownership of the newly manufactured item in proportion of the invoiced value of the goods subject to retention of title to the other processed items. In the event of combining, mixing, or blending, ZPV co. becomes a co-owner pursuant to the statutory regulations. Should the property of ZPV co. lapse anyway and the Ordering Party become the (co) owner, it already transfers its property to ZPV co. now in proportion of the invoiced value of the goods subject to retention of title to the other processed items as a security. In all cases, the Ordering Party is to store the property or joint property of ZPV co. at no charge for it.

3. The Ordering Party is entitled to sell the goods in unprocessed or in processed condition in the scope of its regular business operations. The authorisation to sell lapses automatically upon fruitless attempt to execute at the Ordering Party, in the event of a check or bill protest to be cashed from the Ordering Party or if an application for settlement or bankruptcy is filed against the assets of the Ordering Party. For the rest, other disposals of the goods subject to retention of title, in particular pledging and assignment as a security, are not allowed.

4. The Ordering Party already assigns all claims with ancillary rights arising from the further sale of the goods subject to retention of title in processed and unprocessed form to ZPV co. In the event of the sale of processed, mixed, blended, or combined goods subject to retention of title, ZPV co. obtains the first-priority partial amount that corresponds to the proportionate share of the invoiced value of its delivered goods plus a security surcharge in the amount of 5%. With reservation of revocation at any time, the Ordering Party is entitled to collect the receivables assigned to ZPV co. in regular business activities. ZPV co. will not make use of its own authorisation to collect as long as the Ordering Party fulfils its payment duties - also towards third parties. This authorisation to collection does not allow the Ordering Party to assign its consequential claims to a factoring company the scope of so-called true factoring with assumption of the del credere risk. As a precaution, the ordering party assigns its claims against the factoring company for payout of the factoring revenue to ZPV co. and obligates itself to report this assignment to the factoring company without delay after invoicing by ZPV co.

5. The Ordering Party is not entitled to put the claims of ZPV co. in a current account without the express written agreement of ZPV co. The Ordering Party is also not authorised to put the receivables assigned to ZPV co. in advance from the further sale of the delivered goods in processed or unprocessed condition in a current account kept with the customer. As a precaution, the Ordering Party assigns its claims from the periodic balances and a final balance up to the amount of the secured claims to ZPV co.; the assignment includes causal and abstract balances.

6. The rights of security of ZPV co. expire only upon complete fulfilment. In the event of payment by cheque or bill of exchange the security rights only lapse if the Ordering Party has cashed the paper in a final manner and recourse against ZPV co. is no longer possible. ZPV co. is obligated to release securities according to its choice as soon as the value of the existing securities exceeds the claims of ZPV co. by more than 20%.

7. The Ordering Party is obligated to inform ZPV co. without delay about execution proceedings of third parties against the goods subject to retention of title and its other securities with handover of the documents necessary for the objection. The intervention expenses arising for ZPV co. are to be borne by the Ordering Party insofar as the invention was successful and the execution proceedings were attempted in vain against the respondent as the debtor or the Ordering Party is responsible for the lack of success. Upon request of ZPV co., the Ordering Party is to provide a list of the customers of unprocessed or processed goods subject to retention of title and report the assignment of the claims against them to these customers. In the event of ordering companies to which no natural person belongs as a shareholder with unlimited personal liability, this duty also concerns the managing director personally.

XVI. Place of Fulfilment, Legal Venue, and Applicable Law

1. This Contract and the entire legal relationship between the parties are governed by the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Trade Law (CISG).

2. Place of fulfilment and sole legal venue for all disputes arising from this Contract is the domicile of Zimmermann PV-Stahlbau GmbH & Co. KG, i.e. 88436 Eberhardzell, insofar as nothing else arising from the order confirmation.

3. For all legal disputes, also those in the scope of a bill of exchange or cheque suit, the legal venue is the domicile of Zimmermann PV-Stahlbau GmbH & Co. KG if the contractual partner is a business person, a legal entity under public law, or a special fund under public law.

4. Any changes or supplements to this contract shall be in writing. This also applies to changes to the written form clause above. No oral ancillary agreement have been made.

5. Should individual provisions of this contract be or become invalid or include gaps, the validity of the remaining provisions is not thereby affected.