

General Terms and Conditions of Sale of ZwickRoell GmbH & Co KG Ulm

1. Applicability of Terms and Conditions

- 1.1. All deliveries, services and quotations by ZwickRoell GmbH und Co. KG (hereinafter referred to as “**ZwickRoell**”) to the Purchaser (hereinafter referred to collectively as “**Parties**”) will be executed exclusively in accordance with these General Terms and Conditions of Sale (hereinafter referred to as “**Terms and Conditions**”).
- 1.2. These Terms and Conditions shall also apply to all future business transactions, even if this has not been explicitly agreed. ZwickRoell does not recognize any conflicting or contradictory terms or conditions of the Purchaser, even if their applicability has not been specifically rejected in an individual case.
- 1.3. These Terms and Conditions shall only apply with respect to a person who, on entering into the contract, is exercising his/her commercial or independent professional activity (described as an “**Unternehmer**” = entrepreneur) under German law) or with respect to legal entities under German public law or to a special fund under German public law.
- 1.4. Individual agreements concluded between the Parties in specific cases shall always take precedence over these Terms and Conditions.

2. Outline

These Terms and Conditions are divided into Section A, pertaining to the General Terms and Conditions of Delivery and Payment for delivery contracts, and the accompanying Section B, pertaining to the installation of a machine by ZwickRoell.

Section A General Terms and Conditions of Delivery and Payment

1. Applicability of this section

The provisions of Section A shall apply to all quotations and sales and to the performance of deliveries and services by ZwickRoell.

2. Conclusion of the contract, contractual terms and ZwickRoell documents

- 2.1. A contract shall come into existence when ZwickRoell issues a written acknowledgment of the order, unless a written agreement to the contrary has been concluded.
- 2.2. ZwickRoell’s written confirmation (e.g. via e-mail or other written form) is required for the contents of subsidiary agreements or other contractual agreements, statements, information or undertakings of any form or type to take effect.
- 2.3. Any drawings, technical documents or other information of a physical or non-physical nature made available to the Purchaser shall remain the property of ZwickRoell. These documents may not be disclosed to third parties, or used for purposes other than those for which they were supplied, without written consent from ZwickRoell.

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3. Delivery, delays in delivery

- 3.1. The estimated delivery date is as stated in the quotation and order acknowledgment provided by ZwickRoell and is strictly without obligation and subject to correct and punctual delivery by our own suppliers.
- 3.2. The delivery period shall be extended until all queries between ZwickRoell and the Purchaser concerning the delivery item have been settled and the Purchaser has fulfilled all obligations (e.g. payment(s)). ZwickRoell reserves the right to withhold performance and to object to any claims for such performance until the Purchaser has duly performed its obligations.
- 3.3. ZwickRoell shall not be deemed to be in default of delivery in the event of delays due to force majeure or other obstacles beyond ZwickRoell's control including force majeure pursuant to Clause 11 of this Section A, or in the case of delay or default on the part of the supplier if (i) neither ZwickRoell nor ZwickRoell's supplier is at fault when concluding a congruent covering transaction or (ii) if ZwickRoell is not obliged to purchase in individual cases. If the delivery period is extended due to any of the reasons stated above, ZwickRoell shall immediately inform the Purchaser accordingly and advise the Purchaser of the expected new delivery date.
- 3.4. The delivery date shall have been observed if the delivery item has left ZwickRoell's premises by the expiry of the agreed delivery period or agreed delivery date, or if ZwickRoell has indicated to the Purchaser by this time that the item is ready for delivery.
- 3.5. Whether the delivery is in default shall be determined in accordance with the statutory provisions. However, a reminder with a reasonable grace period stipulated by the Purchaser is required in any case.
- 3.6. ZwickRoell's liability in the event of default in delivery shall be limited in accordance with Clause 8 of Section A. Otherwise, the statutory rights of the Purchaser and ZwickRoell shall remain unaffected, particularly in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance).
- 3.7. If acceptance of the delivery item at ZwickRoell's premises is stipulated, the acceptance date or notification of readiness for delivery or, in the event of unjustified refusal of acceptance, the expiry of the reasonable grace period stipulated by ZwickRoell shall be the effective time for defining observance of the delivery date. This shall not apply if ZwickRoell caused the non-observance of the delivery date or delivery period.
- 3.8. If the Purchaser is in default or delay of acceptance or culpably breaches other obligations to co-operate, ZwickRoell shall be entitled to charge within the time stipulated for the resulting damage or loss, including any additional expenditure and/or non-recovered deliveries. ZwickRoell reserves all additional rights or claims arising therefrom.
- 3.9. ZwickRoell will take back waste electrical and electronic equipment originating from a delivery relationship of the purchaser with ZwickRoell in accordance with the specifications of Directive 2012/19/EU or corresponding national laws.

4. Transfer of risk, place of performance

- 4.1. The risk of accidental loss or deterioration shall pass to the Purchaser in accordance with the agreed clause of INCOTERMS 2020, even if acceptance has been agreed or is provided for by law. If no clause has been agreed, INCOTERMS 2020 EXW shall apply ex our works in Ulm.
- 4.2. The place of performance shall always be ZwickRoell's premises in Ulm unless a different place of performance is stipulated in the order acknowledgment.

5. Pricing and payment

- 5.1. All prices are as stated in the quotation provided by ZwickRoell. The prices include loading ex works at ZwickRoell's premises in Ulm (INCOTERMS 2020 EXW) plus the rate of statutory value-added tax applicable at the time of supply, excluding packing costs and other transport costs (including unloading at the Purchaser's premises) unless agreed otherwise between the Parties in writing.
- 5.2. Following provision of the component parts of the goods to be supplied, ZwickRoell can require the Purchaser to provide a part-payment equal to the value of the component parts made available.
- 5.3. Following notification that the goods are ready for delivery, but prior to dispatching them, ZwickRoell shall be entitled to request an additional part-payment amounting to 80% of the purchase price less any initial part-payment.
- 5.4. The remaining balance of the purchase price is to be paid after the goods are received and the invoice has been issued. On request, ZwickRoell shall concurrently provide the Purchaser with a warranty bond or performance bond in the amount of the part-payment that is to be made.
- 5.5. Payment must be made in accordance with the invoice without any deductions insofar as the Parties have made no agreements to the contrary.
- 5.6. This payment is only deemed to have been made when the entire invoice amount has been credited to ZwickRoell's account.
- 5.7. The Purchaser shall only be entitled to rights of set-off or retention in the case of claims that are undisputed or that have been recognized by declaratory judgment, or in the case of counter-claims that relate to the same legal relationship.

6. Retention of title and other forms of security

- 6.1. ZwickRoell shall retain the title to the delivery item ("Vorbehaltsware" = goods subject to retention of title under German law hereinafter referred to as "reserved goods") until payment has been made in full for all present and future accounts receivable from the contract and the current business relationship ("secured receivables").
- 6.2. If the Purchaser acts in breach of contract, particularly in the event of default in payment, ZwickRoell shall be entitled, after setting a reasonable deadline, to withdraw from the contract and demand the return of the reserved goods. The Purchaser is obliged to return the reserved goods without delay. Following withdrawal from the contract, return of the reserved goods, and prior notification to the Purchaser of its intention to realize the value of the reserved goods, ZwickRoell shall be entitled to realize the value of these goods, and credit the proceeds thereof less reasonable realization costs against the outstanding accounts receivable of the Purchaser. Insofar as the proceeds of realization exceed the amount of the costs and receivables, the surplus shall be paid to the Purchaser.
- 6.3. The Purchaser is required to handle the reserved goods with due care. In the event that maintenance and inspection work is required for the proper care of the reserved goods, this must be carried out promptly at the Purchaser's own expense.
- 6.4. The reserved goods may not be pledged to a third party or assigned as security before full payment of the secured receivables has been made. The Purchaser is required to advise ZwickRoell immediately in writing in the event of seizure or other third-party intervention involving the reserved goods.

- 6.5. The Purchaser shall be entitled to re-sell and/or process the reserved goods in the ordinary course of business subject to the following provisions:
- The Purchaser undertakes processing or alteration of the reserved goods on behalf of ZwickRoell as manufacturer. If the reserved goods are processed with other items not belonging to ZwickRoell, ZwickRoell shall acquire co-ownership of the new item(s) in proportion to the value of the reserved goods (final invoice amount including value-added tax) relative to the other processed items at the time of processing.
 - If the reserved goods are inseparably combined or mixed with other items not belonging to ZwickRoell, ZwickRoell shall gain co-ownership of the new item(s) in proportion to the value of the reserved goods (final invoice amount including value-added tax) relative to the other processed items at the time they were combined or mixed. If the reserved goods are combined or mixed in such a way that the Purchaser's item is to be regarded as the principal item, the Purchaser and ZwickRoell agree that the Purchaser shall transfer co-ownership of this item to ZwickRoell in proportion. ZwickRoell shall accept this transfer.
 - By way of security, the Purchaser assigns to ZwickRoell in full the Purchaser's payment claims against the Purchaser's buyer resulting from resale of the reserved goods, together with those claims of the Purchaser regarding the reserved goods that arise against said buyer or other third party on any other legal grounds (in particular, claims in tort and claims outstanding from insurance proceeds) and including any balance demands from current accounts. ZwickRoell shall accept this assignment.
- 6.6. If the realizable value of the securities exceeds ZwickRoell's claims or demands by more than ten percent, ZwickRoell shall release securities of ZwickRoell's choice at the Purchaser's request.
- 6.7. In the event that an extended or expanded retention of title in accordance with Clause 6.5 is not effective according to the law of the place where the reserved goods are located, the Purchaser shall not be entitled to re-sell the reserved goods unless the Purchaser furnishes ZwickRoell with an appropriate alternative form of security and undertakes the necessary actions for this. The Purchaser must provide such a form of security in the event that the law governing the place where the reserved goods are held does not recognize a retention of title in any form.

7. Claims/liability for defects

- 7.1. ZwickRoell is required to remedy material defects and deficiencies in title in accordance with the statutory provisions. This is on the condition that the Purchaser has fulfilled its statutory obligations regarding inspection and notification of defects. If a defect is discovered during the inspection or at a later date, ZwickRoell must be notified of this in writing without delay. In the case of obvious defects, the notification will be deemed to be without delay if it takes place within two (2) weeks of delivery. In other cases, notification will be deemed to be without delay if it takes place within two (2) weeks of the defect being discovered. Sending the notification punctually shall be sufficient for compliance with the deadline.
- 7.2. Warranty claims shall not be admissible in the case of damage or faults that:
- are due to the influence of third-party products (such as materials provided by the Purchaser);
 - are based on a design specified or defined in detail by the Purchaser;
 - are due to circumstances arising after transfer of risk;
 - are due to operating conditions not provided for in the contract, improper use or incorrect servicing or repair work carried out by the Purchaser;

- are due to unauthorized modifications made by the Purchaser;
- are due to normal wear and tear or are otherwise attributable to the Purchaser's sphere of influence and control.

ZwickRoell shall be able to charge for additional costs resulting from causes of this nature.

- 7.3. Insofar as the goods display a defect, ZwickRoell can provide supplementary performance either by remedying the defect (rectification) or by supplying a fault-free item (replacement delivery). ZwickRoell can rectify the defect at its own discretion at the place of performance, but is not obliged to perform the rectification at the place where the goods are located if they have been transported to a location other than the place of performance. In the case of rectification or replacement delivery, ZwickRoell shall bear the cost of all measures necessary for supplementary performance, particularly transport, travel, labor and material costs insofar as these are not increased due to the purchased item having been transported to a location other than the place of performance. Parts that have been replaced (exchanged) or recovered shall become the property of ZwickRoell.
- 7.4. If, following complaint/notification of defect by the Purchaser, no defect can be found in the item supplied, the Purchaser shall be liable for the costs incurred by ZwickRoell.
- 7.5. The Purchaser must afford ZwickRoell the necessary time and opportunity to provide rectification or a replacement delivery, particularly to hand over the rejected goods for inspection purposes or to make the processed or installed goods accessible for this purpose. In the event of a replacement delivery, the Purchaser must return the defective item to ZwickRoell in accordance with the statutory provisions.
- 7.6. In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Purchaser itself shall be entitled to rectify the defect and to demand compensation from ZwickRoell for the required, proven expenses on an objective basis. ZwickRoell must be informed immediately, if possible in advance, of any such rectification by the Purchaser. The Purchaser's right to rectify the defect independently shall not apply if ZwickRoell is entitled to refuse such supplementary performance in accordance with the statutory provisions.
- 7.7. If the supplementary performance fails or additional attempts at supplementary performance are unacceptable to the Purchaser, the Purchaser shall be entitled to a price reduction or to withdraw from the contract. However, no right of withdrawal exists if the defect is negligible. In addition, the Purchaser shall be entitled to claims for damages due to a defect in the delivery item in the cases specified in Clauses 8.1 to 8.3.

8. Liability

- 8.1. ZwickRoell has unlimited liability for damage arising from loss of life, bodily injury or impairment of health due to a negligent breach of duty by ZwickRoell or a willful or negligent breach of duty by one of its legal representatives or vicarious agents, and in the case of statutory liability regardless of negligence or fault, particularly as specified under the German Product Liability Act, and in the case of liability under warranty.
- 8.2. ZwickRoell shall be liable for other damages that are based on an intentional or grossly negligent breach of duty by ZwickRoell or on an intentional or grossly negligent breach of duty by one of its legal representatives or vicarious agents. In this case, liability shall be limited to the typically occurring damage foreseeable when the contract was concluded.

- 8.3. In the event of willful or negligent breach of a material contractual obligation, ZwickRoell shall only be liable for typically occurring damage foreseeable when the contract was concluded. A material contractual obligation is an obligation that must be met in order to allow due and proper fulfillment of the contract concluded with the customer and on which the customer has depended and should ordinarily be able to depend, and whose culpable non-fulfillment jeopardizes the achievement of the purpose of the contract.
- 8.4. In all other respects, ZwickRoell's liability is excluded.
- 8.5. Insofar as ZwickRoell's liability is excluded and limited, this shall also apply to ZwickRoell's employees, representatives and vicarious agents.

9. Limitation period

- 9.1. The statutory warranty period shall apply in the event of damage arising from loss of life, bodily injury or health impairment due to negligent breach of duty by ZwickRoell or to a willful or negligent breach of duty by one of its legal representatives or vicarious agents; or in the event of other damage due to willful or grossly negligent breach of duty by ZwickRoell or one of its legal representatives or vicarious agents; or in the event of damage arising from a willful or negligent breach of material contractual obligations contained in the relevant contract by ZwickRoell or its legal representative or vicarious agent. The same shall apply in the event of statutory liability regardless of negligence or fault, particularly in accordance with the German Product Liability Law in the case of liability under warranty.
- 9.2. The period of limitations shall be five years in the case of (i) a structure or building and an object that in accordance with its normal use is used for a structure or building and has caused a defect therein, and (ii) work whose success consists in providing planning or supervisory services for a structure or building.
- 9.3. In all other cases, the warranty period shall be one year.

10. Use of computer software

- 10.1. Insofar as software is included in the scope of delivery, the Purchaser shall be granted a non-exclusive right to use the software supplied, including associated documentation. The software is supplied exclusively for use with the delivery item for which it is intended and/or for use of the delivery item. Use of the software for other purposes is prohibited.
- 10.2. The aforesaid right of use can only be transferred to subsequent owners or renters of the delivery item; the Purchaser shall not be permitted to grant sub-licenses. In the event of a subsequent transfer, the Purchaser shall delete the software irrevocably and irretrievably.
- 10.3. ZwickRoell is under no obligation to issue the source code for the software or to provide updated software versions.
- 10.4. Within the scope of its right of use, the Purchaser may only copy, edit or translate the software or convert object code to source code insofar as this is permitted under the statutory provisions (Section 69a et seq. of the German Copyright Act (UrhG)). The Purchaser agrees not to remove the manufacturer's instructions/information – in particular, remarks concerning copyright – or to alter or amend them without the prior explicit agreement of ZwickRoell.
- 10.5. All other rights to the software and documentation including copies shall remain the property of ZwickRoell or its software suppliers.

11. Force majeure

- 11.1. If a Party to the contract is unable to meet its contractual obligations for reasons beyond its control, such as labor disputes, stoppages, fire, war, general mobilization, riot, embargo, export and currency restrictions, natural disasters, acts of terrorism or deficient deliveries, the Party can suspend these obligations insofar as these hindrances persist and were not foreseeable when the contract was concluded.
- 11.2. Any Party to the contract wishing to plead force majeure must notify the other party immediately and in writing of the beginning and end of the delay; otherwise the Party will be required to indemnify the other Party against any costs arising from the failure to notify.
- 11.3. Each Party may withdraw from the contractual relationship or give notice with immediate effect once the delays due to force majeure have lasted longer than six months.

12. Miscellaneous

- 12.1. Part-deliveries
ZwickRoell is entitled to supply part-shipments of the delivery item provided this is not contrary to the Purchaser's legitimate interests. This applies particularly where part-deliveries are of interest to the Purchaser in accordance with the intent of the contract and no significant additional outlay would be incurred by the Purchaser as a consequence.
- 12.2. Technical modifications
ZwickRoell reserves the right to carry out technical modifications to the delivery item at any time up to handover insofar as these serve to optimize the delivery item. In the event that a technical modification of this nature would result in a price increase, ZwickRoell shall not make the technical modification without obtaining the Purchaser's prior agreement.
- 12.3. Applicability of general law
Unless otherwise stipulated in these Terms and Conditions, the statutory provisions shall apply.

13. Applicable law and place of jurisdiction

- 13.1. The contract and the supplier-purchaser relationship resulting from it are subject to the substantive law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 13.2. The sole place of jurisdiction for all disputes arising from or in connection with the contract shall be ZwickRoell's place of business. ZwickRoell is entitled to bring legal action against the Purchaser at the court having jurisdiction over the Purchaser's place of business.

Section B Terms and Conditions for the installation of a machine by ZwickRoell

1. Applicability of this section

The provisions of this section shall apply to all installation and commissioning work carried out on delivery items by ZwickRoell at the Purchaser's premises in addition to the provisions of Section A above.

2. Installation requirements

2.1. Before starting assembly/installation and commissioning, all requirements must be met by the Purchaser so that work may be performed immediately following the arrival of the service and support staff without risking their life and health and without interruption.

2.2. The Purchaser must meet the following requirements:

- the delivery item and its accessories shall have been unpacked and placed at the installation site;
- all supply lines (electricity, water, compressed air, hydraulics, etc.) required for installation and commissioning of the delivery item shall be available and ready for connection;
- the PC provided by the Purchaser shall satisfy the necessary system and software requirements;
- insofar as the delivery item includes a number of ZwickRoell testing machines, an independent appliance leakage current interrupter with a tripping current of 30 mA shall be provided for each ZwickRoell testing machine;
- specimen material for the purpose of staff training in the intended use of the delivery item shall be provided;
- foundations/base shall be completely dry and hardened;
- the areas in which the installation and commissioning take place must be weather-proof, well lit and adequately heated.

3. Other items to be provided by the Purchaser

In each instance the Purchaser must undertake the following at its expense and risk:

- unloading and positioning of the delivery item at the installation site via a specialist transport company;
- provision of the necessary workforce, as determined by ZwickRoell;
- provision of the construction and auxiliary materials, consumables and supplies, devices and heavy tools and equipment required for assembly and commissioning, particularly transport and lifting equipment, together with lighting, electricity and heating;
- suitable lockable rooms for use by the ZwickRoell's employees and for storage of materials.

4. Installation costs

- 4.1. Unless agreed otherwise the Purchaser shall bear the costs of installing and commissioning the delivery item and of instructing the operating staff.
- 4.2. The hourly rates of payment applicable at the time, including additional costs for overtime and work on Sundays or public holidays, shall be charged to the Purchaser's account. Travel time and waiting time are considered working time.
- 4.3. The Purchaser shall also bear the costs of outward and return travel and of transportation of baggage and tools, together with any additional costs arising in connection with the installation and commissioning of the delivery item.
- 4.4. The Purchaser shall pay for official certification and approval.
- 4.5. A rental charge shall be made for the provision of special testing instruments for performing the acceptance/inspection of the delivery item.

5. Liability

- 5.1. ZwickRoell is liable for the correct installation and commissioning of the delivery item, for all associated actions by ZwickRoell's employees and their vicarious agents, and for any damage that is culpably caused in the process. However, liability is limited in accordance with Clause 8 of Section A above.
- 5.2. ZwickRoell shall not be liable for additional work carried out by its staff assigned to install the delivery item that is not connected with the installation and commissioning of the delivery item and that was not performed at ZwickRoell's behest, particularly if it was performed at the Purchaser's behest, and for any loss or damage arising therefrom.

6. Resale of the delivery item

In the event of a resale of the delivery item, the Purchaser shall advise the new owner/purchaser of the requirement for testing and for compliance with the relevant product-specific and country-specific safety regulations. The Purchaser shall indemnify ZwickRoell against all claims arising from the non-observance of this duty of notification.

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