

General Terms and Conditions of Delivery

Harzer Zinkoxide GmbH, Landstraße 93, 38644 Goslar – Germany

– hereinafter „HZO“

I. Validity

1. All HZO's deliveries, services and offers shall be made only on the basis of these General Terms and Conditions of Delivery. These are an integral component of all agreements which HZO concludes with its contractual partners (hereinafter also referred to as the "Ordering Party(ies)") regarding the deliveries or services which HZO offers. They shall also apply to all future deliveries, services or offers to the Ordering Party even if they are not specifically agreed again.
2. The Ordering Party's general terms and conditions of business do not apply to the deliveries, services or offers unless HZO explicitly agrees to their validity in writing. HZO's Terms and Conditions of Delivery shall also apply if HZO carries out the delivery to the Ordering Party without reservation and with knowledge of the Ordering Party's conditions which are in opposition to or are different to HZO's General Terms and Conditions of Delivery.

II. Concluding Agreements and Subject of the Delivery

All offers by HZO are subject to confirmation and without obligation unless they are explicitly specified as binding or include a definite acceptance deadline. A binding agreement is only concluded when a written order confirmation (Schriftform or Textform) is received from HZO.

The scope of the delivery is determined by the written order confirmation (Schriftform or Textform). Additional agreements and modifications require HZO's written confirmation (Schriftform or Textform) in order to be valid.

III. Prices and Payment

1. The prices apply to the services and scope of delivery stated in the order confirmation. Payment for any additional or special services is charged separately. The prices are in Euros EXW (Incoterms 2010) plus packaging and statutory VAT unless the parties explicitly agree otherwise. Any custom duties, taxes, fees or similar duties shall be charged separately if borne by HZO.
2. Invoice amounts are to be paid without any deductions and free of transaction charges for HZO and without undue delay after the invoice is received unless otherwise explicitly agreed in writing. In the latter case the time when the payment is received by HZO shall determine whether it is made on time.
3. If the Ordering Party does not pay upon maturity, the outstanding amounts shall bear interest of 5 % p.a. as of the day of maturity; in the event of payment default the Ordering Party must pay to HZO default interest of 9 percentage points above the base rate. HZO reserves the right to show that HZO incurred greater damage as a result of payment default. The Ordering Party is only entitled to offset its counterclaims which are not in a relationship of mutuality with the payment claim of HZO or with the respective payments on account of any such claims, if they are final and absolute, undisputed or recognized by HZO.

4. HZO is entitled only to carry out or render still outstanding deliveries in return for advance payment or the provision of security if there are circumstances which could significantly reduce the Ordering Party's creditworthiness and where the payment by the Ordering Party of HZO's outstanding receivables arising from the respective contractual relationship, including from other individual orders to which the same framework agreement applies, is jeopardized according to HZO's best judgment. HZO is only obliged to carry out a delivery in return for advance payments if this would exceed the maximum amount of credit agreed. This is particularly the case for release orders.
5. Unless otherwise specifically agreed with the Ordering Party all payments must be made in € (Euro) to HZO.

IV. Delivery and Delivery Period

1. All periods and dates put forward by HZO shall be approximates only unless a fixed period or date has been specifically confirmed (e.g. in order confirmation) or agreed. HZO shall be entitled to request that the Ordering Party extends the agreed period of performance or postpones the dates for delivery or provision of services until such time as the Ordering Party has complied with its contractual obligations toward HZO. The delivery period shall not commence before the documentation, permits and clearance to be provided by the Ordering Party is available and/or before an agreed payment installment is received. The delivery period is adhered to if HZO makes the delivery items available at its own factory or at another agreed delivery point (e.g. the factory of a third-party supplier) and the Ordering Party has been notified that the delivery items are ready for dispatch by the end of the delivery period. HZO is entitled to refuse to hand over the delivery items to the haulage company if it cannot be guaranteed that the load is secured pursuant to VDI Guideline 2700 (Verein Deutscher Ingenieure - Association of German Engineers) based on the condition of the transport vehicle provided by the haulage company or if according to HZO's best judgment the transport vehicle does not satisfy the requirements which must be fulfilled pursuant to the German road traffic licensing regulations (Straßenverkehrs-Zulassungs-Ordnung – StVZO) so that the vehicle can be used on the road. If HZO refuses to hand over the delivery items to the haulage company for the above reasons, the regulations in Ciphers V.2 and V.3 shall apply accordingly.
2. Appropriate partial deliveries are permitted to a reasonable extent if it is possible for the Ordering Party to use them within the contractual intended use, the delivery of the remaining delivery items is ensured and the Ordering Party does not incur any additional costs or considerable additional expenditure hereby.
3. If the dispatch or delivery is delayed by the Ordering Party after it has been notified that the delivery items are ready for dispatch or for other reasons for which the Ordering Party is responsible, HZO can charge the Ordering Party with storage costs in the amount of 0.5 % of the price of the delivery item for each commenced month or a total maximum amount of 5 %. The contractual parties are at liberty to provide evidence that greater or less damage has incurred as a result of the delay.
4. The delivery is subject to the correct and/or punctual supply of required materials to HZO (Covering Transaction). In case of incorrect and/or unpunctual supply of the Covering Transaction, HZO shall be entitled to suspend performance of its delivery obligations or in case such incorrect and/or unpunctual supply of the Covering Transaction is delayed by a period of 90 consecutive days or more, counting from the day of Notice to the Ordering

Party, to rescind the agreement. This does not apply as far as HZO is responsible for the non-correct or nonpunctual delivery of the supplier. In case such incorrect and/or unpunctual supply of the Covering Transaction is caused by Force Majeure, Cipher IV. 6. shall apply.

5. If HZO defaults on a delivery which it is to render or if it is unable to carry out a delivery, the Ordering Party is entitled to rescind the agreement under the terms of statutory provisions. HZO shall only be liable to pay compensation under the terms of the regulations in Cipher VIII. of these General Terms and Conditions of Delivery in the event of default or if the delivery is impossible.
- 6.1 If HZO would, despite all reasonable endeavors, be prevented or hindered, directly or indirectly, by events of Force Majeure from performing any of its obligations under the agreement other than payment obligations (“Affected Obligations”), HZO shall be entitled to suspend performance of the Affected Obligations as far as such events render the delivery or provision of services significantly more difficult or impossible and the hindrance is not only of temporary duration. The Ordering Party shall be entitled to suspend performance of its corresponding obligations other than payment obligations (“Suspended Obligations”), to the extent that, and for so long as, the Affected Obligations continue to be prevented or hindered by Force Majeure (“Force Majeure Period”) provided that HZO gives a Force Majeure Notice in accordance with Cipher IV. 6. 2. In case the Force Majeure Period exceeds a term of 90 consecutive days, counting from the effective date of the Force Majeure Notice, HZO shall be entitled to rescind the agreements covering the Affected Obligations entirely or in part based on the part of the agreements which have not yet been fulfilled.
- 6.2 Upon becoming aware that HZO will be prevented or hindered by Force Majeure from performing the Affected Obligations, HZO shall give written notice (“Force Majeure Notice”) without undue delay to the Ordering Party providing details of the Force Majeure and an estimate in good faith of the expected duration of the Force Majeure. The Ordering Party can request HZO to declare within 90 consecutive days, whether it wishes to rescind the agreement entirely or in part for the part of the agreement, which has not yet been fulfilled or make a delivery within an appropriate subsequent period. If HZO does not make such a declaration by the deadline set by the Ordering Party, the Ordering Party can rescind the part of the agreement which has not yet been fulfilled.
- 6.3 Subject to Cipher IV. 6.1 and 6.2, HZO shall use reasonable endeavors during the Force Majeure Period to avoid or minimize the consequences of the Force Majeure. HZO shall give notice to the Ordering Party when it is no longer prevented or hindered, directly or indirectly, by Force Majeure from performing the Affected Obligations.
- 6.4 Force Majeure means any circumstances or event beyond the reasonable control of HZO and the consequences arising therefrom and for which HZO is not responsible. This shall include, without limitation: Fire, explosion, flood, earthquake, tsunami, extreme adverse weather conditions, act of God, riot, war or threat of war, civil commotion, act or threat of terrorism, unrest or disturbance, sabotage, blockade, embargo, sanctions, non-availability or shortage of electricity, fuel or raw materials, non-availability or shortage of transportation or a breakdown in transportation facilities, failure of HZO’s supplier to supply delivery items due to any event or circumstance which would constitute Force Majeure under the agreement or force majeure (as such term may be defined) under the relevant agreement between HZO and its supplier, breakdown or malfunction of plant, machinery, terminal or other facilities whether total or partial, labor dispute or lock-out whether or not HZO or HZO’s supplier, as the case may be, is a party thereto or would be able to influence or procure settlement

thereof. HZO shall not be entitled to claim Force Majeure for any change in market conditions.

- 6.5 HZO shall not be liable to the Ordering Party for any loss or damage arising out of any delay, omission or failure in the performance of any Affected Obligations or Suspended Obligations to the extent that its performance is suspended or relived pursuant to Cipher IV. 6.1, 6.6 or 6.7.
 - 6.6 HZO may enter into or may have entered into other contracts with other customers for the sale and delivery of delivery items. If HZO is, by reason of Force Majeure, prevented or hindered from supplying the delivery items to the Ordering Party and its other customers during any Force Majeure Period HZO may, throughout the Force Majeure Period, allocate and reallocate its supplies of delivery items available for delivery between all of its customers (including the Ordering Party) as it thinks fit including without limitation by reducing the supply of delivery items to the Ordering Party whilst supplying delivery items to other customers at the same delivery location or otherwise. In allocating and re-allocating its supplies of delivery items available for delivery HZO shall not have regard to any differences in the price(s) payable under the relevant contract or contracts.
 - 6.7 HZO shall be relieved from its obligation to supply to the Ordering Party any difference between the quantity of delivery items contracted to be delivered to the Ordering Party under the agreement during the Force Majeure Period, and the quantity of delivery items (if any) final allocated to the Ordering Party during the Force Majeure Period pursuant to Cipher IV. 6.6. Any quantity of delivery items that HZO is relieved from supplying under Cipher IV. 6.6 shall be cancelled and the quantity of delivery items to be delivered under the agreement reduced accordingly. If, as a result of such reduction, no further quantities of delivery items are deliverable under the agreement, the agreement shall terminate.
 - 6.8 If (i) the agreement provided for more than one shipment of delivery items and (ii) HZO's ability to perform the Affected Obligations in connection with a particular category of delivery items specified in the agreement is prevented or hindered by Force Majeure for a period of 90 consecutive days or more (counting from the effective date of the Force Majeure Notice), then HZO may by notice to the Ordering Party terminate all of the obligations under the agreement in connection with that particular category of delivery item only. If, as a result of such termination, no further quantities of delivery items are deliverable under the agreement, the agreement shall terminate.
7. Release orders and specifications of individual partial deliveries must be made in good time by the Ordering Party in periods and quantities which are as equal as possible so that it is possible for HZO to produce and deliver the delivery items properly within the contractual period. Two months shall be deemed as agreed if a period is not determined for release orders. If the Ordering Party does not specify or place a release order for deliveries (in due time), HZO shall be entitled to demand prepayment or rescind the agreement after setting an unsuccessful deadline irrespective of any other rights to which it may be entitled.

V. Packaging, Dispatch, Transfer of Risk and Acceptance of the Delivery Items by the Ordering Party

1. Unless otherwise explicitly agreed, HZO shall choose the type of packaging at its reasonable discretion.
2. The risk shall pass to the Ordering Party at the latest as soon as the delivery item is given to the haulage company specified by the Ordering Party. This also applies in the case of partial deliveries. Furthermore, the Ordering Party shall default on the acceptance if HZO has notified it that the delivery items are ready for dispatch but the Ordering Party refuses to accept the delivery items on the specified date or it does not collect the delivery items on the specified date and/or it does not have the delivery items collected by a haulage company on the specified date.
3. If the Ordering Party defaults on the acceptance or if it infringes other obligations to cooperate, HZO is entitled to request compensation for potential additional expenditure from the Ordering Party and – in case of default – for the damages incurred. The risk of accidental destruction or accidental deterioration of the delivery item transfers to the Ordering Party in this case. Having set an appropriate deadline and if said deadline should expire without success HZO is furthermore entitled to dispose over the delivery item in another manner and to supply the Ordering Party during an appropriately extended delivery period.
4. The delivery item shall only be insured against theft, breakage, damage in transit, fire and water damage or other insurable risks at the explicit wish of the Ordering Party and at its expense.
5. The Ordering Party must accept delivered items even if they show minor defects irrespective of the Ordering Party's rights in Ciper VII. of these General Terms and Conditions of Delivery and may not return them before a possible entitlement of the Ordering Party to rescission pursuant to Ciper VII.3.

VI. Reservation of Title

1. HZO reserves the right to retain title of the delivery item until all receivables from the Ordering Party arising from the business relationship are settled, including any future receivables which may also arise from agreements which are concluded either subsequently or at the same time. This also applies when all or individual receivables in HZO's favor are transferred to a current account, netted and acknowledged.
2. If HZO rescinds the agreement based on the Ordering Party's conduct being contrary to the agreement, in particular based on delayed payment, the Ordering Party must bear all the costs of repossessing the delivery item. In the event of seizure or other intervention by third parties the Ordering Party must notify HZO in writing and without undue delay and give all necessary information as well as inform the third parties about the existing ownership arrangements. The Ordering Party may not pledge the delivery item or assign the delivery item as collateral. The Ordering Party is obliged to handle the delivery item with care; it is in particular obliged to insure the delivery item against theft, fire and water damage to a sufficient extent, at the current replacement value and at its own expense.

3. The Ordering Party is entitled to sell on the delivery item in the course of ordinary business. It has already now assigned all receivables to HZO with their auxiliary rights which accrue to it from selling on the delivery item to the customer or third parties regardless of whether the reserved product is sold on with or without further processing. The Ordering Party is authorized to collect such receivables even after they have been assigned. HZO's authorization to collect the receivables itself remains unaffected hereby; however, HZO is obliged not to collect the receivable while the Ordering Party duly fulfills its payment obligations, has not defaulted on payment and an application has in particular not been made to commence an insolvency proceeding in the Ordering Party's assets or the Ordering Party has stopped payments. HZO can request the Ordering Party to disclose the assigned receivables and debtors, to release all the information necessary for the collection, to hand over the associated documentation and to notify the debtors of the assignment. The Ordering Party processes or remodels the delivery item for HZO at all times. The Ordering Party's expectant right to the delivery item continues for the remodeled item. If the delivery item is processed or permanently joined to other items which do not belong to HZO, HZO acquires joint ownership of the new item in ratio of the objective value of the delivery item to the other processed items at the time of processing and/or joining. If the items are joined so that the Ordering Party's item is considered the main item, it shall be deemed as agreed that the Ordering Party assigns pro-rata joint ownership to HZO. The Ordering Party holds the sole or joint ownership for HZO. The same regulations which apply to the delivery item supplied under reservation (reserved product) shall also apply to the item which comes into existence at the time of processing and/or joining. In order to secure HZO's receivables from the Ordering Party the latter also assigns those receivables to HZO which accrue to it from third parties based on the delivery items being joined to a building and/or real estate. HZO is obliged to release the security to which it is entitled at the Ordering Party's request if the resulting realizable value of the security exceeds the receivables to be secured by more than 20 % taking downward valuation adjustments which are customary in banking into account. Purchase prices for the items and the nominal value for the receivables should be assumed here.

VII. Claims Based on Defects/Statute of Limitations

1. The Ordering Party's claims based on defects assume that it has duly fulfilled the obligations of examination and notification which are imposed on it by law. The Ordering Party must notify any defect to HZO in writing stating the precise nature and extent of the defect so that HZO can investigate the circumstances of the defect. Immediately after arrival the Ordering Party must examine the supplied items for damage in transit and note down any ascertained damage in writing on the way-bill and have this notification of the defect countersigned by the haulage company employee as well as inform HZO of this in writing.
2. Should the delivery item be defective, HZO is entitled to choose to rectify the defect or make a replacement delivery. HZO must bear the expenditure which becomes necessary for the subsequent fulfillment under the terms of the law. If the Ordering Party legitimately claims costs from HZO in this connection which it incurred through the use of its own employees or own equipment, the Ordering Party's claims for compensation are limited to its own costs. If the expenditure which is necessary for the subsequent fulfillment increases due to the fact that the Ordering Party causes the delivery items to be moved to a different delivery point to the one which was agreed, the additional costs which are thus incurred shall be borne by the Ordering Party.

3. If HZO is not prepared or not able to rectify the defect or make a replacement delivery or HZO refuses to do so or it causes delay beyond appropriate deadlines for reasons for which HZO is responsible or if the rectification of the defect fails at least twice for other reasons, the Ordering Party is entitled to choose to rescind the agreement or request a corresponding reduction in the purchase price.
4. The Ordering Party's right of rescission if the delivery items are defective is excluded in the cases where the Ordering Party is not in a position to return the received services and this is not based on the fact that the return is not possible because of the nature of the received services, or HZO is responsible for the defect or the defect only became apparent when the delivery items were being processed or remodelled. Should defective items be delivered or in the event of partial deliveries the Ordering Party is only entitled to rescind the entire agreement or to compensation in lieu of the entire services under the terms of the above regulations if it is not interested in the rendered services when an objective standard is applied.
5. The Ordering Party is only entitled to compensation under the terms of Ciper VIII. of these General Terms and Conditions of Delivery.
6. The warranty does not apply if the Ordering Party reworks the delivery items or has them reworked by a third party in an unauthorized manner without HZO's consent and the rectification of defects is made impossible or unacceptably more difficult by this. At any rate the Ordering Party must bear the additional costs of the rectification of defects which are incurred by the remodelling.
7. Unless otherwise explicitly agreed HZO only provides a warranty relating to infringements of intellectual property rights insofar as the delivery item does not infringe third-party intellectual property rights in Germany (hereinafter also referred to as "Intellectual Property Rights") unless HZO is positively aware of infringements of Intellectual Property Rights at the Ordering Party's registered office or in such other country where the Ordering Party has notified HZO that the delivery item should be shipped to according to the terms of the agreement. If a third party asserts justifiable claims against the Ordering Party based on an infringement of Intellectual Property Rights by the delivery items which were supplied by HZO and used in accordance with the agreement, HZO shall be liable towards the Ordering Party as follows:
 - a) The Ordering Party must inform HZO in writing and without undue delay of the infringement of Intellectual Property Rights asserted by the third party. HZO shall either satisfy or defend these claims at its own discretion and expense or terminate the dispute through settlement. The Ordering Party grants HZO sole authorization here to make a decision regarding legal defense and settlement negotiations and shall issue HZO with the necessary powers of attorney in an individual case, including the right to issue corresponding sub-powers of attorney.
 - b) If the delivery constitutes an infringement of Intellectual Property Rights in the sense of Sentence 1, HZO shall rectify the reason for the infringement of Intellectual Property Rights within an appropriate period. HZO shall obtain at its choice and expense either a right of use for the deliveries concerned or modify the delivery item so that the Intellectual Property Rights are not infringed or replace the delivery item.

- c) If the rectification of the infringement of the Intellectual Property Rights should fail or if the rectification is not possible or if it is unreasonable for the Ordering Party, it is entitled to statutory rights of rescission or reduction. HZO's duty to pay compensation is regulated pursuant to Ciphers VIII. of these General Terms and Conditions of Delivery.
 - d) HZO is not liable for third-party claims based on infringements of Intellectual Property Rights if they are caused by the Ordering Party making special specifications or they are caused because the delivery items are used in a manner which is not foreseen by HZO or they are caused by the fact that the delivery item was modified by the Ordering Party or an unauthorized third-party or not used in operational conditions recommended by HZO or in the conditions agreed between the parties or used together with items which have not been supplied by HZO. HZO is not generally liable for third-party claims based on infringements of Intellectual Property Rights if the Ordering Party is responsible for them. The Ordering Party shall therefore release HZO from any such claims which third parties may assert against HZO.
8. The provisions in Ciphers VII.2 and VII.5 apply accordingly in the event of an infringement of Intellectual Property Rights.
9. The statute of limitations for warranty claims amounts to one year as of the transfer of risk. This also applies to the statute of limitations for claims pursuant to § 823, German Civil Code (Bürgerliches Gesetzbuch – BGB), based on a defect. Contrary to the above the statute of limitations foreseen by law applies in the event of bodily injury, death and damage to health, for damage pursuant to the German Product Liability Act (Produkthaftungsgesetz) and for damage which is caused by fraudulent conduct, intent or gross negligence of HZO's legal representatives, its executive employees or vicarious agents. This also applies to defects in construction works or for delivery items which were used for construction works according to their customary use and which caused damage due to such delivery items being defective.

VIII. Compensation

- 1. HZO is only liable to pay compensation based on any legal grounds under the terms of the following provisions of this Cipher VIII. Any further liability is excluded.
- 2. The limitation of liability under this Ciphers VIII. does not apply for any liability of HZO for intentional misconduct, for bodily injury, death and damage to health and for guaranteed quality features and pursuant to the regulations of the German Product Liability Act.
- 3. HZO is liable
 - a) for intentional and grossly negligent breaches of duty of its legal representatives, its employees or other vicarious agents and
 - b) for any culpable infringement of major contractual obligations. Major contractual obligations are those obligations which must be adhered to for the agreement to be duly fulfilled and where the contractual partners can regularly place and in fact do place their confidence in such obligations being fulfilled.

HZO's liability is otherwise excluded if the Ordering Party has itself effectively restricted its liability towards its customers. The Ordering Party will do everything in its power here to agree such liability restrictions with its customers – also for HZO's benefit – as far as they are legally permitted.

4. As far as HZO is liable for compensation in terms of merit pursuant to Ciper VIII. of the General Terms and Conditions of Delivery, such liability is restricted to the amount of foreseeable damage which is typical for this type of agreement.
5. Indirect damage and consequential damage which is the result of defects in the delivery item is also only eligible for compensation if such damage can normally be expected when the delivery item is used according to the terms of the agreement.
6. If HZO gives advice or technical assistance and such advice or assistance is not part of the contractually agreed services owed by HZO, it is done free of charge and excluding any liability.
7. The Ordering Party shall inform HZO in detail and consult HZO without undue delay if it wishes to assert a claim against HZO pursuant to the above regulations. The Ordering Party must give HZO the opportunity to examine the circumstances of the claim. The contractual partners shall cooperate with respect to the measures to be taken and articularly in the case of settlement negotiations.
8. The regulations on the exclusion of warranty and on the statute of limitations for claims in Ciper VII.1 and Ciphers VII.6 through 9 of these General Terms and Conditions of Delivery shall apply accordingly.

IX. Export Law – Precondition for Delivery by HZO

Delivery by HZO is subject to the fact that any required export licenses have been issued and/or there are no other obstacles which oppose delivery based on provisions for export or movements to be adhered to by HZO as the exporter/moving company or HZO's suppliers.

X. Final Provisions

1. If the Ordering Party is a tradesman (Kaufmann), the court of venue is HZO's registered business office. HZO is also entitled, however, to sue the Ordering Party at any other court of venue.
2. The laws of the Federal Republic of Germany shall apply to this agreement. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) shall not apply.
3. These General Terms and Conditions of Delivery are drafted in the English and German language. The English version is only a convenience translation of the German version. In case of any discrepancy between the English and the German version, the German version shall prevail.