

General Terms and Conditions of Trade of Grillo Zinkoxid GmbH

1. Subject matter of the contract

Products within the scope of our sales programme are subject matter of the contract. If a specification is agreed with a Customer, this product will become a subject matter of the contract.

2. Conclusion of contract

- a. Our offer is without engagement, unless the confirmation of order does not set out anything else. Modifications and amendments require written form.
- b. Divergent conditions of the Customer only apply, when they have been recognized by us in writing, and will not become contents or the contract only due to the fact that we do not object these or the customer declares he only wants to conclude the contract on his conditions.
- c. When we have agreed to modifications of our General Terms and Conditions of Trade or have recognized the conditions of the Buyer, the individual terms our General Terms and Conditions of Trade remain effective, which were not defined divergently by the modifications or the terms of the Buyer. If special conditions are agreed upon for certain contracts, our General Terms and Conditions of Trade will remain effective with lower priority and in addition.

3. Prices

- a. Unless the confirmation of order does not set out anything else, all prices are deemed to be „ex works“, excluding packaging and value added tax.
- b. All taxes, customs, fees and other levies – including social security contributions outside of Germany will be charged to the Buyer. In the event the seller is charged, the Buyer will be obliged to reimburse immediately. Approvals of whatsoever kind outside of Germany have to be recovered by the Buyer.
- c. Concerning orders on call exceeding the order quantity we will be entitled to cancel the surplus quantity or charge it at the current daily price.
- d. If the Buyer cancels an order in whole or part, we will reserve the right to charge losses resulting from a reselling to third parties basing on intermediate changes of the zinc price (LME).

4. Terms of payment

- a. Unless not otherwise provided in the confirmation of order, the net sales price (without deduction) will be due for payment within 30 days after date of invoice.
- b. If the Buyer is in delay with a payment, we will be entitled to request default interest of annually 9% above base interest rate.
- c. Set off rights can be only granted to the Buyer, if his counterclaims have been stated legally binding, undisputed or recognized by our company.

5. Delivery and acceptance

- a. Unless set out otherwise in the confirmation of order, a delivery „ex works“ is agreed.
- b. Commencement of the delivery time indicated requires clarification of all technical and logistic issues. Furthermore, the respect of our obligation to deliver presumes the timely and orderly fulfillment of the obligations by the Seller. The objection of a non fulfilled contract remains reserved.
- c. We will be liable in accordance to legal regulations, provided that the delay in delivery is caused by an infringement of contract which is intentional or gross negligent, respectively based on a culpable breach of a major contractual obligation. Our liability for damages is limited to the foreseeable, typically incurring damage.
- d. In the event of delay in delivery we will be liable for each complete week of delay within the scope of a generalized delay compensation of 0.5% a week, maximally, however, to not more than 5% of the ex works price.
- e. For framework contracts and orders on call we will be allowed to demand the missing binding subdivision of delivery dates from 3 month after confirmation of order. If the Buyer does not comply with this request within 3 weeks, we will be entitled to set a two-week final deadline. After its expiration we may withdraw from the contract or will be entitled to demand compensation and refuse to deliver.
- f. Should the Buyer wish to have required tests to be carried out by us, type and scope of tests have to be agreed upon beforehand. If that does not happen on conclusion of the contract, the costs will be borne by Buyer.

6. Packaging

- a. One-way packaging is invoiced at cost price.
- b. For reusable packaging in our possession the Buyer engages to collect it and have it prepared for return transport. The Buyer takes care the packaging material will be stored properly. On loss or damage of the reusable packaging we will be entitled to request compensation.
- c. Costs for the return transport are charged to the Buyer, unless otherwise agreed.

7. Weights and delivery quantities

- a. When complete truck loads are ordered, a higher deadweight of the means of transport may result into the necessity to load less than the quantity indicated in the confirmation of order and at the same time to comply with the legal regulations on admissible total weights. Therefore we reserve the right to reduce the order quantity. The Buyer will not have any right to claim later delivery of the residual quantity, unless he agrees to assume the transport costs.
- b. In the event of weight differences only the weights recorded on our balance (incoming and outgoing weights). The Buyer is entitled to receive the corresponding weight notes as well as the certificate on the calibration of our balance.

8. Proprietary rights and security reserves

- a. The goods remain our property until the payment of all accounts receivables incurring as early as on conclusion of this contract, including any accounts receivables from subsequent orders, as for example later orders.
- b. The Buyer is entitled to resell the goods in an orderly business transaction. He assigns as early as now any accounts receivables at the amount of the final amount of the invoice (including value added tax) of our accounts receivable, incurring to him from reselling towards his customers or third parties, independent on whether the goods were resold without or after processing.
- c. In the event the contract partner will be in breach of the contract, in particular in case of delay in payment, we will be entitled to take back the goods and withdraw from the contract.

9. Liability for defects

- a. The warranty claims of the Buyer require that he has complied with his obligation to investigate and rebuke and has given notice of the defects pursuant to what is requested by § 377 HGB (German Code of Commercial Law).
- b. Hidden defects have to be reported immediately after detection.
- c. Warranty claims do not exist, when the defect can be traced back to improper storing or handling. We do guarantee a life time of zinc oxide of 24 month, when the material will be stored in dry conditions and will not be exposed to direct atmospheric disturbances and influences. However, it has to be respected that the dispersing ability and processability after a storing time of more than 6 month from passing of the risk are no longer provided.
- d. We have to get the opportunity to inspect the rebuked defect on the spot. The inspection has to be carried out immediately, provided that the Buyer is interested in an immediate settlement. To avoid the loss of the warranty claim nothing at the defect goods is allowed to be changed. In addition, it must not be reprocessed after detecting the defect.
- e. If a defect at the goods is stated, we will be entitled to subsequent performance, either to remedy the defect or to deliver new goods free of defects. In the event of remedy of the defect we will be obliged to bear any expenditure, in particular incurring for transport, shipping, working and material costs, provided that these have not incurred by the fact that the goods had to be delivered to a place, other than the place of fulfillment.
- f. If subsequent performance fails, the buyer will be entitled to demand cancellation or reduction.
- g. The period of limitation is 12 month, beginning with the transfer of risk.

10. Limitation of liability

- a. We are liable pursuant to the legal regulations, provided that we have culpably infringed a substantial obligation of the contract. In this case the liability for compensation of damages is limited to the foreseeable, typically incurring damage.
- b. A more comprehensive liability for compensation of damages is excluded. This concerns in particular claims for compensation of damages resulting from faults on conclusion of contract, due to other breaches of duty or due to tort claims for compensation of property damage pursuant to § 823 BGB (German Civil Code).
- c. Liability due to culpable infringement of life, body of health remain unaffected; this prevails as well in view of the mandatory liability pursuant to product liability law.
- d. We deliver on the basis of a specification convened with the Buyer. We do not assure any exceeding properties of the zinc oxide for application by the Buyer.

11. Place of performance and legal venue

- a. Place of performance for payment obligations is our site in Goslar.
- b. Provided the Buyer is a merchant, our business site is the legal venue as well; however, we are entitled to take legal action against the Buyer at the court at his place of residence.
- c. The law of the Federal Republic of Germany is effective; validity of UN-International Sale of Goods Law is excluded.