

## **General Terms and Conditions for Deliveries in the General System Business**

### **§ 1: Application Area, Validity of These Conditions**

1. These General Terms and Conditions for Deliveries in the General System Business Area (the "Delivery Terms") of Zimmer Group, Inc., or any of its affiliates (referred to herein as the "Seller," "Zimmer," "we," or "us"), shall apply with respect to after-sales services and deliveries from Zimmer in the general system business area (hereinafter referred to as "deliveries" or "services"), and the provision of any services by Zimmer is expressly conditioned on the acceptance by the entity procuring the services from Zimmer (referred to herein as the "Ordering Party") of these Delivery Terms. The Ordering Party and Zimmer shall each be referred to as a "Party" and collectively as the "Parties".
2. All services are based exclusively on these Delivery Terms. These Delivery Terms, together with Zimmer's written confirmation of an order ("Order Confirmation") and any separate agreement (such as any supplementary conditions and annexes) executed by the Parties constitute the entire agreement ("Agreement") between Seller and the Ordering Party with respect to the provision of services by Seller. No additional or conflicting terms and conditions proposed by the Ordering Party, including in any purchase order ("Order"), shall apply and are expressly excluded by Seller. We hereby expressly reject any references or counter confirmations from the Ordering Party asserting its own terms and conditions of business or purchase. We do not acknowledge any such terms and conditions deviating from our Delivery Terms, unless we have expressly agreed to their validity in writing. Our Delivery Terms shall apply even if we knowingly and without reservation fulfill conditions of the Ordering Party that deviate from our Delivery Terms.
3. In the event of contracts focusing on assembly, commissioning, repairs, maintenance or other services, the "General Terms and Conditions for Assembly, Commissioning, Repair, Maintenance and Other Services" of Zimmer shall take precedence over these provisions. In all other respects, the "General Terms and Conditions of Sale" Zimmer are in subordinated application. In case provisions of these Delivery Terms contradict the "General Terms and Conditions of Sale" of Zimmer, the Delivery shall take precedence for applications related to deliveries.

### **§ 2: Quotation, Contractual Basis and Conclusion of Agreement**

1. Seller's offers and quotations are non-binding and subject to reasonable technical and other changes. If an Order is placed for specified services, the offer including these Delivery Terms is deemed to be binding and accepted by the Ordering Party. Likewise, the Agreement is deemed to be binding and accepted by the Ordering Party if the Ordering Party accepts delivery or makes payment for the services. The Agreement is not deemed to be concluded until such time as the Seller sends a written Order Confirmation. No Order which has been accepted by Seller may be cancelled, modified, or suspended except upon the prior written agreement of Seller or as otherwise set forth herein.
2. All end customer specifications must be listed in the Order Confirmation in order to be valid. As a rule, we endeavor to take these into consideration, possibly for an additional charge or in limited form.

### **§ 3: Properties of Delivery Items; Design Changes; Material List; Approval Drawings; Conformity; Installation and Operating Instructions; Environmental Conditions**

1. The characteristics of the objects we deliver that are listed in the catalogs, brochures, price lists or are otherwise accessible do not entail any specification of properties unless the specifications are expressly agreed upon between us and the Ordering Party. Seller is not obligated to maintain adherence to voluntary standards outside the ISO 9001 certification unless expressly agreed in writing by the Parties.

2. Specifications regarding the properties or service life of our delivery items do not constitute a guarantee of quality or guarantee of durability, unless Zimmer expressly assumes such a guarantee in writing.
3. Regarding the creation of technical drawings, the bilateral exchange of 3D drawings is carried out in STEP format and, for 2D drawings, in DWG/DXF format in a Zimmer company drawing frame. Preferably, 3D data is exchanged. An inspection for fixture/machine interference contours as well as an inspection of the load capacity and reach are always carried out by the Ordering Party, unless otherwise agreed. The final inspection is the responsibility of the Ordering Party and is acknowledged with approval of the technical drawing. If necessary, digital versions of a pneumatic plan and an E-plan are attached to the approval documents in WS-CAD format. A quotation can be provided for other formats upon request.
4. Upon request, we shall provide our preferred material list of operational media (manufacturer standards). The material list can be adapted individually on a project-specific and as-needed basis and upon reimbursement of any additional effort and expense.
5. We are entitled to carry out modifications to the scope of delivery specified in the quotation that remain in harmony with any agreed end customer specifications without this resulting in changes in function or increased costs. During the delivery period, we reserve the right to make changes to the delivery item in design or form that are related to an improvement in technology or to legal requirements, provided that this does not substantially alter the delivery item and that the changes are reasonable for the Ordering Party. We are not required to also make such changes to previously delivered products.
6. At the location of use, we assume a clean and intact environment free of chemical, electrochemical or electrical influences or other aggressive agents (e.g. vapors, chemicals, solvents, radiation, etc.). We assume an ambient temperature between 5 and 40°C and a maximum humidity of seventy percent (70%). We must be notified by the Ordering Party of any deviations from this before conclusion of the Agreement.

#### **§ 4: Prices; Payment; Price Adjustments**

1. Insofar as no other agreement has been made, our prices apply “ex works” and exclude shipping. The prices do not include any applicable taxes. Payment shall be made in accordance with payment terms specified in the quotation.
2. Any installations, assembly work, mechanical commissioning and installations or attachments shall be billed separately unless otherwise agreed. Billing shall take place after the service report. Reference is explicitly made to our “General Terms and Conditions of Assembly, Commissions, Repair, Maintenance and Other Services.”
3. In the event any changes arise in the course of the project that are not attributable to us and that incur additional effort or expense, such will be reported as an additional expense and we reserve the right to bill them to the Ordering Party as such.
4. The prices specified in our quotation or at the conclusion of the Agreement are based on our costing at the time of submitting the quotation or concluding the Agreement. We reserve the right – even after concluding the Agreement – to adjust prices if more than four (4) months lie between the conclusion of the Agreement and an agreed-upon delivery date. If a substantial change to our costing arises in such a period due to increased costs, for example, due to increased costs for materials, energy, or wages of our employees and the resulting price increase of at least five percent (5%) for delivery items, we retain the right to increase our prices within the scope of the altered circumstances. This shall not apply if we are in default with our delivery. If the increase is greater than five percent (5%), the Ordering Party shall be entitled to a right of termination.
5. The Ordering Party shall only have the right to withhold payments if its counterclaims are undisputed or have been established in a legally binding manner.

6. The Ordering Party shall only have the right to offset payments against counterclaims insofar as its counterclaims are undisputed or have been established in a legally binding manner.

#### **§ 5: Delivery Time; Delivery Delays**

1. The delivery time shall be determined by the agreements made by the parties to the Agreement. Our adherence to it presupposes clarification of all commercial and technical questions between the parties to the Agreement; it also presupposes that the Ordering Party has met all obligations incumbent upon it in a timely and proper manner. The obligations incumbent on the Ordering Party pertain specifically to providing the following in a timely manner:

- CAD models of the workpieces (unfinished/finished part)
- Machine data
- Device data
- Robot type
- Where applicable, requirements specifications, operating materials specifications of the end customers
- All agreed customer-provided and sample components for carrying out trials
- Provision of the required certifications or permits from government agencies
- Technical release
- Where applicable, a down payment

The obligations incumbent on the Ordering Party shall be adapted and expanded in the individual case due to the product specification and we shall provide notification of this to the Ordering Party. For the functional engineering/gripper system business area, we expressly refer to the addition in § 7 No. 2. If the Ordering Party does not fulfill its obligations, does not fulfill them completely or does not do so in a timely manner, our delivery time shall be lengthened accordingly. This shall not apply if we are responsible for the delay.

2. In the event of later modifications to the Agreement by the parties that can influence the delivery date, the delivery time will be appropriately extended, insofar as no special agreements have been made.
3. Compliance with the delivery period shall be subject to correct and timely delivery. We shall provide notification as soon as possible of any delays that appear imminent.
4. The delivery time shall be deemed to have been met if the delivery item has left our plant before expiry of the delivery period or notification has been given that the delivery item is ready for shipment. Insofar as acceptance must take place – except in the case of an authorized refusal of acceptance – the acceptance date or, alternatively, the notification of willingness to accept is decisive.
5. We are entitled to partial deliveries so long as the remaining delivery parts have been delivered within a reasonable delivery time and this is not unreasonable for the Ordering Party.
6. If the shipment or acceptance is delayed for reasons for which the Ordering Party is responsible, it can be billed for the expenses resulting from the delay beginning one (1) month after notification of willingness to ship and/or accept.
7. If the delivery time is delayed due to force majeure or events that could not be foreseen (e.g. natural disasters, epidemics, armed conflicts, revolution, terrorism, sabotage, nuclear/reactor accidents, strike, lawful lockouts, shortage of workers, power or raw materials, difficulties in the acquisition of the necessary official approvals, travel restrictions, missing, incorrect or late delivery from suppliers), we shall be released from our performance and contractual obligations for the duration of the interference and the period for completing our work shall be extended by a reasonable amount plus an appropriate lead time. This shall also apply if such circumstances arise after we have fallen behind schedule.

8. The Ordering Party is entitled to withdraw from the Agreement without notice if the Seller is finally unable to perform the entire Agreement before the transfer of risk. Furthermore, Ordering Party shall be entitled to withdraw from the Agreement if, in the case of an order, the execution of a part of the delivery becomes impossible and the Ordering Party has a justified interest in refusing the partial delivery. If this is not the case, the Ordering Party shall pay the contractual price applicable to the partial delivery. The same shall apply in case of our inability. In all other respects, the claims in accordance with § 10 No. 2 shall apply. If the impossibility or inability arises during the delay in acceptance or if the Ordering Party is solely or predominantly responsible for these circumstances, Ordering Party shall be obligated to provide compensation.
9. If the Ordering Party suffers damages as a result of a delay for which we are responsible, it is then entitled to demand flat rate compensation for the delay to the exclusion of any other remedy. The compensation shall amount to one-half percent (0.5%) for each full week of delay, but in total not more than three percent (3%) of the compensation for the part of the work to be performed by us that cannot be used in a timely manner due to the delay.
10. If the Ordering Party, in consideration of statutory exceptions, sets a reasonable deadline for performance after the due date and this deadline is not met, the Ordering Party shall be entitled to withdraw from the Agreement within the scope of any applicable statutory regulations. The Ordering Party shall be obligated to declare within a reasonable period of time whether it intends to make use of its right to withdraw, if grounds for withdrawal exist. Further extensive claims due to the delay shall be based exclusively on § 10 No. 2.

#### **§ 6: Shipping; Transfer of Risk; Acceptance**

1. The Ordering Party shall bear the risk of accidental loss or accidental deterioration of the delivery item or partial delivery as soon as we have handed them over to the person who shall carry out the transport, but no later than when the delivery item or partial delivery leaves our factory for the purpose of being shipped. This shall apply regardless of whether the shipment is made from the place of performance and of who bears the transport/shipping costs.
2. Insofar as acceptance must take place, this is authoritative for the transfer of risk. It must be carried out immediately on the acceptance date or, alternatively, after we report the willingness to accept. The Ordering Party may not refuse acceptance due to the presence of a non-significant defect.
3. If the delivery item is ready for shipping or acceptance and notification of willingness to ship and/or accept is given to the Ordering Party and if shipment or acceptance is delayed for reasons for which we are not responsible, the risk is transferred to the Ordering Party upon being notified of the willingness to ship and/or accept. We undertake to take out the insurance policies requested by Ordering Party at the Ordering Party's expense.

#### **§ 7: Additional Provisions for the Area of Function Modules / Gripper Systems**

1. The following applies for the standard, project-specific or customer-specific components:
  - a) The weight data in the item descriptive text is an estimation and is not binding.
  - b) The requirement for lubrication of individual components accounted for by one threaded hole per lubrication point directly on the part requiring lubrication or via a lubricating nipple on this part. Any additional required components (lubricating cans, piston distributors, etc.) are not offered unless expressly stated in the quotation text.
  - c) The base offer does not include labeling or marking for actuators, cables and other electrical components. Upon request, a quotation for the surcharge associated with this can be provided.
  - d) Servo-electric shafts are provided with reference marking.
  - e) Sensors in our standard design for detecting common switching states in the actuator are included. For other designs, the scope and price shall be determined in advance.
  - f) Tubing and cabling of the actuators, as well as the delivery of valves, hoses and cables can be offered on request for an additional charge.

- g) As a rule, components are not painted. Steel parts are black oxidized or tempered. Aluminum/stainless steel parts are rough and not painted. As a rule, finishes are available at a surcharge.
- 2. Obligations of the Ordering Party valid in addition to § 5 No. 1
  - a) Approximately two (2) weeks before the delivery date, the Ordering Party shall provide us with parts determined and agreed in advance (e.g. servomotors, turning axes, etc.) at no charge.
  - b) Before the gripper system is delivered, we shall verify the function of the gripping process. To this end, the Ordering Party shall provide us, at no charge and approximately two (2) weeks before the ordered delivery date, the necessary sample component(s) for final mounting that is/are in the condition for machining that corresponds to the gripping process. If it is not possible to provide the Ordering Party with the goods, we shall not bear any potential consequential costs for defects that could have been discovered during a proper grip test upon final assembly at the factory and thus avoided. A document with the delivery address and necessary component information can be provided upon request.

## **§ 8: Additional Provisions for the Area of Module Construction / Complete Systems / Systems Engineering**

- 1. Base Offers / Standard Procedure

For the modules, complete systems and equipment described in our quotations and order confirmations, the standard procedure shall apply here unless other arrangements have been made in writing.

  - a) The modules, complete systems and equipment shall be set up and tested in parts at our factory before delivery. Before delivery, an inspection (functional verification) of the modules, complete systems and equipment by the Ordering Party can be scheduled at our facility. The factory setup shall be coordinated with the Ordering Party on a project-specific basis. In any case, the safety fence and any required extraction systems are exceptions to this.
  - b) If an approval is stipulated, this shall take place after commissioning. The exact approval criteria shall be stated in an acceptance specification before the order is confirmed.
  - c) If a training course has been expressly arranged as additional sales content, training (theoretical) and orientation (practical) shall be carried out after installation and commissioning. Only personnel trained in this manner are authorized to operate the system.
  - d) If production support has been expressly arranged as additional sales content, production support shall be carried out after installation and commissioning. Production support shall take place upon coordination during regular working hours (8 a.m. - 4 p.m.) and is stated in the quotation.
- 2. Performance Data
  - a) The performance data of the modules, complete systems and equipment depend on the application. The definitive performance data can be determined during the engineering phase. All statements made in advance are for informational purposes only and are not binding.
  - b) Unless agreed otherwise, the technical availability of the modules, complete systems or equipment shall be ninety-two percent (92%) in accordance with VDI 3423 for the scope described in the requirements specifications.
- 3. Warranty Declaration
  - a) We guarantee the completeness of the system described in the quotation as well as the documentation required for this purpose (guarantee of completeness).
  - b) We guarantee that the quoted system will handle the tasks in accordance with the requirements (functional guarantee)

## § 9: Warranty Claims; Material and Legal Defects

We shall be liable for defects in the delivery without the possibility of, and to the exclusion of, further claims – subject to § 10 – as follows:

1. At our discretion, we shall repair or replace free of defects and free of charge those parts of the delivery that prove to be defective as a result of a circumstance that occurred prior to the transfer of risk. If any such defects are found, written notice of this must be provided to us immediately. Replaced parts shall become our property.
2. After consultation with us, the Ordering Party shall give us the necessary time and opportunity to carry out all repairs and replacement deliveries that we deem necessary. Otherwise, we are released from liability for the consequences. Only in urgent cases (that endanger operational safety, to defend against disproportionately large damages) shall the Ordering Party have the right to remove defects independently or have them removed by a third party and to demand from us reimbursement of the necessarily resulting expenses. The Ordering Party must notify us immediately of the urgent cases.
3. Of the immediate costs resulting from remedying the defect or providing a replacement, the costs of the replacement part, including shipping, shall be borne by us, provided that the claim is proved to be justified. We shall also bear the costs of removal and installation as well as the costs of providing the necessary installation technicians and assistant workers, including travel costs, provided that this does not result in a disproportionate burden for us. If the delivered element is not located at the Ordering Party's headquarters, the Ordering Party shall be responsible for the increased transportation and travel expenses.
4. Within the statutory provisions, the Ordering Party shall have the right to withdraw from the Agreement if we - taking into account the statutory exceptions - allow a reasonable period of time set for us for the remedy or replacement delivery to expire without success. If the defect is only insignificant, the Ordering Party shall only be entitled to reduce the purchase price. In all other cases, the right to reduce the Agreement price shall be excluded. Further extensive claims shall be based on § 10 No. 2 of these Terms and Conditions.
5. If the Ordering Party has made a claim against us in relation to alleged defect rights and it transpires that either there is no defect or the claimed defect is due to circumstances for which we are not liable, the Ordering Party shall be obligated to reimburse us for all costs incurred in conjunction with examining the defect claim and/or rectification, unless we invoke this without justification and the Ordering Party is not responsible for this.
6. In particular, we shall not be liable:
  - a. for damages and defects caused by improper or unsuitable use of the delivery item, particularly due to overuse or excessive strain (capacity limit), incorrect or negligent handling, improper maintenance or incorrect assembly by the Ordering Party, use of unsuitable operating materials or consumables, faulty construction work, an unsuitable foundation, the effects of chemical, electrochemical or electrical factors – unless the circumstances of the aforementioned nature are our responsibility;
  - b. if statutory directives or directives issued by us with regard to installation, operation, maintenance and cleaning are not complied with by the Ordering Party or third parties, unless the respective defect in question is not the result of such failure to comply;
  - c. for the consequences of improper remedial work by the Ordering Party or a third party commissioned by the Ordering Party or if the Ordering Party or a third party commissioned by the Ordering Party has made changes to the delivery item or replaced parts without our consent – unless the respective defect in question is not the result thereof;
  - d. for natural wear and tear of the delivery item or individual parts.

**THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **§ 10: Liability; Exclusion of Liability**

1. If the delivery item cannot be used by the Ordering Party as intended in the Agreement through our fault as a result of a lack of or incorrect execution of recommendations made before or after the conclusion of the Agreement or through the violation of other accessory contractual obligations, in particular instructions for the operation and maintenance of the delivery item, the following stipulations shall apply in addition to § 9, to the exclusion of other claims by the Ordering Party.
2. We shall be liable – regardless of the legal reason – for damage not occurring to the delivery item itself in accordance with the following:
  - a. In case of intent;
  - b. In case of gross negligence of the company owner, managing body or executive managers;
  - c. In case of culpable injury of life, limb and health;
  - d. In case of defects that we have maliciously concealed;
  - e. As part of a promise of guarantee (specifically as part of § 8 No. 3); or
  - f. To the extent there is liability for personal injury or material damage on privately used objects in accordance with any applicable law.
3. In the event of a culpable violation of major contractual obligations (i.e., obligations that must be fulfilled for the Agreement to be fulfilled properly in the first place and that the contractual partner regularly expects and may expect to be fulfilled), we shall also be liable in case of gross negligence of non-executive employees and in case of simple negligence, limited to reasonably foreseeable damage that is typical for the Agreement in the latter case. More extensive claims are excluded. The exclusion of liability shall also apply with regard to the personal liability for damages of our employees.

#### **§ 11: Statute of Limitation**

1. All claims of the Ordering Party – irrespective of the legal reason – shall lapse in twelve (12) months in the course of using the delivery item continually over an eight (8) hour period (“single-shift operation”). In the course of using the delivery item in multiple-shift operation, the limitation period is reduced to six (6) months – regardless of the legal reason. This limitations periods set forth herein shall be interpreted accordance with the *Limitations Act, 2002 (Ontario)* (the “Act”). This agreement is made for business purposes and is a “business agreement” as defined in the Act and any amendments thereto, and no limitation period in the Act, other than the ultimate limitation period of the Act, shall apply to this Agreement and to the obligations imposed by this agreement. The limitation periods specified in No. 1 begin on the day after acceptance or commissioning and no later than one (1) month after delivery.
2. The statutory limitation periods apply to claims for compensation in accordance with § 10 No.2 (a-d) and (f) as well as to defects of a structure and defects of delivery items that were used for a structure according to their usual type of function and that have caused its defectiveness.

#### **§ 12: Retention of Title**

1. We shall retain title to the delivery item until receipt of all payments under the delivery Agreement. If assembly services or other additional services are to be provided, ownership of the delivery item shall not pass to the Ordering Party until receipt of the assembly payment or the part of the payment corresponding to the service performed.
2. We shall be entitled to insure, at the Ordering Party’s expense, the delivery item against damage by theft, breakage, fire and water and other damage insofar as the Ordering Party

does not provide proof of a corresponding insurance policy themselves.

3. The Ordering Party may only sell, pledge, or assign the delivery item as security with the prior written consent of the supplier. The Ordering Party is furthermore obligated to notify us immediately of any seizure, repossession, or other interference by a third party.
4. In the event that the Ordering Party acts in a way that is contrary to the Agreement, in particular in case of delay of payment, we shall be entitled, in accordance with the *Personal Property Security Act* (Ontario), to withdraw from the Agreement and to repossess the delivery item after issuing a reminder. Enforcement of the retention of title as well as seizure of the delivery item by us shall not be considered a withdrawal from the Agreement. While the retention of title exists, the Ordering Party shall inform us immediately and in writing if a third party enforces claims on or rights to the object of the retention of title. The Ordering Party shall support us in the pursuit of our interests at no cost.

### **§ 13: Use of Software, Use of Provided Documents; Rights of Third Parties**

1. Insofar as software is included in the scope of delivery, the Ordering Party is granted a non-exclusive right to use this software including its documentation. It is transferred for use on the item delivered. Any use of the software on more than one (1) system is prohibited. The Ordering Party may reproduce, revise, translate or convert the object code into the source code only to the extent expressly permitted by applicable law. The Ordering Party undertakes not to remove existing manufacturer information, particularly copyright or registration marks, such as registration numbers in the software, or to modify it without our express, prior approval. The other rights to the software and the documentation, including copies, remain vested in us as seller or in the software provider. The granting of sublicenses is not permitted.
2. Regardless of the specific content of the job (design engineering, engineering services, etc.), we retain all property rights and copyrights for all content provided to the Ordering Party, including documents, data carriers, figures, drawings, patterns, costings, cost estimates, documentation and other documents produced by us as well as similar information in a tangible or intangible form (even in electronic form). They must not be used for purposes other than those stipulated in the Agreement and must not be made accessible to third parties without our prior permission being granted in writing. This applies in particular to all documents that we have designated as confidential.
3. The technical documentation supplied by the Ordering Party to us that we require (e.g. to perform the agreed services), shall not be used for purposes other than the fulfillment of the Agreement.
4. The Ordering Party shall bear sole responsibility for the correctness of the documents that the Ordering Party has provided to us.
5. The Ordering Party shall be solely responsible for checking whether the documents (data, figures, drawings, templates, documentation, plans, etc.) and other information that the Ordering Party has provided us infringe upon the rights of any third party, namely, industrial property rights and copyrights. Insofar as a third party resorts to litigation against us due to the application, use, or reproduction of the documents that the Ordering Party has provided us due to the infringement of copyrights or industrial property rights or due to the infringement under applicable law, the Ordering Party shall be obligated to support us in defending against such a claim. In addition, the Ordering Party shall indemnify, defend, and hold us harmless against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Seller in connection with any such claim or action.

### **§ 14: Applicable Law; Place of Jurisdiction; Miscellaneous**

1. The Agreement and any Order placed thereunder shall be governed by and construed solely and exclusively in accordance with the laws of Ontario, Canada, and all claims relating to or



arising out of this Agreement and the Order, or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed by the laws of Ontario. The Parties agree that any dispute, claim, or action relating to or arising from this Agreement or an Order shall be brought only in the provincial or federal courts sitting in Ontario, Canada. The Ordering Party waives all defenses of lack of personal jurisdiction and forum non conveniens. Application of the United Nation's Convention on the International Sale of Goods is excluded.

2. If a provision in these Delivery Terms or a provision in other agreements between us and the Ordering Party shall at any time be deemed either entirely or partially invalid or unfeasible, or if these Delivery Terms should contain any gap, the validity of all other provisions and/or agreements shall not be affected. The effective or feasible provision most closely approaching the purpose of the ineffective or unfeasible provision shall apply in its place as agreed upon. In the case of a gap, the provision corresponding to what would have been agreed upon in accordance with the purpose of these Delivery Terms, insofar as the parties to the Agreement would have taken the matter in question into account from the outset, shall apply.
3. Unless otherwise stipulated in these Delivery Terms, communication via fax or e-mail can be used to comply with the written form requirement.
4. The place of fulfillment of all mutual obligations arising from the contractual relationship shall be the official location of business of Seller in Hickory, North Carolina.
5. Notwithstanding the foregoing, we reserve the right also to choose to file an action in any jurisdiction where the registered office of the Ordering Party is located, or in any other permitted court of competent jurisdiction, to the extent deemed we deem necessary in our sole and absolute discretion.
6. The Agreement constitutes the entire Agreement between the Parties, there being no warranties, representations, or conditions of any kind or nature between the Parties except as set forth therein. The Agreement - including this clause - cannot be modified, changed, waived, substituted, or discharged orally, except by a writing signed by the Party against whom enforcement of the change, modification, waiver, substitution, or discharge is sought. No waiver by either Party, whether express or implied, of any provision of the Agreement or any breach of default of either Party shall constitute a continuing waiver of such provision or a waiver or any other provision of provisions of the Agreement, and no such waiver by either Party shall prevent such Party from enforcing any and all provisions of the Agreement, or from acting upon any subsequent breach of default of the other Party, under any provisions of this Agreement.