

General Terms of Business

Revision 07/2002



Life on Roofs

§ 1 Application of Terms

- (1) All offer, sale and delivery transactions shall be carried out in accordance with ZinCo's General Terms of Business as printed below. ZinCo does not recognize any conflicting or deviating conditions imposed by the Customer unless ZinCo has expressly agreed to their validity in writing.
- (2) ZinCo's General Terms of Business and its supplementary terms and conditions shall apply exclusively, even if ZinCo is aware of deviating conditions of the Customer's other rules and regulations, especially the General Terms of Business of the Customer shall not form an integral part of the contract, even if ZinCo has not expressly rejected them.
- (3) ZinCo's General Terms of Business shall apply for all future deals and commercial transactions, even if these Terms have not been expressly agreed.

§ 2 Quotation and Contract Conclusion

- (1) ZinCo's quotations are subject to confirmation and are not binding. ZinCo is entitled to cancel an order by the Customer before or with 2 days after receipt of the order.
- (2) The Customer is bound to its order for 14 days. The basis of the order shall be ZinCo's written acknowledgement. This acknowledgement can be given in writing, by facsimile or EDI, unless delivery resp. issuing an invoice is carried out by ZinCo immediately. Alterations, amendments, or subsidiary agreements are subject to equal conditions.
- (3) Statements about properties of ZinCo delivery items are in the ZinCo Product Data Sheets. Descriptions in catalogues, brochures, mailings, advertisements, graphics and price lists do not state the properties unless they are specifically included into the Product Data Sheets.
- (4) Statements about properties of delivery items do not contain any warranty, especially no warranty about shelf life. Statements about scope of delivery and services do not warrant the exercise risk. Correct and just in time delivery of the products through ZinCo's supplier are not guaranteed.
The accepting of guarantees and the purchasing risk shall require explicit written agreements by the parties in which explicit reference is made to the specific meanings of the guarantees and purchasing risk.
- (5) The Customer is responsible for the assembling and installation unless it is agreed differently. Drawings or installation instructions for ZinCo's delivery items are only information about the dimensions of the delivery items.

§ 3 Prices

- (1) Prices are ex-works and do not include packing unless agreed otherwise. Additional costs, such as cost for disposable package, not returned re-usable package, freight, insurance, or customs as well as an arranged installation are priced separately.
- (2) According to the German Package Law (VerpackV) ZinCo is committed to take back the re-usable package. The Customer shall return the package at its own expenses.

§ 4 Payment

- (1) The total purchase price is to be paid as prepayment (cash). The following conditions of payment shall apply to the payment of ZinCo's invoices if the Customer falls into delay of payment: net within 30 days from the receipt of the invoice or any other demand for payment. In case the receipt of invoices or demands for payment is at risk, payments fall due for payment with the receipt of ZinCo's deliveries and services.
- (2) In case the Customer falls into delay of payment, ZinCo is entitled to demand default interest of 5 % above the base interest rate. Default interest shall be charged and shall be equivalent to at least 8 % p.a. above the base interest rate, if the Customer is not the consumer. ZinCo shall be entitled to establish a higher claim of delay of payment. The Customer is entitled to proof no or little damage caused by delay of payments.
- (3) In case of outstanding payments of the Customer, the incoming payment is hold good to cover the invoices falling due the longest.
- (4) Bills of exchange and cheques are no cash payment. Bills of exchange and cheques will only be accepted, if expressly agreed to and then solely as a means of payment and under no circumstances in lieu of payment. Any charges and costs arising there from shall be borne by the Customer. ZinCo is not obliged for due presentation of cheques and other payment instructions.
- (5) If the Customer is in delay of payment, if a cheque or a bill of exchange is dishonoured or if he stops payment, ZinCo shall be entitled to make the whole outstanding claim due for immediate payment, albeit cheques and bills of exchange have been accepted. ZinCo is also immediately entitled to deny outstanding deliveries and services until the Customer makes the prepayment or provides appropriate securities for outstanding deliveries and services.
- (6) The Customer may only offset amounts in the presence of an undisputed counterclaim or one, which has been determined to be legally enforceable or accepted by ZinCo. The Customer is only entitled to exercise a right of retention if this is based on the same contractual relationship.

§ 5 Delivery

- (1) Delivery dates and processing periods as stated are not binding and are only valid as approximations unless they have been explicitly agreed as binding. Delivery information is stated and confirmed in the order confirmation. Alterations and amendments require written form.
- (2) ZinCo is entitled to make partial shipments in reasonable quantities and to invoice these separately.
- (3) The rights to effect any changes in the design or quality, which do not impede the proper functionality of the delivery item, shall be reserved, and shall form no basis for warranty claims.

§ 6 Date of Delivery, Delay in Delivery and Refusal of Delivery

- (1) The lead time is confirmed in writing as delivery date in the order confirmation.
- (2) As long as the Customer has not submitted the necessary documents, authorizations, clearances etc. at least one month prior to the delivery date confirmed in writing, the delivery date will prolong automatically by one month from the day of the received documents, authorizations, clearances etc in total.
- (3) The compliance of the lead time is subject to ZinCo's reception of the delivery items.
- (4) The delivery period is met, if the delivery item leaves ex works before the end of the period, or, in case of pick-up by the Customer the Customer is informed that the delivery item is ready for shipment.
- (5) In case of a call-off order, the Customer is required to appoint partial deliveries exceeding 6 months in detail and to call for these partial deliveries as specified duly prior to the date of delivery, as long as not agreed otherwise. If the Customer cannot fulfil the obligations or not as agreed, ZinCo shall be entitled to set a certain time frame for the call-off arrangement, or to decide on the delivery date, or to step back from the contract. The right of a claim for damages is not influenced by the rescission.
- (6) ZinCo is not liable in case of any delay or default in delivery or service, except:

- damages from negligent and deliberate breach of duty and gross negligence by ZinCo, legal agents or vicarious agents, resulting in injury to life, body or health.
- damages from gross negligence and intention by ZinCo, legal agents or vicarious agents.
- damages from substantial breaches of contractual obligations (Cardinal Obligation), by ZinCo, its executives or vicarious agents.
- if ZinCo guaranteed a certain delivery date or service
- under the German Product Liability Act.

In case of slight negligence with breach of contractual obligations (Cardinal Obligation) resulting in compensation for damages from ZinCo, the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body and health are existent, or if ZinCo has not guaranteed a delivery or service in time, or if there is no liability under the German Product Liability Act.

The noted limitation of liability for contractual and foreseeable damages in the cases of slight negligence includes liability for loss of production and/or loss of profit. This shall also apply to the personal liability of vicarious agents.

The right of withdrawal through the Customer in such cases is unaffected from this limitation of liability.

- (7) ZinCo is entitled to proof that ZinCo is in spite of careful assortment of its supplier and in spite of fair agreements has a delay in delivery from the supplier. The delivery period prolongs in the case of delay by the time of the delay and by the relevant supplier.

If the delay exceeds a month, the Customer is entitled to step back from the outstanding parts of the contract. Claims for damages are excluded unless in case of § 6, 2. ZinCo must inform the Customer within 3 days of acknowledgement of delay.

- (8) In case of default of acceptance, the Customer has to replace the damage especially the storage costs. This does not account, if the Customer is not liable on the default of acceptance. In that case the Customer has to replace the costs resulting from storage of the delivery items.

In case of unsuccessful determination of reasonable time for acceptance, ZinCo is entitled to dispose of the delivery items and to deliver the Customer in reasonably prolonged time.

§ 7 Force Majeure

- (1) If ZinCo is unable to perform its obligations after the conclusion of the contract as a result of the occurrence of unforeseeable and unusual circumstances, which could not be avoided despite all the reasonable care to be expected in the relevant circumstances of the particular case, especially natural disasters, official impositions of sanctions and interventions, delays with the delivery of major raw materials and energy supply difficulties, etc., the delivery period shall be extended in time line with the aforesaid effects. If delivery is impossible on account of the aforesaid circumstances, ZinCo shall be released from its delivery obligations and commitments.
- (2) The aforesaid ruling as in (1) shall also apply accordingly in the event of lock-outs and strikes.
- (3) If the aforesaid impediments exceed one month, both parties shall be entitled to withdraw from the contract with regard to the unfulfilled part thereof. Compensation claims by the Customer shall be excluded in cases of force majeure. ZinCo shall only be entitled to invoke the

General Terms of Business

Revision 07/2002

aforesaid circumstances, if it informed the Customer of the aforesaid circumstances immediately after their occurrence.

§ 8 Passing of Risk / Acceptance

(1) In case of the delivery items being sent at the request of the Customer or the delivery ex works (normal case), the risk of coincidental loss and coincidental deterioration of the delivery items shall pass to the Customer with the commissioning to the appointed freight agent, with leaving the works or the warehouse. This shall also apply when place of delivery differs and carriage paid delivery has been exceptionally agreed. In case the delivery item is ready for delivery and the delivery is or acceptance without reasonable motives is delayed, the risk will pass to the Customer with the order confirmation. The previous rulings shall not apply, if the Customer is consumer.

(2) If ZinCo despatches the goods at the request of the Customer, ZinCo shall arrange appropriate insurance for damages caused by theft, breakages, transport, fire and/or water as well as other risks for the account of and at the cost of the Customer.

(3) Delivered items have to be received by the Customer even though they have minor deficiencies, irrespective its rights as described in §12.

§ 9 Reservation of Ownership

(1) The goods delivered remain ZinCo property until all claims between ZinCo and the Customer have been settled. The Customer may use the delivery item in duly business connections.

(2) ZinCo reserves ownership and is considered to be the manufacturer of all products, which result from processing, mixing, or combination of various items. In case a supplier has a reservation of ownership on items processed, mixed or combined with items of third parties ZinCo acquires co-ownership of the new product in the ratio of the value of the items.

(3) Claims from resale against third parties the Customer assigns yet to ZinCo in total resp. in the amount of ZinCo's co-ownerships share in deed of trust. We will accept the assignment. The Customer is entitled to collect these claims from ZinCo's invoice until cancelled or until adjustment of its payment of ZinCo's invoice. On ZinCo's request, the Customer is to provide ZinCo with instructions which are necessary for the collection of the claims on presentation of the corresponding contract for delivery with its consumer, of the invoice and an overview about the payment of the consumer of the Customer.

(4) The Customer is to inform ZinCo immediately on writing of any access of third parties, in particular also of enforcements of judgement of ZinCo's goods and claims inherent to ZinCo. The Customer also is to provide ZinCo with the necessary documents for an intervention.

(5) If the Customer falls into default of payment twice within 6 months and/or or if the Customer is insolvent or if it becomes evident due to objective criteria that ZinCo's claims are endangered by the Customer's lack of ability to pay, ZinCo shall be entitled to demand return of the delivery items and in case of realienation to collect assigned claims directly from the consumer of the Customer. The return of the delivery items and/or the assignment of a claim do not automatically lead to a rescission of the contract.

(6) In case ZinCo's securities, which it is entitled to, exceed 10 % of ZinCo's claims against the Customer, ZinCo is to release securities at ZinCo's own option on request of the Customer.

§ 10 Insurance

ZinCo is entitled to arrange appropriate insurance for damages caused by theft, breakages, transport, fire, water and/or other damages for the account of and at the cost of the Customer, if the Customer has not arranged appropriate insurance.

§ 11 Product Monitoring Obligation and Product Warning Obligation

(1) In order to ensure consumer protection against risks of all kinds, the Customer – as long as it is not the consumer - shall be obliged to monitor ZinCo delivery items on an ongoing basis from a safety-related point of view (product monitoring obligation). If it is identified that a product is the cause of risks, the Customer shall be obliged to notify ZinCo thereof immediately in writing (product warning obligation).

(2) If claims are made against ZinCo due to a breach of product monitoring obligation and/or product warning obligation and if the aforesaid product monitoring obligation and/or product warning obligation is attributable to a breach of product monitoring obligation and/or product warning obligation by the Customer, the Customer shall compensate ZinCo for the damages incurred on account of the breach of obligations by the Customer.

§ 12 Notice of Defect

(1) The inspection and complaint notification obligations of the Customer shall be based on § 377 of the German Commercial Code (HGB).

(2) In the event of larger delivered quantities of similar goods, the delivered batch as a whole may only be rejected as defective, if the defects were established by means of a recognized and representative sampling test procedure. The Customer shall notify any complaints immediately in writing (on the delivery note if possible).

§ 13 Defect of Quality

(1) In case the delivery items incorporates a defect of quality, ZinCo has given a guarantee for certain properties, ZinCo is entitled to remedy the defect or to supply delivery items free of defects.

Wearing parts which are free of defects at passing of risk and whose life span is shorter than the period of limitation as described in §13/5, are not defective due to its short life span.

(2) If the attempt to remedy the defect fails the second time, the Customer can withdraw from the contract or reduce the price.

If the defect of quality is based on gross negligence or intention by ZinCo, its executives or vicarious agents or the defect of quality leads to breaches of substantial contractual obligations (Cardinal Obligations) or to injury of life, body or health or in case of fraudulent concealment of facts, or if ZinCo has given a guarantee or claims arising from product liability law, the Customer can claim for damages of defect of quality instead of withdrawing from the contract or reducing the price.

In case of breach of cardinal obligation due to slight negligence which results in financial loss and property loss, the claim for damages is limited to typically foreseeable damages. The use of the product liability law remains unaffected. Damages due to loss of production and/or loss of profit are excluded in terms of slight negligence. This limitation of liability applies also for ZinCo's vicarious agents.

(3) If ZinCo decides to remedy the defect, ZinCo is responsible for the occurring cost of the remedy. If the delivery items have been shipped to another location other than the location originally agreed in the contract, the Customer pays for the freight. The reimbursement of costs does not apply if the expenses are increased due to the delivery to a different location other than delivery address of the Customer. In case the Customer remedies, the refund of expenses of the Customer by ZinCo is limited to actual expenses in relation to ZinCo's share of delivery and service.

- (4) ZinCo is not liable for claims from defect of quality
- which occur from faulty or heavy duty usage by the Customer itself or its Customer.
 - if the delivery items were changed by a third party or parts were included from a third party, except when the defect of quality is in causal connection with this damage.
 - if ZinCo delivery items are not assembled in accordance and in compliance with the relevant legal and/or ZinCo installation and application instructions, except when the defect is not in causal connection with the non-observance.
 - For the suitability of ZinCo goods for a given application, in case the exact possible use does not arise from the order confirmation or from a written instruction enclosed to the goods or the suitability for a certain application has not been explicitly confirmed by ZinCo.

This exclusion of liability is not applicable:

- for claims for damages from defects from negligent and deliberate breach of duty by ZinCo, its legal agents or vicarious agents resulting in injury to life, body or health.
- for claims for damages from other defects from gross negligence and intention by ZinCo, its legal agents or vicarious agents.
- for damages from substantial breaches of contractual obligation (Cardinal Obligation) by ZinCo, its executives or vicarious agents.
- If ZinCo fraudulently concealed the defect or if ZinCo has given a guarantee for the properties of the service item.
- in case of liability arising from the product liability law.

In case of unintended or not grossly negligent breach of substantial contractual obligation (Cardinal Obligation), the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body or health are existent, or if ZinCo has not fraudulently concealed defects or guaranteed a certain quality of the delivery items, or if liability from the product liability law is not applicable.

In case the defect depends on circumstances not resulting in warranties for defects, the Customer must compensate ZinCo all relevant costs.

(5) If not agreed differently the limitation period for delivery items is as stated by law. The limitation period is based on the date of delivery of the delivery item at the Customer or performance.

(6) Claims of the Customer arising from defects based on irrelevant reduction of the value or efficiency of the delivery item do not apply. The above-mentioned claim for damages does not apply for defect of quality based on gross negligence or intention or substantial breach of contractual obligation (Cardinal Obligation) of ZinCo, its executives or vicarious agents or cause injury to life, body or health.

(7) If the products sold are used products, ZinCo is not liable for used goods. This exclusion of liability is applicable.

- for claims for damages from defects from negligent and deliberate breach of duty by ZinCo, its legal agents or vicarious agents resulting in injury to life, body or health.
- for claims for damages from other defects from gross negligence and intention by ZinCo, its legal agents or vicarious agents.
- for damages from substantial breaches of contractual obligation (Cardinal Obligation) by ZinCo, its executives or vicarious agents.
- If ZinCo fraudulently concealed the defect or if ZinCo has given a guarantee for the properties of the service item.

General Terms of Business

Revision 07/2002



Life on Roofs

- in case of liability arising from the product liability law.
In case of unintended or not grossly negligent breach of substantial contractual obligation (Cardinal Obligation), the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body or health are existent, or if ZinCo has not fraudulently concealed defects or guaranteed a certain quality of the delivery items, or if liability from the product liability law is not applicable.

(8) The afore mentioned regulations about exclusion resp. restriction of claim for damages (article 4 and 7) apply accordingly to the rights of the Customer for replacement of expenses in vain.

§ 14 Claim for Damages due to Breach of Duties

(1) § 14 does not apply for the defect of quality or defect of title or delay in delivery or non-delivery. §§ 6, 12, 13 and 15 of the General Terms of Business are applicable.

(2) ZinCo is not liable in case of breaches of duty or legal obligations. This exclusion of liability is not applicable:

- for damages from negligent and deliberate breach of duty and gross negligence by ZinCo, its legal agents or vicarious agents, resulting in injury to life, body and health.
- For other damages from gross negligence and intention by ZinCo, its legal agents or vicarious agents.
- For damages from substantial breaches of contractual obligations (Cardinal Obligation), by ZinCo, its executives or vicarious agents.
- If ZinCo fraudulently concealed the defect or if ZinCo has given a guarantee for the properties of the service item.
- in case of liability arising from the product liability law.

In case of unintended or not grossly negligent breach of substantial contractual obligation (Cardinal Obligation), the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body or health are existent, or if ZinCo has not fraudulently concealed defects or guaranteed a certain quality of the delivery items, or if liability from the product liability law is not applicable.

In case of slight negligence, the liability is limited to contractual or foreseeable damages including liability for loss of production and for loss of profit. The right of withdrawal through the Customer in such cases is unaffected from this limitation of liability.

If the claim arises from breaches of substantial contractual obligations due to slight negligence, the claim for damages at financial and physical loss is limited to typically foreseeable damages. The use of the product liability law remains unaffected.

This shall also apply to the personal liability of ZinCo executives.

(3) The above-mentioned limited liability (2) is applicable to tortious claims due to liability in tort.

(4) Claims for damages due to other breaches of duties as described in this chapter, which are not a matter of claims of defect of quality, become time-barred within one year from the end of the year, in which the claim has begun and the Customer has noticed the circumstances establishing the claim or should have noticed without gross negligence. The use of § 199 paragraph 2 and 3 BGB which regulates time limits for time-barred claims remain unaffected.

The limitation for time bars (1) are not applicable:

- for claims for damages from defects from negligent and deliberate breach of duty by ZinCo, its legal agents or vicarious agents resulting in injury to life, body or health.
- for claims for damages from other defects from gross negligence and intention by ZinCo, its legal agents or vicarious agents.
- for damages from substantial breaches of contractual obligation (Cardinal Obligation) by ZinCo, its executives or vicarious agents.
- If ZinCo fraudulently concealed the defect or if ZinCo has given a guarantee for the properties of the service item.
- in case of liability arising from the product liability law.

In case of unintended or not grossly negligent breach of substantial contractual obligation (Cardinal Obligation), the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body or health are existent, or if ZinCo has fraudulently concealed defects or has not guaranteed the properties of a delivery item or liability due to product liability law is applicable.

The noted limitation of liability for contractual and foreseeable damages is also applicable for liability for loss of production and/or loss of profit. The right of withdrawal through the Customer in such cases is unaffected from this limitation of liability.

§ 15 Intellectual Property Rights

(1) Compensation for the infringement of intellectual property rights such as brands, registered trademarks, patents, patent application, petty patents, design patents and copyright to ZinCo, its agents, executives, or vicarious agents are excluded.

This exclusion of liability is not applicable

- for claims for damages from defects from negligent and deliberate breach of duty by ZinCo, its legal agents or vicarious agents resulting in injury to life, body or health.
- for claims for damages from other defects from gross negligence and intention by ZinCo, its legal agents or vicarious agents.

- for damages from substantial breaches of contractual obligation (Cardinal Obligation) by ZinCo, its executives or vicarious agents.

- If ZinCo fraudulently concealed the defect or if ZinCo has given a guarantee for the properties of the service item.

- in case of liability arising from the product liability law.

In case of unintended or not grossly negligent breach of substantial contractual obligation (Cardinal Obligation), the liability is limited to contractual and foreseeable damages, if no damages from injury of life, body or health are existent, or if ZinCo has not fraudulently concealed defects or guaranteed a certain quality of the delivery items, or if liability from the product liability law is not applicable.

(2) The right of withdrawal through the Customer in case of the infringement of intellectual property rights is unaffected.

(3) As far as ZinCo is claimed for the infringement of property rights of third parties, the Customer handles the evidence of this defect of title, if a final judgement has been pronounced against him. The right of the Customer to inform ZinCo of the conflict is unaffected.

§ 16 Suspension of the Running of the Statute of Limitations in Negotiations

A pendency of negotiations about claims for defect of quality or other claims for damages only exists, if the parties have agreed to the negotiations of claims in writing. No party can appeal to the adherence to this requirement in written form, if the reference to this requirement in written form describes behaviour with abuse of legal rights.

§ 17 Order Related Instructions and Provision

(1) In case the Customer specifies or provides the use of certain production facilities, devices, tools and designs, drawings or samples for execution, as agreed in the contract, resp. are being produced by ZinCo at the request of the Customer, the Customer is liable for the correctness of the instructions and the capability of application of the provision. Furthermore, the Customer is liable for breach of property rights by a third party or other rights of third parties when using the facilities and devices and/or other instructions.

(2) Order related facilities as described in (1) remain ZinCo property due to lack of special agreements.

(3) In case the Customer is owner of the order related facilities, the Customer must pick up the provision after request and an appropriate time limit. ZinCo may remove the provision and invoice the Customer for the costs, in case the time limit expires unsuccessfully.

§ 18 Copyrights of Documents

ZinCo shall reserve its property and copyright exploitation rights to cost estimates, specimens, drawings and other documents. They may not be made available to third parties except upon ZinCo's approval in writing. Drawings and other documents forming part of quotations shall be returned immediately without keeping any copies upon ZinCo request even if the order is placed.

§ 19 Business Secrets

(1) ZinCo shall reserve its property and copyright exploitation rights to specimens, drawings and other documents. They may not be made available or announced to third parties by the Customer through copying, duplicating or delivering. This is also applicable, if there is no extra endorsement of nondisclosure.

(2) The Customers ensures in writing that its employees, consultants, partners and others which know about the business secrets are subject to nondisclosure of business secrets arising from the business relationship.

(3) The obligations will be valid even after termination of any contractual relationships.

§ 20 Place of Performance, Applicable Law, Place of Jurisdiction, Validness in Part

(1) In case no alternatives are agreed, the place of performance for delivery and payment is Germany 72669 Unterensingen.

(2) The law of the Federal Republic of Germany shall apply for the General Terms of Business, the law of the UN Convention on the International Sale of Goods (CISG) and the law of the Civil Code is excluded.

(3) The place of jurisdiction for all direct and indirect legal disputes arising from the contract including bills of exchange and cheques is the respective court of Unterensingen. ZinCo is entitled to also institute legal proceedings at the Customer's place of business.

(4) Alterations and amendments require written form to come into effect.

(5) Should a regulation of the General Terms of Business be or become invalid, the General Terms of Business are not affected in the rest of its contents. Should any other regulation in the scope of the cooperation with the Customer be or become invalid, all other agreements are not effected in the rest of its contents. The invalid regulation has to be replaced by the contractual partners by such a regulation that is closest to the originally intended economic result of the invalid regulation.