

Terms and Conditions

1. General

1.1 These Terms and Conditions apply to all sales/deliveries of the E.Zwicky AG if there are no other written agreements or written provisos between the contractual parties. Any other Purchasing Terms and Conditions of the customer's are automatically invalid as soon as the sales contract with E. Zwicky AG has been signed.

1.2 If neither the special agreements nor these Terms and Conditions have any regulations to the opposite, then the current letter of Swiss Law applies.

2. Scope of Services

2.1 The full scope of services to be delivered by E. Zwicky AG (goods, quantity, price, date of delivery, dispatch, etc.) is defined by the sales confirmation letter or the delivery note and is binding.

2.2 E. Zwicky AG reserves the right to deviate from the sales confirmation letter or the delivery note due to adherence to mandatory legal standards.

3. External causes affecting price

If E. Zwicky AG is forced to expend greater time and effort for the goods to be delivered than was known or could have been known at the time of agreement and without being at fault, then these extra costs are fully chargeable to the Buyer. Such costs may arise for example from the following circumstances: official provisions (e.g. changes in customs and excise fees, price surcharges, additional compulsory payments, taxes, duties, fees, etc.) as well as additional costs due to stoppage in Rhine barge traffic, high and low-water charges, gasoil charges.

4. Delivery terms

4.1 Delivery time is agreed in writing in the sales confirmation letter or by word. Changes to the order result in cancellation of previously agreed delivery times.

4.2 In cases of temporary delivery problems caused by an act of God such as industrial action, lock outs, operational disturbances, epidemics, disruption in waterways or similar, delivery and service periods are automatically extended by the relevant period of time due to the problem.

4.3 Partial deliveries are subject to special agreement. Cancellation of an order by the Customer must be made no later than 3 working days prior to the agreed delivery time.

4.4 The Seller is not liable for empty trips or costs incurred if HGV's are sent for loading before the goods are ready to be loaded.

4.5 The venue of jurisdiction is at the Buyer's registered offices or the site for unloading or railway station agreed on the sales confirmation letter or the delivery note.

5. Quality and Quantity

5.1 If the parties do not agree in writing specific standards of quality, then quality customary in the trade should be delivered. The quality and condition determined during loading at the supply site constitute execution of the contract. The right to obvious differences in quality correctly identified prior to unloading at the place of delivery is reserved.

5.2 Samples and/or specifications leading to a sale, are a binding condition of the sale. Special quality standards, deviating from the standards commonly traded, require prior agreement in the sales confirmation letter or on the delivery note.

5.3 For all their products, E. Zwicky AG is bound by Swiss Laws governing food for human and animal consumption.

5.4 The agreed weight of delivered products is based on goods with a 15% moisture content at the loading site at E. Zwicky AG (loose goods) or at the packaging site (packaged goods), provided there are no other product-specific or legal deviations.

5.5 The quantity specified in the sales confirmation letter or the delivery note relates to the total quantity of delivery. If there are weight discrepancies in individual parts of the total amount of delivery (e.g. individual bags), then this does not constitute a fault if the total amount of delivery corresponds with the contractual quantity.

5.6 The weight of packaging of the contractual goods is not included in the contractual quantity.

6. Delay of Collection

If the Buyer fails to collect the goods at the agreed time or does not accept them when delivered according to the contract or, in case of partial availability, fails to cancel, then the Buyer automatically defaults in acceptance. E. Zwicky AG then has the right to give notice for making the goods available, a minimum of 3 days later. If this additional period expires unused, E. Zwicky can either arrange later delivery by keeping the goods available at their own site and charging the Buyer for storage at SFr.1.00 per 100kg per month or they can waive fulfilment of the contract and claim compensation for breach of contract. E. Zwicky AG should communicate their decision either way to the Buyer in writing without delay as soon as the additional period has expired.

6.2 The additional period begins on the day of posting, the day of posting itself is not counted.

7. Guarantee

7.1 The Seller needs to be notified of any faulty goods without delay on delivery of the goods at the agreed site of hand-over. If the condition of the goods needs to be specially analysed (chemical or technical analysis, baking tests or similar) by recognised laboratories the period of the complaint is extended by the appropriate period required for such an analysis, however by no more than 20 working days. E. Zwicky AG does not accept liability for costs the Customer has incurred from commissioning an analysis – except if it is found that the quality falls short of the delivery specifications.

7.2 There is no compensation for weight discrepancies of up to 1% of the contractual amount for loose goods. The Buyer accepts the risks of loss of weight associated with shipping by container or silo wagon. The weight determined by E. Zwicky AG will be accepted as the correct one by both parties provided calibrated weighing instruments are used. Any declarations must be made in such a way so that the right of recourse to the applicable institutions is not affected.

7.3 If the loss of value (in terms of quality) is not greater than 5% of the total value of the goods, the Buyer only has the right to a reduction. However, the Seller continues to have the right even in this case to take the goods back and to replace them without delay at the originally agreed price and conditions. Any costs incurred by this are covered by the Seller.

7.4 If the loss of value (in terms of quality) is greater than 5% of the value of the goods, the Seller has the right to declare if they will immediately replace the goods no longer than 3 working days after receipt of the complaint about loss of value. If the Seller waives this right within the 3 days, then the Buyer can

- a) accept the goods with the recognised reduced value
or
- b) demand change of contractual conditions, though any compensation should be limited to the difference in price and any expenses incurred supported by a receipt.

7.5 Any guarantee rights against E. Zwicky AG expire if the Buyer or any other third party have tampered with the goods, except if the Buyer is able to prove that the complaint is not connected to the tampering. The guarantee also expires due to any improper handling, storage or processing of the goods or if the goods are used for purposes not covered in the product description.

8. Liability

8.1 E. Zwicky AG is liable exclusively for damage caused by breach of one of their contractual obligations or if these are breached due to gross negligence or with intent.

8.2 E. Zwicky AG is not liable in any way for any subsequent damage.

8.3 E. Zwicky AG is not liable for damage which the Buyer could have either avoided altogether or could have avoided from getting worse by taking action that could be reasonably expected.

8.4 The maximum amount of compensation is limited to the agreed amount of money agreed as the sales price of the affected delivery.

9. Prices, Conditions of Pay

9.1 The prices on the sales confirmation letter plus value added tax are binding. All prices include packaging (except returnable containers) and transport to the agreed place of delivery, if nothing else was agreed.

9.2 Deliveries and services for which prices were not agreed in writing in advance will be invoiced at list prices of E. Zwicky AG valid at the time of the contractual service is provided.

9.3 The Seller reserves the right, contrary to agreed payment conditions, to deliver the goods only on prepayment.

9.4 If nothing else has been agreed, payments should be made within 30 days from the date of invoice or within the period of time stated on the invoice, in cash without any deductions. On failure to pay within this period of time and without a reminder, the Buyer is automatically in breach of contract and interest of 1% per month, a level of interest common in the industry, is levied.

9.5 Reductions or withheld monies by the Buyer are only acceptable if their claims were either accepted in writing by E. Zwicky AG or are granted by a court of law.

9.6 If the same Buyer is in arrears with several payments, then any payment will cover the oldest outstanding debt. If the Buyer is in arrears with at least one payment for a partial delivery, then E. Zwicky AG reserves the right to withhold further partial deliveries until all outstanding debts have been paid in full.

9.7 As soon as the additional payment period for payment/ fulfilment of contractual obligations given in the reminder expires, E. Zwicky AG automatically withdraws from the contract.

10. Applicable Law, Court of Law

10.1 Swiss Law applies to these Terms and Conditions and all contracts based on them.

10.2 Any disputes arising from or in the context of these Terms and Conditions will be dealt with by the competent court with jurisdiction at the place of the registered offices of E. Zwicky AG.

Reviewed: August 2008