

Terms and conditions

Süddeutsches Lackwerk
Zelle GmbH & Co. KG
Velaskostrasse 10
D-85622 Feldkirchen

Telephone +49 89 9077 840
Fax +49 89 9044 149

info(at)wetterwart.com

I. Scope

1. The following delivery and payment terms shall apply to all our deliveries and services. Deviating conditions of the customer are not legally binding on us. Our offers are subject to change unless expressly agreed otherwise.
2. Our delivery and payment terms shall also apply, and without notice, to future transactions. Acceptance of our deliveries or services shall constitute acceptance of our terms and conditions.
3. Clause 2 (above) does not apply to non-merchants.
4. Collateral agreements, as well as changes and deviations from these conditions, require our written confirmation.

II. Prices

1. The agreed prices are binding plus the statutory VAT in effect on the day of delivery.
2. Prices are calculated by the weight, quantity and unit of measure determined by us unless the purchaser expresses an immediate objection.
3. Should we reduce or increase our prices in the period between the conclusion of the contract and delivery, the price in effect on the day of delivery will be applied. If the price increases, the purchaser is entitled to withdraw from the contract within 14 days after notification of the increased price.
4. Clause 3 (above) does not apply to non-merchants.

III. Product application advice

We provide technical application advice on our products to the best of our knowledge. However, all details and information on the suitability and application of our goods are non-binding and do not release the purchaser from the obligation to carry out tests and trials on the appropriateness of the products for the intended use.

IV. Delivery

1. All deliveries are made freight collect unless otherwise agreed to by our order confirmation.
2. In the event of an agreed collection, the risk of accidental loss and accidental deterioration of the items for delivery shall pass to the purchaser upon notification that the goods are ready for dispatch. Otherwise, the risk shall pass to the purchaser at the time the goods are handed over by us to the carrier. We choose the type and route of dispatch. Additional costs due to deviating wishes of the purchaser are to be borne by the purchaser.
3. In the case of custom-made products, we are entitled to exceed or fall short of the delivery quantities agreed to in the purchase order by 10% and, if necessary, charge a small-quantity surcharge.
4. Partial deliveries which are reasonable for the purchaser are permitted.
5. Significant, unforeseeable operational disruptions, delays in delivery or delivery failures by our suppliers through no fault of our own, shortages of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, orders from higher authorities and cases of force majeure on our part or on the part of our sub-suppliers, shall extend the delivery period by the duration of the obstacle to deliver, insofar as they are of significance for the ability to deliver the goods. We shall inform the purchaser of the beginning and end of such hindrances as soon as possible. If delivery is delayed by more than one month, as a result, both parties are entitled to withdraw from the contract in respect to the quantity affected by the delivery disruption, with the exclusion of all further claims.
6. If delivery is in returnable containers, these must return within 90 days of delivery, completely emptied and with the carriage paid. Loss and damage of returnable packaging, as long as it has not been returned to the supplier, shall be at the expense of the purchaser where the loss and damage is the fault of the purchaser. Returnable packaging is not be used for other purposes or as containers for other products. They are only intended for the transportation of the delivered goods. Removal of labels is not permitted.
7. Disposable, single-use packaging will not be taken back by us. Instead, we will inform the purchaser of a third party who will recycle the items according to the regulations on packaging.

V. Payment

1. The invoice amount must be paid in full on the due date. Timely payment is only made if the invoiced amount is available as cleared funds on the due date and in the account specified. Discounts and rebates are granted only by special agreement. No discount is possible on new invoices if older due invoices are unpaid.
2. In the event of late payment, default interest in the amount of 5% above the German Bundesbank discount rate is payable. The contracting parties remain at liberty to prove higher or substantially lower actual damages.
3. The provision of a bill of exchange is not a cash payment and only permitted as payment with our prior consent. Discounts and bill charges shall be borne by the purchaser.

4. Retention or claims for compensation by the purchaser which are contested by us are not accepted and are solely at our discretion.
5. Paragraph 4 (above) does not apply to non-merchants.
6. The non-payment of due invoices or other circumstances which, when customary banking standards are applied, indicate a significant deterioration in the financial circumstances of the purchaser, will result in the immediate maturity of all our claims based on the same legal relationship.

VI. Retention of title

1. The delivered goods remain our property until all claims, including all future claims, arising from the business relationship with the purchaser have been settled. Retention of title shall also remain in effect if some of our claims have been included in the current account and the balance of those claims has been struck and acknowledged.

Despite payment, purchase price claims shall not be deemed to have expired as long as a liability continues under a bill of exchange accepted by us in this context – e.g. within the framework of a cheque/bill of exchange procedure.

2. The purchaser shall process or mix the goods for us without this entailing any obligation for us. In the event of processing or mixing with other items not belonging to us, the purchaser hereby assigns to us co-ownership of the new item in proportion to the invoice value of the reserved goods to the other processed items in order to secure our claims, with the proviso that the purchaser keep the new item in safekeeping for us.
3. The purchaser is entitled to dispose of the products in the ordinary course of business as long as they fulfil their obligations arising from the business relationship with us in good time.
4. The purchaser hereby assigns to us as security all claims arising from the sale of goods to which we are entitled to ownership rights, to the extent of our ownership share in the sold goods.

If the purchaser combines or mixes the delivered goods with a principal item of a third party against payment, they hereby assign to us as security their claims to remuneration against the third party up to the amount of the invoice value of the delivered goods. We accept this assignment.

5. At our request, the purchaser shall provide us with all necessary information on the inventory of the goods to which we have a title, and on the claims assigned to us, as well as inform their customers of the assignment.
6. The customer is obliged to keep the retained goods in safekeeping and to insure them at their own expense against loss and damage. They hereby assign their claims under the insurance contracts to us in advance. We accept this assignment.
7. If the value of the securities exceeds our claims by more than 10%, we shall, at the request of the purchaser, release securities of our choice to that extent.

8. The purchaser's right to dispose of the products subject to our right to retention of title and to collect the claims assigned to us, shall only exist as long as the purchaser fulfils their obligations to us and does not fall into financial collapse. If these conditions cease to apply, we shall be entitled to demand the immediate provisional surrender of all goods subject to our retention of title, to the exclusion of the right of retention, without setting a period of grace or exercising our right to rescind the contract.
9. If the right to retention of title is not effective according to the law of the country in which the delivered goods are located, the purchaser shall provide an equivalent security at our request. If the purchaser does not comply with this request, we may demand immediate payment of all outstanding invoices irrespective of any agreed payment terms.

VII. Full warranty and liability

1. The statutory warranty periods shall apply.
2. Obvious material defects, wrong deliveries and deviations in quantity of the delivered goods must be reported in writing immediately, but no later than 14 days after receipt. Hidden defects must be reported to us in writing within 7 days of discovery.
3. The customer shall check – if necessary by test processing on the basis of samples provided – whether the delivered goods are suitable for the intended use. Similarly, the customer must check the RAL colour designations on the container against the information on the delivery note before the parts planned for coating are painted.

Within the scope of any warranty claims:

- a) If a sample is delivered to the customer/new customer for the purpose of an 'initial sample inspection', the customer/user is obliged to check the suitability of the sampled coating material for its intended purpose and to conduct appropriate test coatings using the sample delivered. If there is no further indication by the customer between sampling and the initial order by the customer, the product quality shall automatically be deemed to have been tested and approved in accordance with the sample sent when the order is placed.
 - b) Prior to the initial order, the customer/purchaser is obligated to provide Süddeutsches Lackwerk Zelle GmbH & Co. KG with all relevant information on the substrate/coating surface/pre-treatment, as well as on the surface preparation, environmental conditions and intended application. Süddeutsches Lackwerk must be informed of any changes to the parameters mentioned above. If the user/customer does not comply with this obligation to provide information, liability for any resulting complaints/warranty claims against Süddeutsches Lackwerk Zelle GmbH & Co. KG will be extinguished.
4. In the case of legitimate complaints, we will deliver missing quantities or exchange the goods. If it is not possible to exchange the goods or if the replacement delivery is defective, we shall grant the purchaser either the right of annulment or to a discount, at our discretion.

5. If the customer is a non-merchant within the meaning of the act governing German business conditions (AGB-Gesetz), the following shall apply:
 - a) Notification of hidden defects must be made in writing within the statutory warranty period. This shall also apply if a longer warranty period than the statutory warranty period has been agreed.
 - b) In the case of justified notices of defects of goods that either have not yet been processed or have been processed, the customer can only demand a replacement delivery or a reduction in payment.
6. a) Claims for damages by the purchaser based on a breach of our contractual or legal obligations are excluded, provided the loss was not caused by wilful intent or gross negligence.

This shall not apply to loss caused by negligent breach of a contractual obligation and to claims for damages based on the Product Liability Act.

 - b) Our liability for indirect damages based on circumstances not typical of the contract and which are not foreseeable for us is excluded.
 - c) The limitation of liability also applies to the liability of our agents of vicarious liability.
7. Liability for product properties under warranty is not limited by the above provisions.
8. Warranty and liability are extinguished in all cases if thinners, hardeners, additional coatings or other components are added (mixed into our products) which were not purchased from us.

VIII. Information according to Section 36 of the Consumer Dispute Resolution Act (Verbraucherstreitbeilegungsgesetz – VSBG)

1. Süddeutsches Lackwerk Zelle GmbH & Co. KG is not prepared and not obligated to take part in a dispute settlement process before a consumer arbitration board.

IX. Place of performance and place of jurisdiction

1. The place of performance for all obligations arising from the business relationship or from an individual contract shall be our respective place of dispatch, and for payments, our registered office.
2. The place of jurisdiction shall be our registered office or the customers's general place of jurisdiction if we so decide. This shall also apply to disputes in connection with documents, bills of exchange or cheques.
3. Paragraphs 1 and 2 shall not apply to non-merchants within the meaning of the act governing German business conditions (AGB-Gesetz), and to minor merchants.
4. The law of the Federal Republic of Germany shall apply exclusively to the contractual relationships with our customers. The applicability of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG – United Nations Convention on Contracts for the International Sale of Goods) is excluded.