

§ 12: Warranty

1. We shall be liable for defects of our delivery items (material and legal defects) without the possibility of further claims – but subject to the regulations under § 13 – as follows:
2. Customer rights arising from defects require that the customer properly comply with its obligation to examine and provide notification of defects owed according to § 377 of the German Commercial Code (HGB). Thus, our delivery items must be inspected for damage by the Ordering Party immediately upon receipt and, if reasonable, also by using or processing the samples. The Ordering Party must inform us immediately in writing about any visible defects, at the latest, two weeks after receiving the delivery items. Defects that cannot be discovered immediately, even after careful inspection, must be disclosed to us in writing immediately after their discovery. Our deliveries shall be considered approved if notice of defects is not be given in a timely manner.
3. If a defect of our delivery items is present, we shall have the choice to rectify by either eliminating the defect or delivering a new item free of defects. If the claim proves to be justified, for the purpose of rectification, we shall bear all required expenses, in particular shipping, transport, transit, labor and material costs, so long as they do not increase due to the delivery items having been brought to a location other than the delivery address. The Ordering Party shall bear any additional costs or expenses resulting from bringing the delivery item to a location other than the delivery address. Replaced parts are property of Zimmer GmbH and must be returned to us.
4. The Ordering Party shall give us the necessary time and opportunity to carry out all measures we deem necessary for rectification as defined by No. 3; otherwise, we shall be released from liability for the consequences resulting therefrom. Only in urgent cases that endanger operational safety and for the purpose of defending against disproportionately large damages, the Ordering Party shall 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. In the last cases mentioned, the Ordering Party must notify us immediately.
5. If we allow an appropriate deadline for rectification set by the Ordering Party to pass without action, the Ordering Party shall have a right to, at its option, withdraw from the contract or demand a reduction (decrease) of the contractually agreed price. Furthermore, Ordering Party shall be entitled to withdraw from the contract or demand a decrease of the contractual price if rectification fails, is unreasonable for the Ordering Party or is delayed for an unreasonable length of time for a reason for which we are responsible. The same shall apply if we earnestly and finally refuse rectification or are incapable of rectification, as well as if special circumstances exist that justify immediate withdrawal considering the interests of both parties. However, in case of only minor infringement of the contract, particularly for only minor defects, the Ordering Party shall have only the right of decrease.

6. Further extensive claims of the Ordering Party shall be based exclusively on § 13 of these Terms and Conditions.
7. For remedial work and replacement shipments as defined by No. 3, we shall be liable to the same extent as for the original delivery item.
8. We shall not be liable
 - for damages caused by improper or unsuitable use of the delivery objects, particularly due to overuse or excessive strain, incorrect or negligent handling, improper maintenance, incorrect installation or commissioning of the objects of delivery by the Ordering Party or third parties, use of unsuitable operating materials, use of consumables that do not conform to the original specifications, faulty construction work, an unsuitable foundation, the effects of chemical, electrochemical or electrical factors – unless the circumstances of the aforementioned nature are our responsibility;
 - 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, such as the Ordering Party's own end customers, unless the respective defect in question is not the result of such failure to comply;
 - 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 objects or replaced parts without our consent - unless the respective defect in question is not the result thereof;
 - if the delivery item has been produced or modified based on specifications provided by the Ordering Party, particularly based on drawings it has provided and the defect in the delivery item is attributable to these specifications/drawings or for the solution to a design task specified by the Ordering Party which, at the time of its implementation, was the state of the art;
 - for natural wear and tear of the delivery items;
 - for whether the delivery items comply with standards or regulations of other countries, unless we provided specific assurance of such.
9. 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, particularly if one of the cases listed above under No. 8 applies, 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.