

General Terms and Conditions of Purchase

§ 1 General – Application

1. Only our General Terms and Conditions of Purchase shall apply; terms and conditions of the Supplier (hereinafter also referred to as the Vendor or the Contractor) which are either to the contrary or diverge from our Terms and Conditions of Purchase shall not be recognised by Ziehl-Abegg (hereinafter also referred to as the Purchaser or the Client) unless Ziehl-Abegg has explicitly consented to their application in writing. The Terms and Conditions of Purchase shall likewise apply where the Supplier's delivery is accepted without reservation by Ziehl-Abegg in awareness of terms and conditions of the Supplier which are either to the contrary or diverge from our own Terms and Conditions of Purchase.

2. The Terms and Conditions of Purchase shall also apply to all future transactions with the Supplier.

3. The Terms and Conditions of Purchase shall solely apply vis-à-vis companies within the meaning of § 310 Section 4 German Civil Code.

§ 2 Orders

1. Orders shall only be valid where placed in writing, by telefax or by e-mail. Every order placed must be confirmed by means of an order confirmation issued by the Supplier except where there is an explicit agreement regarding waiver of the requirement for the confirmation of orders. Where Ziehl-Abegg does not receive the above-mentioned confirmation of order within fourteen days from the date of ordering, Ziehl-Abegg shall reserve the right to cancel the order without obligation.

2. Ziehl-Abegg shall retain the property rights and copyright to all figures, drawings, calculations and other documents; same shall not be made accessible to third parties without our explicit consent. They shall be solely used for production on the basis of our order; following execution of the order they shall be automatically returned to Ziehl-Abegg. They shall be kept secret from third parties. Any right of retention to such documentation shall be excluded in all cases.

3. All quotations submitted by the Supplier as well as all associated activities shall be free of charge for Ziehl-Abegg.

4. The Supplier shall be obliged to maintain non-disclosure as regards all business and trade secrets of Ziehl-Abegg, whereby this shall also include all documents made available to the Supplier by Ziehl-Abegg, in addition to other information forming the subject of communication. The obligation of non-disclosure shall also apply following performance of the present contract. A corresponding obligation shall be imposed in writing on any sub suppliers and subcontractors. Should the Supplier establish that an item of confidential information has been acquired by an unauthorised third party or that a confidential document has been mislaid, he shall notify Ziehl-Abegg in writing at once.

The Supplier shall be lastly obliged to likewise treat as confidential conclusion of the contract itself; references may only be named with our prior written consent.

5. Ziehl-Abegg shall also be at liberty to request changes to the subject of delivery following conclusion of the contract where this can be reasonably expected of the Supplier. In the event of such amendment to the contract due consideration must be given to the consequences for both parties, in particular as regards additional or reduced costs as well as the delivery dates.

§ 3 Prices, Shipment, Packaging, International Transport

1. The agreed prices are fixed prices and shall exclude additional claims of whatever nature. Where prices are not specified in the purchase order, they shall be stated in the order confirmation with binding effect. In this case the contract shall not come into being until we have given our written consent to the prices.

2. Said prices shall include the costs of packaging and transport to the forwarding address specified by ourselves or the place of use as well as costs incurred for customs and clearing formalities. Delivery shall be effected Delivered Duty Paid (DDP), Incoterm Codes 2000.

3. Our order number shall be stated on advices of shipment, bills of lading, invoices and all correspondence with ourselves. Ziehl-Abegg will only be able to process invoices where – as specified in our order – the order number shown therein is indicated in addition to any other information explicitly mentioned; the Supplier shall be accountable for all consequences ensuing from failure to comply with this obligation unless he is able to prove that he was not responsible in this regard.

4. Ziehl-Abegg shall only be obliged to take delivery of the quantities or piece numbers ordered by the company for a specific time of delivery. Deliveries which exceed or fall short of the specified quantity shall only be permitted where previously agreed with ourselves (normally in writing).

5. Shipment shall take place at the Supplier's risk. The risk of any deterioration, including accidental perishing, shall thus remain with the Supplier until delivery to the forwarding address or place of use required by ourselves.

6. The Supplier's obligation to take back packaging shall be governed by the statutory provisions. Goods must be packaged in such a manner as to avoid any damage in transit. Packaging materials shall only be used to the extent that same are necessary to achieve this purpose. It shall only be permitted to make use of environmentally sustainable packaging and filling materials which do not impair recycling. Where we are separately charged for packaging by way of exception, Ziehl-Abegg shall be entitled to return said packaging carriage paid against reimbursement forming the subject of individual negotiation with the Supplier.

7. A packing slip or delivery note shall be included with every consignment.

8. Where goods are transported beyond international borders, the Supplier shall be obliged to provide the customs invoice necessary for custom clearance. The invoice shall be issued in English or the language of the destination country and must include the following data: name and telephone numbers of the Purchaser's and the Vendor's contact persons who are familiar with the transaction; Purchaser's order/purchase order number, Purchaser's invoice items of the purchase order, release code number (with skeleton agreements), individual component numbers and detailed description of goods; purchase price per item stated in the currency applicable to the transaction; quantity; INCOTERM or Incoterm Codes 2000 and designated location, in addition to the country of origin of the goods. Moreover, all goods and services provided by the Purchaser to the Vendor for production of the goods which are not included in the purchase price, must be identified separately on the invoice (e.g. consigned materials, tools, etc.) Every invoice must also include the relevant order number or other references to any consigned goods and list all discounts or reductions offered on the basic price which were taken into consideration when determining the invoice value.

9. Where agreements exist between the destination country to which the goods are to be delivered and the country in which the Vendor is based in respect of preferential treatment in terms of commerce or customs duties ("trade agreement"), the Vendor shall be obliged to cooperate with the Purchaser in examining the eligibility of goods for special programmes of benefit to the Purchaser and to supply the Purchaser with the necessary documentation (such as the EUR1 Certificate, preferential certificate of origin, FAD, NAFTA Certificate of Origin or other certificates of origin) in accordance with the relevant preferential customs treatment programme (e.g. EEA, Lomé Convention, EU / Mediterranean Partnerships, GSP, EU-Mexico Free Trade Agreement, NAFTA, etc.) to allow the goods to enter the destination country duty-free or subject to preferential treatment. Likewise, where there exists a trade agreement or preferential customs treatment programme which is applicable to the scope of the purchase order and this is deemed by the Purchaser to be of benefit to himself at any time during its execution, the Vendor shall be obliged to support the Purchaser in his efforts to realise such benefits, including the value of any countertrades ensuing from the purchase order or set-off, and the Vendor shall acknowledge that such benefits and preferential treatment shall solely accrue to the Purchaser. The Vendor shall be obliged to indemnify the Purchaser for any costs, fines, contractual penalties or charges resulting from the Vendor's inaccurate documentation or failure on the part of the Purchaser to cooperate in a timely manner. The Vendor shall be obliged to immediately notify the Purchaser of any errors known to exist in the documentation.

10. Where the ICS (Import Control System) customs procedure is of relevance, this shall be observed by the Supplier, who shall thus in particular make available to the custom authorities the data pertinent to customs clearance in a timely manner in the form of the stipulated entry summary declaration (ENS), also referred to in German as [Eingangs-SumA](#).

§ 4 Invoicing and Payment

1. Invoices must be submitted to ourselves separately in duplicate together with all associated documents and data in due form following delivery. Invoices not submitted in due form shall not establish a due date for payment and shall only be deemed to have been received by ourselves once submitted in the proper form. Ziehl-Abegg reserves the right in the event of premature delivery to effect payment not until the due date agreed for settlement.
2. Payment shall be effected according to customary commercial procedure, namely either within 14 calendar days with 3 % discount or 60 calendar days strictly net, calculated from delivery/performance and receipt of invoice.
3. Where certificates documenting materials testing or other documents have been agreed for the scope of delivery, they shall form an integral part of delivery and must be submitted to ourselves at the latest together with the invoice.
4. We shall hold a right of set-off and retention to the extent as provided by the statutory provisions.

§ 5 Delivery Dates, Delay in Delivery, Force Majeure

1. The delivery date specified in the order shall be binding.
2. The Supplier shall be obliged to immediately notify us in writing where circumstances resulting in an inability to comply with the agreed delivery date occur or come to his notice; at the same time he shall indicate the probable duration of the delay.
3. In the event of any delay in delivery we shall hold the statutory claims in this regard. In particular Ziehl-Abegg shall be entitled to demand compensation for performance following fruitless expiry of a period of time of reasonable length. Ziehl-Abegg shall additionally be entitled in the case of default to withdraw from the contract at its discretion, whereby the risk of default on the part of the Supplier's sub suppliers shall be borne by the Supplier. Any additional costs incurred for express shipment required to comply with delivery dates shall be for the Supplier's account.
4. In the event of delayed delivery Ziehl-Abegg shall be entitled to apply a contractual penalty amounting to 0.2% of the net total value of the order per working day of delay up to a maximum of 8% of the net total value of the order. Ziehl-Abegg may also apply the contractual penalty without making reservation until issue of the final invoice. Any claim to compensation due to non-performance shall be offset against the contractual penalty incurred.
5. The Supplier shall only be able to invoke the absence of necessary supplies to be furnished or other duties of participation to be rendered by ourselves where we have received a written reminder to this effect and Ziehl-Abegg has failed to comply with said obligation within a reasonable period of time.
6. Force majeure and industrial disputes shall release us from our obligation of performance for the duration of the disturbance and to the extent of its involvement. Ziehl-Abegg shall be released from its obligation to accept the ordered delivery/performance either partially or in its entirety and shall be entitled in this respect to withdraw from the contract where it is not longer able from an economic viewpoint to make use of said delivery/performance due to the delay caused by force majeure or industrial disputes.
7. Ziehl-Abegg shall only accept partial delivery following explicit written agreement to this effect. Where partial shipment is agreed, the outstanding quantities shall be indicated.

§ 6 Liability for Defects and Guarantee/Warranty

1. The Supplier guarantees that all deliveries/services comply with state-of-the-art technology, the relevant statutory provisions and regulations, and guidelines issued by the authorities, employers' liability insurance associations and trade associations. Should it be necessary in individual cases to diverge from such regulations, the Supplier must obtain written consent from Ziehl-Abegg in this regard.

The responsibility of the Supplier for his deliveries/services shall be not be excluded or limited either by said consent or other dispensations or declarations on our part. Where the Supplier has reservations about the type of execution required by Ziehl-Abegg, he shall immediately notify Ziehl-Abegg in writing.

2. The Supplier undertakes to make use within his financial and technical means of environmentally friendly products and procedures for his deliveries/services as well as for supplies or additional services rendered by third parties. The Supplier shall be liable for the environmental compatibility of the delivered products and packaging materials and for all consequential damage resulting from culpable failure to comply with his statutory obligations of disposal. The Supplier shall issue a certificate of inspection for the delivered goods at our request.

3. No incoming inspection of the delivered goods shall be performed by the Client. The Contractor agrees to waive his rights according to § 377 German Commercial Code. The Contractor moreover agrees that the outgoing goods inspection he is to carry out shall serve the same purpose as the incoming inspection in fact required from the Client according to § 377 German Commercial Code.

The Supplier shall ensure that his public liability insurance accepts the aforementioned amendment of the statutory liability provisions without impairing the existing cover offered by his public liability insurance. The Contractor shall at the Client's request immediately furnish certification to this effect from his insurers.

4. The statutory defect claims shall accrue to Ziehl-Abegg to their full extent (including consequential damage from defect); at all events Ziehl-Abegg shall be entitled at its discretion to request the elimination of defects by the Supplier or the delivery of a new item including to or at the place at which the product is used; this shall also apply in the case of contract work. It shall explicitly reserve the right to claim compensation, in particular to compensation in lieu of performance.

5. Where the Supplier fails to satisfy his obligation of subsequent fulfilment within a reasonable period of time set by Ziehl-Abegg, Ziehl-Abegg shall be entitled to itself perform the necessary measures at the expense and risk of the Supplier – without prejudice to further liability for defects in existence – or arrange for their performance by third parties. Ziehl-Abegg shall additionally be entitled to itself eliminate defects at the Supplier's expense in case of imminent danger or special urgency.

The limitation period for claims in respect of material defects shall be 36 months, calculated from the transfer of risk.

In the case of spare parts the limitation period for claims in respect of material defects shall be 36 months from installation or commissioning, but shall come to an end at the latest 4 years from the transfer of risk.

Claims in respect of defects in a building or items which are or have been used for a building in accordance according to standard procedure for their usage and have resulted in its defectiveness shall expire by limitation 5 years from the date of delivery.

6. In the case of rectified parts or deliveries of spare parts the limitation period for claims in respect of material defects shall re-commence on completion of subsequent fulfilment; should an acceptance procedure have been agreed, the limitation period shall re-commence as soon as acceptance is successful.

7. The Contractor shall assume the costs and risk involved in the return of defective items, as well as those costs incurred by the Client due to their defectiveness (in particular costs of processing, transport, infrastructure, labour, staffing and materials).

§ 7 Quality, Product Liability

1. The Supplier shall carry out quality assurance measures which are appropriate in their nature and extent and correspond to state-of-the-art technology (suitable quality management system e.g. DIN EN ISO 9000 ff) and provide evidence of same to Ziehl-Abegg on request. The Supplier shall additionally conclude a quality assurance agreement with Ziehl-Abegg as required. Ziehl-Abegg shall reserve the right to perform on-site testing to check the efficacy of said quality management system.

2. Where the Supplier is responsible for a product defect, he shall be obliged upon first demand to indemnify Ziehl-Abegg in respect of third-party claims for compensation where the cause can be attributed to his own sphere of management or organisation and where the Supplier bears or would bear liability vis-à-vis third parties. In the framework of his liability for losses as defined above the Supplier shall be likewise obliged to refund costs resulting from or in association with any recall campaign carried out by our company. Ziehl-Abegg shall inform the Supplier of the content and extent of such recall measures as far as this is possible and can be reasonably expected of same – and shall offer the Supplier the opportunity to comment in this regard. All other statutory claims shall remain unaffected thereby.

The Supplier shall undertake to maintain product liability insurance including an appropriate level of cover for the risk of recall, offering however an insured sum of at least €5 million for each instance of personal injury/damage to property on a lump-sum basis for the term of the present agreement, i.e. until expiry of the limitation period for the relevant defect; where further claims to compensation accrue to Ziehl-Abegg, they shall remain unaffected thereby. The Supplier shall on request immediately provide Ziehl-Abegg with written evidence documenting the conclusion and maintenance of such insurance.

3. § 6 item 3 shall additionally apply.

§ 8 Property Rights

1. The Supplier guarantees that all deliveries are free of third-party property rights and in particular that delivery and use of the subject of delivery does not infringe patents, licences or other property rights of third parties.

2. The Supplier shall indemnify Ziehl-Abegg and our customers in respect of third-party claims resulting from any infringement of property rights on first demand and shall also assume all associated costs incurred thereby.

3. Ziehl-Abegg shall be entitled at the Supplier's expense to obtain permission for use of the respective delivery items and services from their rightful owners.

4. The limitation period for claims in respect of defects as to title shall be 5 years from the transfer of risk.

§ 9 Social Responsibility and Environmental Protection, Code of Ethics

The Supplier shall be obliged to comply with the applicable national laws and regulations of the federal states.

The Supplier is committed in the framework of his corporate responsibility to the protection of human rights, compliance with work standards and rejection of discrimination and slave / child labour during the manufacture of products and the rendering of services and to the avoidance of any adverse effects for man and his environment during performance of his activities.

The Supplier confirms that he will not tolerate any form of corruption and bribery or to engage in same in any manner whatsoever.

The Supplier is asked to avoid making gifts to staff employed by Ziehl-Abegg. Conventional presents or invitations of minor value shall constitute an exception to this rule.

This shall not only apply to transactions between the Supplier and Ziehl-Abegg, but also to other business partners (own supply chain, intermediaries, staff, competitors and the public authorities).

§ 10 Final Provisions

1. The Supplier shall not be entitled without our prior written consent to assign the contract either partially or in its entirety to third parties; this shall also apply to any awards to subcontractors or subsuppliers intended by the Supplier.

2. Unless explicitly agreed otherwise, the place of performance for supply obligations shall be the forwarding address or place of use required by our company; in the case of all other obligations to be rendered by both parties the place of performance shall be Künzelsau.

3. Where the Supplier ceases payments, a temporary trustee in bankruptcy is appointed or insolvency proceedings are instituted against his assets, Ziehl-Abegg shall be entitled to withdraw from the contract either partially or in its entirety.

4. The language of the contract shall be German. Where the contracting parties additionally avail themselves of another language, the German text shall prevail.

— 5. The legal venue shall be the court with jurisdiction for our place of business. Ziehl-Abegg shall however also be entitled to bring actions at the Supplier's principal place of business.

6. The contractual and other legal relationships between the contracting parties shall be subject to German substantive law; UN Law on the International Sale of Goods shall be excluded.