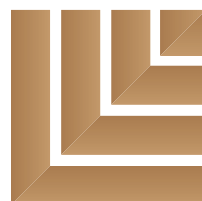


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# General Terms of Sale, Delivery and Payment



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# **General Terms of Sale, Delivery and Payment (GSDP) of the Ziegler Holztechnik GmbH for exclusive application in entrepreneurial business transactions (Version: 2021-07-23)**

## **1. General/ Applicability**

### **1.1**

Your contracting partner is Ziegler Holztechnik GmbH, Zur Betzenmühle 1, D-95703 Plößberg (head office). You can reach them by telephone +49(0)9636 9209-0, by fax under +49(0)9636 9209-1459 or by e-mail (info@ziegler.global). Ziegler Holztechnik GmbH (hereinafter referred to as ZIEGLER) is registered in the commercial register at the local court of Weiden under the commercial register number HRA 5275. Chief executive officers are Mr Andreas Sandner and Mr Robert Friedl. The VAT registration number is DE 324887688.

### **1.2**

As long as nothing to the contrary is expressly agreed, the hereafter mentioned GSDP apply to all contractual relationships, deliveries and any other fulfilment of services in business transactions with companies within the definition of §14 BGB and with legal persons of public law, including public-legal assets.

### **1.3**

The GSDP of ZIEGLER apply exclusively. This applies for all offers, sales, deliveries and services of ZIEGLER in current and future business relationships, regardless of whether the goods are produced by ZIEGLER themselves or are bought from third party suppliers (§§ 433, 651 BGB). Deviating, contrary or additional provisions of a buyer shall not be a part of the contract – regardless of when they become aware of ZIEGLER -, except if ZIEGLER approves the applicability of the deviating provisions expressly and in writing.

### **1.4**

The requirement of approval also applies when ZIEGLER carries out a delivery without reservation in the knowledge of a contrary, deviating or additional provision of a buyer. Separate General Terms and Conditions of the buyer will therefore not apply, even if ZIEGLER hasn't expressly contradicted them.

### **1.5**

Agreements which are decided in individual cases with the buyer (including subsidiary agreements, addendums and amendments) have in every case precedent over these GSDP. A written contract or our signed confirmation is decisive for the content of such agreements, subject to proof to the contrary.

### **1.6**

Legally significant declarations and notices of the buyer concerning the contract (for example, setting of deadlines, notification of defects, rescission or reduction) require the written form. Statutory provisions of form and especially further evidence, in cases of doubt, about the legitimation of the declaring party, remain unaffected.

### **1.7**

Evidence of the applicability of statutory provisions only has a clarifying importance. The statutory provisions therefore apply even without such a clarification, as long as they have not been directly amended or expressly precluded in these GSDP.

## **2. Offer and the Conclusion of a Contract**

### **2.1**

All offers of ZIEGLER – especially offers of quantity, price and delivery time – are subject to change and apply only to a whole order. This also applies when catalogues, technological documents (such as subscriptions, plans, calculations, computations, DIN-normative references), or other product descriptions or documents – even in electronic form – are sent to the buyer, to which ZIEGLER reserves the right to ownership and copyright. ZIEGLER is not obligated to accept orders made by buyers.

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## **2.2**

An order made to ZIEGLER is a binding offer of the buyer. ZIEGLER is entitled to accept this offer within two weeks by means of sending an order confirmation or by dispatching the ordered delivery to the buyer within this deadline. To safeguard the deadline it's enough that the order confirmation or the ordered goods are sent in time. Order confirmations are sent to the address given by the buyer in their order or to the last known address at the time of the business relationship.

## **2.3**

A written, completed contract of purchase including these GSDP is alone decisive in the legal relationship between ZIEGLER and a buyer. This renders all agreements between the contracting parties concerning the subject matter of the contract complete. Oral confirmations of the seller before conclusion of this contract are not legally binding and oral agreements of the contracting parties will be replaced by a written contract, as long as it is not expressly stated in them that they will continue to be binding.

## **2.4**

Subject matters of the contract are only those listed services of ZIEGLER in the order confirmation. For additional services ZIEGLER is entitled to list these additionally in the invoice.

## **2.5**

Minor, material deviations from the underlying images in the order or descriptions in catalogues, patterns or show pieces, especially small differences in colour or texture are reserved. Such material differences do not amount to a deficiency.

## **3. Prices**

### **3.1**

In so far as nothing different is stipulated in the direct commission or contract documents with the buyer, the following regulations apply with regard to price quotations:

- All cited prices are understood to be in Euro
- The prices are net prices and apply in addition to the respective applicable VAT
- All shown prices are factory price, not including packaging, freight, insurance or custom duties

### **3.2**

For deliveries within the European Union, the buyer must share their VAT identification number. If no VAT is incurred for a delivery, the buyer must notify of this in a timely fashion and produce the necessary evidence.

### **3.3**

Set prices only apply as fixed and agreed to until the contracted delivery.

### **3.4**

ZIEGLER reserves the right to increase prices accordingly after 6 weeks have expired since the completion of the contract, if, between the time of completion of the contract and delivery increases in price factors occur (especially because of increases in tax or because of increase of income, customs, transport costs, storage costs, material or raw material costs). This also applies in the case of a set price agreement.

## **4. Payment Provisions**

### **4.1**

As far as nothing to the contrary is agreed, accounts of ZIEGLER are to be paid within 30 days of the invoice and delivery and acceptance of the goods in full.

### **4.2**

ZIEGLER is – also in the context of a current business relationship – entitled at any time to perform a delivery either completely or partly only on advance payment. ZIEGLER can declare an according reservation with the order confirmation at the latest.

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### 4.3

ZIEGLER is entitled, despite contrary provisions of the buyer, to count initial payments towards their old debts. In this case, the buyer will be informed of this settlement. Should costs and interest already have arisen, ZIEGLER is entitled to count the payment first towards the costs, then towards the interest and lastly towards the principal claim.

### 4.4

A payment first applies as having been made when it is available to ZIEGLER. In the case of cheques, the payment only applies as having been made when the cheque has been irrevocably cashed. Drafts and cheques will only be accepted for processing, drafts only after special agreement.

### 4.5

With the expiration of the payment deadline according to figure 4.1, the buyer is in default of payment. During default, the purchase price is to bear interest according to the applicable statutory interest rate. ZIEGLER reserves the right to enforce a continuing damage caused by delay. Against traders, the claim to commercial interest (§353 HGB) remains unaffected.

### 4.6

Should the buyer enter into arrears of a payment, all other accounts will also immediately be due for payment without the need for a special default notice.

### 4.7

It applies to all deliveries and services to buyers outside of Germany as explicitly agreed, that all prosecution costs, which arise for ZIEGLER in the case of a buyer's default of payment, both inside and outside of court, are to be borne by the buyer.

### 4.8

If circumstances become known to ZIEGLER, which bring into question the credit status of the buyer, especially if a cheque cannot be cashed or if the buyer discontinues their payments or if other circumstances become known which bring their credit status into question, ZIEGLER is entitled to demand prepayment or security provisions for goods which have not yet been delivered.

### 4.9

ZIEGLER reserves the right to convey demands of payment from delivery of goods or from other deliveries and services to third parties.

### 4.10

The Buyer is only entitled to offsetting, retention or reduction, even if notices of defects or counter-claims are to be enforced, if the counter-claims have been legally grounded or if they are uncontested. The buyer is however also entitled to retention because of counter-claims stemming from the same contractual relationship, as long as the counter-claim does not concern claims based upon payment.

## 5. Delivery and Transfer of Risk

### 5.1

Subject to any other contractual agreement, delivery occurs from the factory (EXW) of ZIEGLER, manufacturing plant: Industriestraße 11, D-07629 Hermsdorf (deviating from the head office), according to Intercoms 2010. The risk of possible deterioration or of possible wreckage transfers to the buyer, as soon as the goods have left the factory. ZIEGLER is not liable for damages or losses during transportation. This also applies when carriage free delivery is agreed. Transportation occurs always by order of the buyer.

### 5.2

Should the dispatch/collection of the goods be delayed as a result of circumstances, for which the buyer is responsible, the goods are to be stored, after the expiration of 5 working days, calculated from the day of communication of preparedness for delivery, at the cost and risk of the buyer.

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### 5.3

As far as International Commercial Terms according to Incoterms of the ICC are used, the Incoterms will become a part of the contract in their current version.

### 5.4

Over- or undersupplies of up to 10% and customary minor size tolerances are permissible and do not entitle the buyer to a complaint. Part deliveries are to a reasonable degree permissible and will be specially invoiced.

### 5.5

Delivery deadlines and appointments of ZIEGLER arise from the order confirmation or from a different communication. These delivery deadlines and appointments are approximate. Delivery deadlines apply always from the order confirmation of ZIEGLER. Delivery appointments are generally to be considered from the factory, according to agreement. ZIEGLER is entitled to appropriately extend or defer delivery deadlines and appointments according to the reasons listed in figures 5.6 and 5.7 as well as if other impediments arise, which have not been brought about by the at least grossly negligent behaviour of ZIEGLER. ZIEGLER is to inform the buyer of such a delay in delivery at least one day before the original delivery appointment. For such delays, the buyer does not have any claims.

### 5.6

For default or impossibility of delivery as a result of force majeure (for example strikes, fires, war, transport disruptions, robbery etc.) or for reasons, which cannot be influenced by ZIEGLER, such as the buyer not having made the necessary arrangements in a timely manner, ZIEGLER is not liable.

### 5.7

Should the rendering of services be impaired as a result of force majeure or for reasons, which cannot be influenced by ZIEGLER, ZIEGLER is entitled to cancel those promises of delivery which remain open. This also applies if the hindrance of delivery goes back to default or non-performance of a pre-supplier.

### 5.8

ZIEGLER is only liable for default or impossibility of delivery or for a partial delivery for reasons other than those listed in figures 5.6 and 5.7 if ZIEGLER acted at least grossly negligently. Here, the limitation of liability according to figure 8.1 applies.

### 5.9

Impossibility of delivery, especially for reasons listed in figures 5.6 and 5.7, entitle the buyer to rescind from the contract. Likewise, the buyer is entitled to rescind from the contract, with the setting of a deadline of at least 4 weeks, if ZIEGLER defaults. Where a partial delivery is concerned, the buyer is however only ever entitled to a correspondingly partial rescission.

### 5.10

In as far as ZIEGLER is obligated in a contract to pre-render services, it can refuse delivery if, after the conclusion of the contract, circumstances become known which bring the preparedness of the buyer to render services into question, especially if the trade credit insurers cancel or substantially decrease the credit limit of the buyer, or if the credit limit is already exhausted and the claim for payment will be endangered because of this. The right to withhold performance is omitted, if the counter performance is effected or security is provided.

## 6. Reservation of ownership

### 6.1

ZIEGLER reserves the right of ownership of the delivered goods until complete payment of all accounts from the business relationship with the buyer (goods subject to retention of title), even if payments will be made of specially mentioned accounts. Even the placement of individual accounts into a current invoice as well as the balancing of an account and recognition of this does not affect the reservation of ownership. The receipt of money by ZIEGLER or of its credit note applies as payment. As long as the payment of the purchase price occurs by way of acceptance of a draft, the reservation of ownership does not expire before the draft is cashed in by the buyer as the drawee.

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## 6.2

If the delivered goods are processed or altered by the buyer, the reservation of ownership extends also to the new product. The processing or alteration or restructuring of the thing bought by the buyer ensues always in the name of and on behalf of ZIEGLER. In this case, the expectancy right of the buyer for the good bought continues onto the restructured good. In so far as the good bought is altered by other things which do not belong to ZIEGLER, ZIEGLER acquires co-ownership of the new good in proportion to the objective worth of the delivered good which was delivered by ZIEGLER to the other altering objects at the time of the alteration. The same applies in the case of intermixing. As far as a mixture occurs in such a way that the object to the buyer is to be seen as the main object, it applies as agreed, that the seller conveys proportionate co-ownership to ZIEGLER and the so produced sole ownership or co-ownership is kept safe for ZIEGLER.

## 6.3

Should the goods subject to retention of title be sold by the buyer, alone or together with goods which don't belong to ZIEGLER, the buyer conveys the outstanding accounts arising from the resale to the amount of invoice amount agreed with ZIEGLER including VAT with all ancillary rights. ZIEGLER accepts this conveyance. If the resold goods are in co-ownership of ZIEGLER, then the conveyance of the account extends to the amount, which corresponds to the worth of the co-ownership of ZIEGLER.

## 6.4

In so far as the goods subject to retention of title are incorporated from the buyer as a substantial component into the property of a third party, the buyer conveys all conveyable accounts which arise against the third party or against that party which is concerned, to remuneration to the amount of the worth of the goods subject to retention of title with all ancillary rights including such rights to concession of a legal mortgage, with priority over the rest. ZIEGLER accepts this conveyance. Aforementioned sentence 3 of figure 6.3 applies accordingly.

## 6.5

If the goods subject to retention of title are incorporated from the buyer as a substantial component into the property of the buyer, the buyer conveys all accounts arising from the resale of the property or from property rights to the amount of the worth of the goods subject to retention of title with all ancillary rights and with priority over the rest. ZIEGLER accepts this conveyance. Aforementioned sentence 3 of figure 6.3 applies accordingly.

## 6.6

The buyer is only permitted to resale, usage or incorporation of the goods subject to retention of title in a prudent and diligent business transaction and only with the stipulation, that the accounts under the meaning of figures 6.3, 6.4 and 6.5 actually are transferred to ZIEGLER. The buyer is not entitled to any other ordinance of the goods subject to retention of title, especially bailment and assignment as security.

## 6.7

The buyer remains authorized to collect the conveyed accounts mentioned in figures 6.3, 6.4 and 6.5 until withdrawal by ZIEGLER, which can withdraw at any time. ZIEGLER will not make use of its own ability to collect as long as the buyer makes good on their obligations to pay, even to third parties. The buyer is to mention the conveyed accounts when asked to and to show the debtor the conveyance. ZIEGLER is also authorized to show the debtor the conveyance itself.

## 6.8

In the case of arrestments, seizures or any other access of a third party to the goods subject to retention of title or claims, to which security interests of ZIEGLER exist, the buyer is to inform ZIEGLER without delay and to support it in the enforcement of its rights. The possible costs attached to any interventions which take place other in or out of court are to be borne by the buyer, so long as their reimbursement cannot be demanded by the third party.

## 6.9

With cessation of payment, or the application or opening of insolvency proceedings, or of judicial or extrajudicial conciliation proceedings, the rights to resale, to usage or to incorporation of the goods subject to retention of title are extinguished and the authority for collection of the conveyed accounts. In the case of cheques and bill protest the authority for collection is likewise extinguished.

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## **6.10**

In the case of behaviour on the part of the buyer which is in violation of the contract, especially in the case of default of payment, ZIEGLER is entitled to take back the delivered goods. Doing so does not represent a rescission from the contract, except if ZIEGLER has stated this expressly and in writing. After the taking back of the delivered goods ZIEGLER is entitled to further use of these goods. The proceeding use is to be counted against accounts payable of the buyer, minus appropriate utilization costs in accordance with figure 4.3.

## **6.11**

If the value of the granted securities exceed the claims of ZIEGLER from the business relationship with the buyer by more than 20%, ZIEGLER will release the securities on demand by the buyer. The choice of securities to be released is at the discretion of ZIEGLER.

## **6.12**

The buyer is obligated to handle the delivered goods which are delivered subject to retention of title with care and to insure them at their own cost against fire damage, water damage, theft and any other common risks.

## **6.13**

An application to open proceedings of insolvency against the assets of the buyer entitles the ZIEGLER to rescind from the contract and to demand the immediate return of the goods that have been delivered and not yet paid for.

# **7. Defects and Warranty**

## **7.1**

Wood is a natural material and its natural characteristics, variations and features are therefore to be constantly paid attention to. The buyer must especially take into consideration the biological, physical and chemical characteristics at the time of purchase and use. The buyer should seek out professional advice when necessary. The range of natural differences in colour, structure and other differences within a type of wood belong to the characteristics of the natural wood product and is not grounds for a defect of the delivery.

## **7.2**

Only the agreed to product description of ZIEGLER applies fundamentally as features of the goods. Public statements, blurbs or advertisement of ZIEGLER do not, on the other hand, represent a contractual statement of features of the goods.

## **7.3**

Claims of defects made by the buyer require that the buyer examines the goods for deficiencies immediately after receiving them and makes their complaint to ZIEGLER within a reasonable time and in writing. If no complaint of deficiency is made, the goods are to apply as being approved and the enforcement of warranty claims is excluded. Minor deviations in wood products, which are certainly caused by the naturalness of the material (for example the texture, the colour etc.), do not represent a defect.

## **7.4**

An immediate examination of the goods cannot ensue after the acquisition of the goods by way of common business routine, this circumstance is to be immediately shown to ZIEGLER and any possible defect found after an ensuing examination to be revealed in writing after no more than 14 working days from receipt of the goods. The same applies also to failed deliveries or changed orders.

## **7.5**

If there is a defect and its removal is called for by the buyer, ZIEGLER has the choice whether it removes the deficiency through improvement, subsequent delivery or reduction of the purchase price. The supplementary performance can be refused, if the buyer does not fulfil their obligations to pay to the extent which corresponds to the defect-free part of the delivery rendered.

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## **7.6**

The buyer is entitled to their own choice whether to rescind from the contract or to demand an appropriate reduction in the purchase price, if the supplementary performance has failed at least twice.

## **7.7**

The return of delivered goods is to be made at the expense and risk of the buyer, if nothing contrary to this has been agreed to in writing with ZIEGLER. The costs of returns are however to be borne by ZIEGLER if the return occurs because of a justified complaint of deficiency by the buyer.

## **7.8**

The processing and handling of the goods lead to the exclusion of warranty.

## **7.9**

The enforcement of warranty claims does not release the buyer from the obligation to pay.

## **8. Claims for Damage, Liability**

### **8.1**

So long as nothing to the contrary is stated in these GSDP, including in the following provisions, ZIEGLER is liable for a breach of contractual and non-contractual obligations according to statutory provisions.

### **8.2**

ZIEGLER is liable for damages - regardless of the legal basis – in the context of fault based liability only in the case of intent and gross negligence. In the case of ordinary negligence ZIEGLER is liable, subject to a milder measure of liability according to statutory provisions (for example because of diligence in its own affairs), only

a. For damages from violation to life, body, or health,

b. For damages arising from significant violation of an essential contractual obligation (an obligation, the fulfilment of which makes possible the proper implementation of the contract and upon the adherence to which the contracting partner regularly relies and is allowed to rely); in this case, however, the liability is limited to the compensation of foreseeable and typically occurring damages.

### **8.3**

The limitations of liability mentioned in figure 8.2 also apply to breaches of duty through or to the advantage of those persons, whose culpability ZIEGLER is responsible for, according to statutory provisions. They do not apply, if a defect is fraudulently withheld or if a guarantee for the nature of the goods was undertaken, and also for claims of the buyer according to the Product Liability Act.

### **8.4**

The buyer can only rescind or give notice because of a breach of duty, which does not exist in a defect, if the ZIEGLER is responsible for the breach of duty. A free right of the buyer to give notice (especially according to §§ 650, 648 BGB) is excluded.

### **8.5**

Liability is generally limited to a sum to the amount of the value of the goods of the applicable delivery. Liability for lost profit, subsequent damages or for damages due to the claims of a third party, is excluded. This does not apply in the case of liability for intent and gross negligence as well as in the cases listed in sentence 2(a) and (b) of figure 8.2 as well as in the case of liability according to the Product Liability Act.

### **8.6**

For damages caused by inappropriate handling of the delivered goods ZIEGLER does not undertake any liability. ZIEGLER is also not liable for the work of third parties, caused to the goods after delivery.

### **8.7**

The liability of ZIEGLER and its pre-suppliers for harm caused by a defective product only exists in the context of the compulsory provisions of the Product Liability Act.



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## **9. Statute of limitations**

### **9.1**

Notwithstanding §438 Abs. 1 Nr. 3 BGB, the general period of limitation for claims due to material and legal defects amounts to one year from delivery. As long as an acceptance is agreed, the limitation period begins with the acceptance.

### **9.2**

If the goods concern a structure or an object, which has been used for a structure according to its common manner of use, and which has caused the deficiency (building material), the limitation period amounts to 5 years from delivery, according to statutory provision (§ 438 Abs. 1 Nr. 2 BGB). Other special statutory provisions on limitation remain unaffected (§438 Abs. 1 Nr. 1, Abs. 3, §§ 444, 445 b BGB).

### **9.3**

The aforementioned periods of limitation of the law of the sale of goods apply also to contractual and non-contractual claims for damages of the buyer, which are based upon a defect of the goods, except if the application of the regular statutory period of limitation (§§195, 199 BGB) would lead to a shorter limitation period in an individual case. Claims for damages of the buyer according to sentences 1 and 2 (a) of figure 8.2 as well as according to the Product Liability Act expire exclusively, however, after the statutory period of limitation.

## **10. Applicable Law, Place of Delivery, Court of Jurisdiction**

### **10.1**

In the contractual relationship between ZIEGLER and the buyer, the law of the Federal Republic of Germany is to be exclusively applied. The provisions of the Treaty of the United Nations on Contracts for the international Sale of Goods (UN Law of Sales) have no application in this contractual relationship.

### **10.2**

The business place of ZIEGLER will be agreed to as the place of fulfilment for the payment of the purchase price as well as for other services of the buyer, as long as nothing to the contrary is agreed to in writing.

### **10.3**

If the buyer is a trader according to the meaning of the German Commercial Code, a legal person of public law or a public-legal special asset, then the exclusive – and also international – court of jurisdiction for all disputes arising either directly or indirectly from the contractual relationship is the place of business of ZIEGLER in Zur Betzenmühle 1, D-95703 Plößberg. The same applies if the buyer is an entrepreneur according to the meaning of §14 BGB. ZIEGLER is however in all cases also entitled to assert a claim at the place of delivery of the obligation of delivery according to these GSDP or an overriding individual agreement or at the general court of jurisdiction of the buyer. Overriding statutory provisions, especially those to exclusive jurisdictions, remain unaffected.

### **10.4**

The language of the contract is German. For the purposes of the contractual relationship only the German text of these sales and delivery terms is legally binding. If the applicability of the German law, the agreement to the place of delivery and the court of jurisdiction agreements are concerned in any language other than German, then in cases of deviation, the German version will always apply.

## **11. Special Provisions**

### **11.1**

Should one or more provisions or parts of provisions of these sales and delivery terms be or become void for any reason, the applicability of the rest of the terms will not be affected. The buyer and ZIEGLER commit themselves to replacing the void provisions or the void part of the provisions with regulations which correspond appropriately with the purpose of the contract. The same applies in cases of unknown incompleteness.

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**11.2**

Individual stipulations which deviate from these provisions, or those which supplement these provisions, require the written form in order to be legally effective.

**11.3**

These general terms of sale and delivery supplement the concluded contract between ZIEGLER and the buyer. In the case of contradictions to the provisions in the contract or if the contract contains further reaching provisions, the contract takes precedence over the general terms of sale and delivery.

Attachment: Practices of Tegernsee, version from 16.02.2017