

General Terms and Conditions of Sale and Delivery of Zeuschel GmbH

§ 1 Scope of Terms, Exclusion of Conflicting Terms and Conditions

- (1) Our General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") shall apply to all our offers, deliveries and services. The following GTC shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as "Customer").
- (2) Our GTC shall apply exclusively. We shall not accept different General Terms and Conditions of Sale and Delivery of the Customer unless they have been confirmed by us in writing.
- (3) Our GTC shall also apply when we carry out deliveries to the Customer without reservation while being aware of conflicting or different terms of the Customer.
- (4) Within a permanent business relationship, our GTC shall also apply to all our future offers, deliveries and services relating to the Customer without requiring any further reference or agreement.

§ 2 Conclusion of Contract, Scope of the Delivery, Prohibition of Assignment

- (1) As a general rule, our offers are free of charge and non-binding, unless agreed upon otherwise in writing. Any deal or agreement requires our written acceptance of order or our delivery of the goods. The same shall apply to any amendments, changes or side agreements.
- (2) Unless agreed upon otherwise, the conclusion of contract is subject to the reservation of correct and timely self-supply by our suppliers. This only applies if we are not to be held responsible for the non-delivery, particularly if we have entered into a congruent transaction in good time with our supplier. We shall inform the Customer about the non-availability of performance immediately. We shall refund eventually performed considerations immediately.
- (3) Our written acceptance of order or, in the event of lack of such acceptance of order, our offer shall be authoritative for the scope of delivery and the services to be rendered.
- (4) All information about our products, in particular pictures, sizes, performance criteria and any other data contained in our offers and brochures shall be regarded as approximate average values. Tolerances in quantity, weight, number of pieces and dimensions customary in this line of business are expressly reserved. We reserve the right to make technical modifications.
- (5) All documents and data, on which our offer is based, such as technical drawings, illustrations, descriptions, weights and sizes, shall only be binding if expressly agreed upon in writing. We reserve the right to make minor changes and modifications to the extent such changes or modifications do not substantially impair the purpose of the contract and the delivery.
- (6) All offer documents, plans, drawings, estimates, documents and data – also in the electronic form – remain our property and may neither be retained nor modified nor copied or otherwise reproduced or made available to third parties by the Customer and have to be handed out to us immediately upon our request or have to be deleted. Even if we leave these documents to the Customer, our intellectual property rights remain unaffected hereby.
- (7) We reserve the right to make technical modifications during delivery time, as long as there is no fundamental change in the object of purchase and its appearance and provided that the contractual purpose of delivery is not limited in an unreasonable way to the Customer.
- (8) The Customer shall not be entitled to assign any claims against us without our prior written consent. The same shall apply to any of the Customer's claims against us in connection with the contractual relationship which have arisen by operation of law.

§ 3 Prices, Payments, Partial Payments

- (1) Unless otherwise agreed, our prices shall apply for delivery "Ex Works" (EXW, Incoterms 2010) and are net prices and do not include applicable sale taxes, even if this is not expressly stated, and do not include packaging costs, freight, installation, consignment, insurance expenses, customs clearance, any bank and transaction fees and any other costs.
- (2) Our invoices are immediately due for payment without any deduction.
- (3) At the latest 30 days after the receipt of the invoice, the Customer shall be deemed in delay of payment unless circumstances exist (e.g. reminder or a shorter payment term or a payment term determinable by calendar) that cause the Customer to be deemed in delay earlier. When the Customer is in delay of payment, the Customer shall pay interest at a rate of annually 9 percentage points above the base interest rate.
- (4) In the event of delay of payment, we are entitled to make any further deliveries dependent on the complete settlement of such outstanding payments.
- (5) Unless agreed upon otherwise in writing, we are entitled to unilaterally raise the prices and/or charges for freight in the event of substantial increases of salaries, prices of raw materials and supplies, energy costs, costs for freight and customs duties or other materials. The same shall apply to contracts under a continuing obligation.
- (6) If payment terms are not complied with or circumstances become known or visible which – according to our reasonable commercial discretion – give reason to doubt the credit worthiness of the Customer including facts which already existed at the time of the conclusion of the contract, but which were not known by us or which we didn't have to be aware of, we are entitled to refuse our performance and to demand advance payments or the provision of adequate securities for outstanding deliveries and to withdraw from the contract after a reasonable grace period to provide such securities has expired; further statutory rights remain unaffected hereby. The Customer shall be liable for all damages incurred by us by the non-fulfillment of the contract.
- (7) Upon delay of payment of our Customer, suspension of payment or the opening of an insolvency proceeding with respect to the Customer's assets, all our claims become immediately due for payment. This applies also in the event of agreed terms of credit or if the claim is not yet due for payment for some other reason. Furthermore, this shall apply irrespective of the term of a draft which we have accepted.
- (8) The Customer may only offset receivables due to us with counter claims, if such counter claims are indisputable or bindingly established in court.
- (9) Cheques and/or drafts will not be accepted as means of payment.
- (10) All payments shall be made in EURO exclusively to us. Any exchange rate risks shall be borne by the Customer.

§ 4 Delivery Times

- (1) The delivery period shall be the period agreed upon between the parties.
- (2) The term of delivery agreed upon shall be considered as a term of delivery aimed at, unless expressly agreed upon otherwise in writing.
- (3) The term of delivery agreed upon shall begin at the earliest with the date of conclusion of contract, however, not before complete clarification of all commercial and technical questions. The start of the delivery period requires that the Customer has provided all necessary documents and approvals and made any advance payments that may have been agreed upon.
- (4) Adherence to the delivery period is subject to the reservation of correct and timely delivery of our suppliers to us.
- (5) Delivery is made "Ex Works" (Incoterms 2010). The Customer shall collect the goods immediately after notification that the goods are ready for dispatch.
- (6) The term of delivery "Ex Works" (Incoterms 2010), shall be deemed complied with if the item to be delivered has been selected and is ready for dispatch within the agreed period and the Customer has been informed hereof. In the case of a sales shipment ("Versendungskauf"), the term of delivery shall be deemed complied with if the item that has to be delivered has been handed over to a person in charge of the transport prior to expiry of the delivery period or if the item could not be handed over without our fault.
- (7) A term of delivery shall be extended appropriately in the event of Force Majeure or any unforeseen and exceptional obstacles which affect us or our suppliers. Such an unforeseen and extraordinary obstacle shall be particularly given in the event of unrest, strike, lock-out, fire, confiscation, embargo, statutory or official orders and constraints or incorrect and/or delayed supply by our suppliers, if and to the extent such obstacles have not been culpably caused by us and such obstacles have influence on our ability to timely fulfil our obligations under the contract. If, due to such circumstances, the term of delivery shall be extended for a commensurate period of time, the Customer shall be entitled to withdraw from the contract after expiry of such extended term of delivery. If the Customer is interested in partial performance of the contract, the Customer may withdraw from such part of the contract that is yet unfulfilled. If we have already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial delivery and/or service by us. Further statutory or contractual rights to withdraw from the contract remain unaffected hereby.

- (8) We are entitled to deliver before the expiry of the delivery date and to deliver in partial deliveries, provided that this is reasonable to the Customer.
- (9) If the Customer is in default of acceptance of the goods or can otherwise be held responsible for a delay in dispatch, we shall be entitled to store the products at the risk and expense of the Customer and to charge as delivered. After the grace period for accepting the delivery set by us has expired, we may withdraw from the contract and demand compensation for damages in lieu of performance. Further rights remain unaffected hereby. The setting of a grace period is not required if the Customer seriously and finally declines acceptance or it is obvious that the Customer is not able to pay the purchase price or to accept the delivery within grace period. The amount of damages is deemed to be an amount of 20 per cent of the order value. The amount of damage shall be set off against any advance payment made. The parties are free to demonstrate that the actual damage actually incurred was higher or lower than this amount.

§ 5 Passing of Risk, Dispatch, Packaging

- (1) Unless agreed upon otherwise in writing, the goods shall be delivered "Ex Works" (Incoterms 2010).
- (2) The risk of accidental loss or accidental deterioration shall pass to the Customer as soon as the Customer is notified of the readiness for dispatch and the delivery item is set aside. This shall also apply if we have provided additional services such as loading, transport or unloading. If the performance is delayed due to reasons caused by the Customer, the risk of accidental loss pass with the notification of provision of the delivery.
- (3) If a sales shipment ("Versendungskauf") is agreed upon, the risk of accidental deterioration or accidental loss shall pass to the Customer at the latest when the delivery item is dispatched or handed over to the representative of the shipping company ex works or at the place of dispatch. If the delivery is delayed due to reasons caused by the Customer, the risk of accidental deterioration passes to the Customer with placing the goods at disposal for shipment and notification of the readiness for shipment to the Customer. Section 5 subsection (2) sentence 3 shall apply accordingly.
- (4) If we undertake to transport the deliverables for the Customer, we are entitled to choose the manner of packaging and dispatch of the items, unless agreed upon otherwise in writing.
- (5) Separate transport insurance shall be concluded by the Customer if required.

§ 6 Retention of Title

- (1) We retain the title to all goods delivered by us until complete fulfilment of all claims resulting from the business connection with the Customer including claims resulting from cheques and drafts. If payment is agreed upon with the Customer on the basis of cheque-draft-procedure, the retention of title shall last until the danger of recourse has ceased to exist.
- (2) The Customer shall, at any time upon our request and in the event of an insolvency application, clearly mark the goods subject to retention of title as "property of Zeuschel GmbH".
- (3) The Customer shall handle the goods subject to retention of title with care; in particular, the Customer shall adequately insure these goods at replacement value against damages caused by fire, water and theft. If and to the extent maintenance and inspection services are required, these services shall be effected by the Customer in a timely manner.
- (4) Any processing of the delivered goods by the Customer will be done for us as producer according to § 950 German Civil Code. If the delivered item is processed or inseparably connected with other items not belonging to us, we acquire joint ownership of the new goods. The share of the joint ownership corresponds to the relation of the invoice value of the delivered item to the invoice values of the other used items. The Customer is authorized to process the delivered item in the ordinary course of business, provided that the aforementioned security interests are preserved.
- (5) The Customer is entitled to sell the delivered items in the ordinary course of business provided that the extended retention of title in accordance with subsection (6) is ensured. Any other acts of disposal, in particular transfer, transfer by way of security, pledge or the like by the Customer shall not be permitted.
- (6) The Customer hereby assigns to us all claims resulting from the resale of the delivered goods to third parties. We hereby accept this assignment. If the good subject to retention of title is jointly owned by us, such assignment shall only relate to the amount of our claims against the Customer.
- (7) The Customer is revocably authorized to collect the assigned claims for the account of us in its own name in the ordinary course of business. Any revocation may only occur if the Customer has not correctly fulfilled its duties, in particular its payment duties, if the Customer is insolvent or unable to pay, if the Customer has applied for the opening of an insolvency proceeding or the opening of such proceeding has been refused due to lack of sufficient assets. If the permission to collect our claims has been revoked, the Customer shall notify the debtor of the assignment. Furthermore, we are entitled to disclose the extended retention of title to the Customer's client.
- (8) The Customer's authorization to dispose of, to process or to collect the assigned claims shall terminate without express revocation in the event an insolvency proceeding is opened or the opening is refused due to lack of sufficient assets, cessation of payments, a filing for insolvency concerning the Customer's assets by the Customer or a third party or in the event of establishment of inability to pay or over-indebtedness. In these events as well as in the events of section 6 subsection 7, we are entitled to withdraw from the contract and to request the return of the good subject to retention of title after reminder and fruitless expiry of an appropriate additional respite. The Customer is obliged to release such goods. The proceeds resulting from the collection of the goods subject to retention of title minus the collection costs shall be deducted from the obligations vis-à-vis us.
- (9) In the event the Customer's authorization to collect the assigned claims is revoked, the Customer shall immediately disclose to us in writing the name of the assigned claim's debtor and the amount of the claims.
- (10) In the event that the securities assigned to us exceed the value of our claims by more than 20 %, we shall at the Customer's request release securities to an appropriate amount at our own discretion.
- (11) The Customer shall immediately inform us in writing about third parties' access to the goods subject to retention of title, the assigned claims or any other documents and data. Any costs incurred by a legal defense of the goods subject to retention of title including costs vis-à-vis third parties shall be borne by the Customer.

§ 7 Warranty

- (1) If the contractual relationship between us and the Customer is a purchase contract or a contract to produce a work, we are to be held responsible for defects in material and workmanship ("Sachmangel") and defects of title existing at the time of the passing of risk according to the following provisions. In addition, the statutory provisions shall apply.
- (2) Any warranty rights are available to the original purchaser only and may not be assigned to a third party without our consent.
- (3) Certain characteristics are only considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if a characteristic is expressly denominated as "guaranteed" in writing.
- (4) In the context of the application of Section 377 German Commercial Code, the Customer shall immediately give notice in writing of any kind of obvious material defects, deviations in quantity and false deliveries, at the latest within 14 days after delivery, in any case before connection, mixture, processing or installation; otherwise, the goods are considered to be approved despite these defects, unless we, our legal agents or our vicarious agents have acted with fraudulent intent. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 14 days after their discovery. In addition, Section 377 German Commercial Code shall apply.
- (5) The Customer shall give us the opportunity to jointly assess the notified complaints and to be present at any withdrawal for material examination.
- (6) Subject to the following provisions in this subsection 6, the limitation period for all claims for defects shall be one year from the start of the statutory limitation period. If we have intentionally misrepresented the defect by silence, the statutory limitation periods shall apply with respect to any claims for damages. Furthermore, the statutory limitation periods shall apply with respect to claims for damages due to defects, if we are liable for intent or gross negligence, or in the event of injury to life, body or health.
- (7) Our warranty for defects of quality and defects of title shall be limited to supplementary performance. Within the scope of our supplementary performance obligation, we are entitled, at our discretion, either to remedy the defect (subsequent improvement) or to deliver faultless material (replacement). If our supplementary performance is delayed beyond a commensurate period of time, or if the supplementary performance is unsuccessful despite repeated efforts, the Customer is entitled to reduce the purchase price or to withdraw from the contract. A withdrawal from the contract is excluded if the defect is only of minor nature. Furthermore, in the event of faultless partial deliveries, the Customer may only withdraw from the entire contract if it can evidence that it has no interest in the partial performance. Further claims, in particular claims for reimbursement of expenses and claims for damages, are excluded unless provided for otherwise in the following § 9. We shall take title to the replaced parts or, as the case may be, they remain our property and they shall be returned to us upon our request.

- (8) The Customer shall return the defective good to us for subsequent improvement or replacement at its own risk, unless a reshipment is not possible because of the kind of delivery. We shall bear the costs for transportation due to supplementary performance, however only from the place where the good has been delivered to according to the terms of contract and limited by the amount of the purchase price.
- (9) The Customer has to give us the necessary time and opportunity for subsequent improvement or replacement. Only in the event of urgent cases of risk to the plant safety, the protection against unreasonably high damages or delay with the removal of defects, the Customer shall be entitled to cure the defect by itself or by a third party after prior notice and to demand from us restitution of the necessary costs.
- (10) Claims for recourse according to Sections 478, 479 German Civil Code are excluded, unless the claim by the consumer was legitimate and only to the statutory extent, except for gestures of goodwill which were not coordinated with us and require the observation of own duties of the person entitled to recourse, in particular the observation of the requirement to make a complaint in respect of a defect immediately on receipt of goods.
- (11) The processing or installation of delivered items is always deemed to be a waiver of the notice of defects to the extent the defect was obvious.
- (12) In the event of legitimate notices of defects, payments by the Customer may only be withheld in an adequate proportion to the material defects occurred. In the event of an unjustified notice of defects, we are entitled to demand from the Customer reimbursement of the expenses resulting therefrom.
- (13) Claims based on defects are excluded in the event of minor deviations from the agreed or usual characteristics or utility, e.g. minor differences in color, dimension and/or quality or performance features of the products.
- (14) The recognition of a material defect always requires the written form.
- (15) There shall be no warranty obligation if the intended use of the delivery item by the Customer deviates from the common use, unless agreed upon in writing.
- (16) The warranty rights only extend to new products. Unless agreed upon otherwise, used products are sold as is under exclusion of any warranty rights.
- (17) Unsuitable or improper use, incorrect installation by the Customer or by third parties, fair wear and tear, damage caused by the Customer's or any third party's default, negligence or misuse of the Products, inappropriate maintenance, including mechanical, chemical, electrical, electrical and comparable influences that do not correspond with expected average standard influences, are not subject to any warranty rights.

§ 8 Intellectual Property Rights and Defects of Title

- (1) Unless agreed upon otherwise, we shall only deliver products in the Federal Republic of Germany that are not infringing any intellectual property rights and copyrights of third parties (hereinafter collectively referred to as "Intellectual Property Rights"). If a third party asserts any justified claims against the Customer based on the infringement of Intellectual Property Rights, concerning any correctly used deliveries by us, we shall be liable to the Customer as follows:
- (2) We will, at our option and at our expense, either obtain a right of use for the corresponding deliveries, change them in such a way that the Intellectual Property Rights are not infringed or will exchange them. If none of the above measures is feasible at reasonable conditions, the Customer shall have the statutory rights to withdraw from the contract or to reduce the contract price.
- (3) Our obligation to pay damages is governed by § 9.
- (4) The aforementioned obligations shall only apply, if the Customer has immediately informed us about any such third party claims in writing, did not acknowledge an infringement and has reserved all defensive measures and settlement negotiations to us. If the Customer ceases to use the delivery due to reasons of minimizing the damage or due to other reasons, the Customer shall inform the third party that the suspension of use does not represent any acknowledgement of an infringement of Intellectual Property Rights.
- (5) Any claims of the Customer are excluded if and to the extent the Customer is responsible for the infringement of the Intellectual Property Rights.
- (6) Furthermore, any claims of the Customer are excluded insofar as the infringement of Intellectual Property Rights is caused by special requirements of the Customer, through any use which was not foreseeable or due to the fact that the delivery is changed by the Customer or used together with products which were not delivered by us.
- (7) In case of other defects in title, the provisions of § 7 shall apply accordingly.
- (8) Further or other claims of the Customer against us other than those set out in § 8 and in § 7 are excluded.

§ 9 Liability

- (1) Our liability for damages, out of which legal reasons whatsoever, is limited to
 - a) our acts of intent or gross negligence including acts of our legal agents and vicarious agents;
 - b) culpable injury of life, body, health;
 - c) culpable material breach of contract;
 - d) if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects;
 - e) to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.
 Further claims for damages are excluded.
- (2) A contractual obligation shall be material if its fulfillment is a precondition for the proper performance of the contract and on the observance of which the contractual partner generally relies and may rely.
- (3) In the event of a culpable breach of a material contractual obligation, our liability is limited to losses reasonably foreseeable and typical for this kind of contract.
- (4) The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

§ 10 Repairs and Services

- (1) The repairs mentioned in this § 10 refer to repairs which are not covered by our warranty obligation for material defects.
- (2) Repairs will be affected in the manner that the item under repair becomes fully functional once again. Defective parts will be renewed if it is necessary for proper functioning.
- (3) If the Customer wishes to obtain a cost estimate prior to performance of the repair, the Customer shall expressly request so. The cost estimate is subject to the charge according to our current hourly rate.

§ 11 Software Usage

- (1) If software is included in the scope of delivery, we grant the Customer a non-exclusive right to use the supplied software including the associated documentation. The use of the software on more than one system is prohibited.
- (2) The Customer may only use the software to the legally permissible extent. The Customer shall not remove the manufacturer specifications - especially the copyright marks - or modify them without our prior written consent.
- (3) All other rights to the software and the documentation including copies thereof are reserved by us or the software supplier. It is not permitted to grant sublicenses.

§ 12 Installation and Commissioning

- (1) If an installation and commissioning is subject of the Agreement, our prices are based on the condition that a smooth installation process is ensured. If additional costs incur to us due to the following circumstances, we will invoice them to the Customer at the installation rates as applicable at a time unless we are responsible for the incurrence of such additional costs:
 - a) interruption of the installation so that new arrivals and departures become necessary;
 - b) the chaining with devices which are not within the scope of delivery;
 - c) air and electrical supply of the equipment;
 - d) waiting periods;
 - e) necessary works which have to be effected onsite or on Customer's side which have not been executed in time or incorrectly;
 - f) a workplace which is not prepared or not tidied up;
 - g) if parts or components of the equipment cannot be unloaded at the installation site in time or as agreed upon.
- (2) The Customers shall place additional workers (assistants) at our disposal, as far as it is necessary for the installation work.

§ 13 Terms for Preliminary Acceptance and Final Acceptance

- (1) If a preliminary acceptance is agreed upon at our works, this shall occur in consultation with the Customer. The result of preliminary acceptance shall be recorded in a written preliminary acceptance protocol.
- (2) If a preliminary acceptance cannot take place due to reasons the Customer is reasonable for, our internal acceptance protocol shall be deemed to be the preliminary acceptance protocol.
- (3) If a final acceptance is agreed or if a final acceptance is necessary in accordance with the statutory requirements, the following provisions of this § 13 apply.
 - (4) The final acceptance is made in consultation with the Customer at the Customer's plant.
 - (5) The Customer shall be required to accept our works performed upon our notification of their completion and, if applicable, after any contractually agreed testing has been conducted.
 - (6) The Customer shall inform us about any deviations from the specifications or the agreed characteristics immediately upon their discovery in text form. The notification shall contain a sufficiently precise description of the observed deviation in order to allow us to identify and eliminate the deviation.
 - (7) The Customer may not refuse the final acceptance due to minor defects. Such defects shall be remedied within the scope of our warranty obligations.
 - (8) Substantial defects shall be rectified as soon as possible and shall be submitted to the Customer for acceptance; the new acceptance test shall be limited to the assessment of the removal of the defects. Minor defects shall be documented in the acceptance protocol in writing and shall be remedied within the scope of our warranty obligations.
 - (9) Should the Customer refuse acceptance without justification or without giving any reasons, we reserve the right to set a 14 days period of time for acceptance. The acceptance shall be deemed to have been granted if the Customer has not accepted the work within this period of time or if the Customer hasn't specified any substantial defects in writing.
 - (10) In any case, the work result shall be deemed accepted if the Customer is using it or could use it productively. From that moment, the warranty period shall start and we have a claim for payment of the outstanding balance.
 - (11) The Customer is not entitled to refuse the final acceptance due to disruptions during the final acceptance for which we are not responsible.
 - (12) The Customer shall provide skilled operating personnel necessary for the final acceptance in due time and free of charge.
 - (13) If partial acceptances are agreed, the limitation period begins with the acceptance of the last performance.
 - (14) Our liability for obvious defects ceases to exist upon final acceptance unless the Customer has explicitly reserved the right to assert a claim for a defect known to the Customer.

§ 14 Customer's Right of Termination

If we owe the delivery of a movable, non-fungible item to be manufactured or produced, the Customer is entitled to terminate the contract at any time until the completion of the work. We are entitled to request the agreed remuneration in case of termination by the Customer; however, the value of any savings in expenses as a result of the termination of the contract as well as the value of what we acquire through other use of our labor force or maliciously failed to acquire shall be deducted therefrom. Section 649 of the German Civil Code (BGB) remains unaffected hereby.

§ 15 Place of Performance, Place of Jurisdiction, Applicable Law

- (1) For all claims arising out of the business relationship between the Customer and us, the place of performance shall be our company's registered office.
- (2) The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be the place of performance if the Customer is a businessman, a legal entity under public law or an asset under public law. We are also authorized, however, to sue our Customer at its general place of jurisdiction.
- (3) All disputes arising from contracts to which these GTC apply and all disputes arising from business relationship between us and the Customer shall exclusively be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

§ 16 Final Clauses

Should one or another provision of these GTC be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

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