

General Terms & Conditions for Deliveries and Services

ZASCHE handling GmbH

Valid as from 01 September 2017

1. General Provisions

1.1 Agreements – especially insofar as they modify these terms – become binding only after our written confirmation. If a letter of confirmation of the Buyer deviates from our order confirmation, the Buyer shall particularly highlight the change as such.

1.2 All our – also future – deliveries and services including proposals, consultations and other ancillary services (hereinafter collectively "Deliveries") occur in business transactions exclusively based on these General Conditions. Conditions of the Buyer shall not form part of the agreement, even if we do not expressly object to them or accept payments without reservations.

1.3 Our offers are subject to change. If, however, after submission of a binding offer by us, changes in the requirements for the contractual obligations arise because of new or amended legal provisions or new demands by authorities and inspection authorities, we can customize this taking into account the interests of both parties at our discretion. This shall apply also after accepting an offer.

1.4 The Buyer has the non-exclusive right to use the standard software with the agreed performance characteristics in unmodified form on the agreed equipment. Unless otherwise agreed or otherwise mentioned, e.g. on the data carrier or in the software documentation, the Buyer may create two backup copies.

2. Price, Payment, Security

2.1 Unless expressly otherwise agreed, our prices are ex works (EXW Nördlingen INCOTERMS 2000), additional costs (esp. costs for packaging, insurance, freight, storage or third-party inspection) are not included. Where we are responsible for installation or assembly, and unless otherwise agreed, besides the agreed prices the Buyer shall pay all the necessary additional costs, such as esp. the costs for travel, transport of tools as well as the consumption and provision of electricity, water, compressed air, etc.

The Value Added Tax (VAT) will be added to the agreed prices at the statutory rate (in Germany currently 19%). For deliveries abroad, all taxes, duties and other statutory charges to be paid by us abroad shall be refunded by the Buyer.

2.2 Payments must be received by the dates agreed without any deduction.

2.3 The Buyer has a right of retention and right to offset only to the extent that the counterclaims are undisputed or have been bindingly established. If this is not the case, the right of retention of the Buyer must originate from the same contractual relationship as our claim and be proportionate.

2.4 We only accept discountable and properly taxed bills (and in any case only for payment), when this has been expressly agreed. When accepting bills of exchange, the debt shall only be considered to be repaid after the bills have been honoured; when accepting cheques only when these have been irrevocable credited to our account. Discount charges and any costs incurred in connection with the payment of the bill or the amount of the cheque shall be borne by the Buyer.

2.5 In case of failure to meet the payment deadline, interest at the average market rate or overdrafts of business accounts will be charged as from the day following the due date of payment and without further reminder, however, not at a rate less than the statutory rate of interest.

2.6 Where payment is delayed or our claims are at risk due to a significant deterioration in the creditworthiness of the Buyer, we are entitled to demand immediate payment of outstanding sums, regardless of the term of payment of any outstanding bills or to request guarantees. We are also entitled only to make outstanding deliveries against advance payment or the provision of collateral.

3. Packaging

Unless otherwise agreed, the Buyer will be invoiced separately for the packaging. Alternatively, we may request return of the package, subject to a usage fee and deposit.

4. Delivery dates, obstacles to fulfilment

4.1 The delivery dates depend on the timely clarification of all details of the order, in particular the provision of all documents and permits to be procured by the Buyer, the release of drawings and the timely receipt of any agreed down payment as well as the timely provision of any agreed payment security. Another requirement is the timely provision of preliminary installation and assembly work at the Buyer's, in particular the provision of electricity, gas, water, compressed air for our use without charge as well as the provision by the Buyer of the necessary auxiliary staff.

4.2 The agreed delivery dates shall be considered as met upon notification of readiness for shipment, especially if the delivered goods cannot be dispatched on time for reasons beyond our control. A delivery date can be met also by a defective delivery.

4.3 If we are prevented from fulfilling our obligations due to unforeseen circumstances affecting us or our suppliers or sub-contractors which could not be avoided despite our having made every reasonable effort under the circumstances, e.g. in times of war, acts of force majeure, civil unrest, natural disasters, accidents, strikes and lockouts, other disruptions and delays in the delivery of essential operating supplies or semi-finished products, the dates will be postponed by a period corresponding to the duration of the unforeseen circumstances plus a reasonable start-up time. If fulfilment of our obligations becomes impossible or unreasonable under the circumstances, we are entitled to withdraw from the contract; the same shall apply to the Buyer where, due to the delay, the receipt or acceptance or our deliveries is unreasonable.

4.4 Where we are at fault and the Buyer can credibly show that he has thereby suffered a loss, he is entitled to demand compensation for the delay. This shall amount to 0.5% for each full week of delay, totalling a maximum of 5% of the value of that part of the delivery which cannot be used for the intended use as a result of the delay. Both claims for damages due to delayed supplies as well as claims for damages in lieu of performance beyond the limits aforesaid are excluded in all cases of delayed supplies even upon expiry of a set deadline for delivery. This does not apply in cases of intent or gross negligence or injury to life, body or health or other compulsory liability. The Buyer can only withdraw from the contract in accordance with statutory provisions where the delay of our deliveries is our responsibility. A change in the burden of proof to the disadvantage of the Buyer has no effect on the above regulations.

4.5 At our request the Buyer is obligated to state, within a reasonable period of time, whether, due to the delay in deliveries, he still insists on the delivery and/or which claims and rights he is entitled to he will be asserting.

4.6 A right in principle of withdrawal that the Buyer or we are entitled to only applies to the unfulfilled part of the contract. In so far as partial deliveries cannot be reasonably used by the Buyer, he is also entitled to withdraw in regard of these partial deliveries. Where partial deliveries to the Buyer are not reasonably available, he is also entitled to withdraw from these partial deliveries.

5. Acceptance

5.1 If an acceptance test has been agreed, it must be performed immediately upon notification of readiness for the acceptance test.

5.2 An acceptance test may also be performed where specific features of the delivered goods are agreed or if we request it. This also applies to self-contained partial deliveries.

5.3 The Buyer shall ensure that the preconditions required for the performance of an acceptance test. With the exception of our personnel costs, the buyer shall bear all costs associated with the acceptance test.

5.4 The Buyer may not refuse an acceptance test due to minor defects, without prejudicing his rights under paragraph 8.

5.5 If the acceptance test is not performed on time or incompletely, for reasons beyond our control, the delivery item shall be considered to be accepted following our written request to perform the acceptance test and after a reasonable period of time determined by us, provided we have made specific reference to this effect.

5.6 The acceptance test in any case will be deemed to have been satisfied, where the delivery item is put into operation without our consent.

6. Transfer of risk, shipping

6.1 Risk is transferred to the Buyer also in the case of carriage-free delivery, and even where partial deliveries are made, as follows:

6.1.1 For deliveries without installation or assembly, if the delivered goods are shipped or picked up for shipment. At the request and expense of the Buyer, deliveries will be insured by us against the usual transport risks;

6.1.2 If deliveries include installation or assembly on the day they are handed over in the own factory or, if agreed, after acceptance by the Buyer.

6.2 If the dispatch, delivery, start or performance of the installation or assembly, handover at the Buyer's premises or acceptance is delayed for reasons for which the Buyer is responsible or the Buyer is in default of acceptance for any other reasons, the risk passes to the Buyer.

6.3 The means of transport and transport route are at our discretion. The same applies to the selection of the freight forwarder or carrier.

6.4 Delivery items declared ready for dispatch must be collected promptly, otherwise we are entitled to store them at the expense and risk of the Buyer at our discretion and charge for them as delivered.

6.5 We are entitled to make partial deliveries and invoice them separately.

7. Retention of Title, Confidentiality, Privacy

7.1 The delivered goods remain our property (goods that are subject to retention of title) until all claims, especially the relevant balance claims to which we are entitled against the Buyer within the scope of the business relationship.

7.2 The handling and processing of the goods subject to retention of title for us as the manufacturer is according to § 950 BGB. The processed goods are deemed to be goods that are subject to retention of title according to Section 7.1.

If the goods subject to retention of title are processed, combined and mixed with other goods by the Buyer, we shall be entitled to co-ownership in the new goods in the ratio of the objective value of the goods subject to the reservation compared to the objective value of the other used goods. If our property rights cease to exist due to processing, combining or mixing, the Buyer hereby already transfers to us ownership to the new stock or goods to which he is entitled to the extent of the objective value of the retained goods and stores them at no cost to us.

Our rights of co-ownership shall be deemed to be reserved goods according to Section 7.1.

7.3 The Buyer may sell the goods only in the normal course of business according to his standard business conditions and only as long as he is not in default, provided that the claims from the resale pursuant to Section 7.4 are transferred to us. The Buyer is only permitted to resell the reserved goods within the normal course of business according to his standard terms and conditions of business and if he is not in default, provided that he retains title and the receivables arising from such resale are assigned to us in accordance with Section 7.4. The Buyer is not entitled to dispose of the reserved goods in any other way.

7.4 The Buyer's claims from the resale of the reserved goods, whether unchanged or in combination with other goods not delivered by us, are already assigned to us to the amount of the invoice value or the amount of co-ownership pursuant to Section 7.2; this shall also apply to the amount of the respective balance claims when transferring the resale claim to a current account.

7.5 The Buyer is obliged to insure the reserved goods at his own expense against theft, breakage, fire, and water damage for the duration of his obligations to us and to prove this to us on request. He hereby assigns all of his rights under the appropriate insurance contracts irrevocably to us until complete fulfilment of his obligations.

If the Buyer does not fulfil his obligations under the preceding paragraph, we have the right to take out the aforementioned insurances to the extent considered necessary by us at the Buyer's expense provided that we are directly entitled to the rights under the insurance contracts.

7.6 The Buyer has the obligation to maintain the reserved goods in perfect condition and to have necessary repairs carried out immediately by specialist companies; it is his obligation to inform us at any time about the reserved goods, especially with regard to their respective location. We are entitled to visit the location of the goods at any time; where necessary, the Buyer shall at all times allow us or our representatives' access to the location of the reserved goods.

The Buyer is obliged to notify us immediately of any risk to our property.

7.7 In the case that the Buyer violates material obligations under this Section 7, we shall be entitled to demand full payment of the outstanding debts concerning the reserved goods, independent of the term of any bills or to demand securities. If the Buyer does not pay the entire outstanding debts within seven days after notification by us, or he does not provide the requested securities within this period, his right to use the reserved goods shall be forfeited. We are then entitled to demand the immediate return at the expense of the Buyer, excluding any right of retention.

7.8 We shall be entitled, without prejudice to the payment obligation of the Buyer, to make the best possible use of the goods repossessed by us by selling them on the open market or by taking them over at the current market price. The market price of the reserved goods will be estimated bindingly for the Buyer and us for by a recognised expert appointed by the competent Chamber of Commerce for our works Nördlingen. The proceeds from the sale or the market price will be offset against the Buyer's payment obligation after deduction of the costs incurred by us.

7.9 Repossession or assertion of the reservation of title and seizure of the delivery item by us shall not constitute a withdrawal from the contract, unless we have expressly declared this to be so.

7.10 If the value of the existing securities exceeds the secured claims by more than 10%, we shall be obliged at the Buyer's request, to release securities of our choice.

7.11 We reserve the right of ownership and copyright to cost estimates, models, drawings and other documents.

7.12 The Buyer is obliged to keep confidential all drawings, models, cost estimates, business or company secrets and other confidential documents and information received from us in physical or electronic form. They may be made available to third parties only as far as is necessary following our prior consent. The obligation to maintain confidentiality shall also remain in place after the completion of the contract; it only expires if and to the extent that the information has become generally known.

7.13 We are authorized within the context of the purpose of the contract to process or have processed by third parties the personal data entrusted to us in accordance with the Privacy Policy. In so doing it is our duty to ensure compliance with the data protection regulations.

8. Liability for defects

We assume liable for defects as follows:

8.1 All deliveries that have a defect within the period of limitation – irrespective of the hours of operation – shall be repaired free of charge, replaced or provided again at our discretion, provided that the cause already existed at the time of transfer of risk.

8.2 For software whose source code we can modify ourselves ("Class A"), we shall eliminate any defects in the software at our discretion by providing an update of the software, in which the defects alone are eliminated or by providing an upgrade in which the defects have been eliminated. For software where we cannot modify the source code ourselves ("Class C"), this only applies where such an update or upgrade is available or can be procured by us at a reasonable cost.

8.3 Warranty claims expire within 12 months after commissioning, but no later than 24 months after delivery ex works (period of limitation). However, this does not apply where the law stipulates a mandatory liability period according to Section 10.4 or longer periods according to §§ 438 Para. 1 No. 2 (Buildings and items used for buildings), 479 Para. 1 (Right of recourse) and 634a Para. 1 No. 2 (Construction defects) BGB. The rules on suspension of expiration, suspension or recommencement of limitation periods shall thereby remain unaffected.

8.4 Notification of defects must be made without delay and in writing.

8.5 Firstly the Buyer shall grant us the opportunity to rectify the defect within a reasonable time.

8.6 If subsequent performance fails, the Buyer may – without prejudice to any claims for damages pursuant to Section 10 – withdraw from the contract or reduce the remuneration.

8.7 The warranty does not include minor deviations from the agreed quality, minor impairments in usability, natural wear and tear or damage arising after the transfer of risk due to incorrect or negligent handling, improper, incorrect, omitted or not timely maintenance, improper storage, excessive strain, unsuitable operating materials, defective construction work, unsuitable subsoil or from particular external influences not provided for in the contract, as well as in the case of non-reproducible software errors. If the Buyer or third parties carry out improper modifications or maintenance, there are no claims for defect for these or their resulting consequences.

Claims based on defects for software that has been extended beyond an interface provided by us will be only considered up to the interface.

8.8 Any claims for damage shall otherwise be governed by Section 10. Further claims or claims other than those regulated in Section 8 against us or our agents due to a defect in quality are excluded.

9. Industrial property rights, copyrights; defects of title

9.1 Unless otherwise agreed, we are obliged to make deliveries free of industrial property rights and copyrights of third parties (hereinafter: property rights) only in the country of the place of delivery. If a third party asserts justified claims for infringement of property rights through goods supplied by us that he uses in compliance with the contract against the Buyer, we shall be liable to the Buyer within the warranty period (Section 8.2) as follows:

9.1.1 At our discretion and at our own expense, we will either obtain right of use for the goods concerned, modify them so that the property right is not infringed or replace them. Where this proves impossible under commercially reasonable conditions, the Buyer shall be entitled to exert his statutory right to withdraw from the contract or to a reduction in price.

9.1.2 Any claims for damages shall be governed by Section 10.

9.1.3 The aforementioned obligations in as far as they concern us only exist if the Buyer notifies us immediately in writing of the claims asserted by a third party, does not acknowledge any infringement and leaves any defensive measures and settlement negotiations to us. If the Buyer stops using our deliveries to reduce the damage or for other important reason, he is obliged to inform the third party that ceasing to use the product in no way acknowledges any alleged infringement.

9.2 Claims of the Buyer shall be excluded if he himself is responsible for the infringement.

9.3 Claims are also excluded if the infringement is caused by specifications made by the Buyer or by the fact that our deliveries have been modified by the Buyer or are being used together with products not supplied by us.

9.4 In the event of infringements of property rights, the provisions of Sections 8.3, 8.4 and 8.5 also apply for the claims regulated in Section 9.1.1.

9.5 In the case of other defects in title, the provisions of Section 8 shall apply accordingly.

9.6 Further claims against us or our agents, or other claims than those regulated here in Section 9, due to a defect in title are excluded.

10. Other claims for damages

10.1 We shall be solely liable according to the statutory provisions under the following conditions.

10.2 Claims for damages and reimbursement of expenses (hereinafter: compensation claims), regardless of the legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.

10.3 The liability for indirect or consequential damages such as loss of use, loss of profits, damages resulting from business interruption and financial costs are excluded.

10.4 The above limitations of liability (Section 10.2 and Section 10.3) shall not apply where liability is mandatory, e.g. under the Product Liability Act, in cases of intent or gross negligence, injury to life, body or health, due to the acceptance of a guarantee for the quality of a thing or breach of fundamental contractual obligations, thus such contractual obligations the fulfilment of which enable the proper execution of the contract in the first place and on whose compliance the buyer relies and may rely. However, the damages for the breach of fundamental contractual obligations are limited to the contract-typical, foreseeable damage if there is no wilful misconduct or gross negligence or based on liability for injury to life, body or health.

10.5 If under this Section 10 the Buyer is entitled to claim for damages, such claims shall lapse with the expiry of the limitation period applicable for claims concerning defects pursuant to Section 8.3.

10.6 A change in the burden of proof to the disadvantage of the Buyer is not associated with the above liability provisions.

11. Impossibility; amendments to the contract

11.1 If the agreed delivery proves impossible, the Buyer is entitled to claim damages in accordance with Section 10, except where we are not responsible for the impossibility. However, the claim for damages shall be limited to 10% of the value of that part of the delivery which cannot be used accordingly due to the impossibility. This limitation shall not apply in cases of intent or gross negligence or injury to life, body or health in which liability is mandatory; a change in the burden of proof to the disadvantage of the Buyer is not associated with this. The Buyer's entitlement to withdraw from the contract remains unaffected.

11.2 In the case of temporary impossibility, Section 4 (Delays) shall apply.

11.3 Where unforeseeable events according to Section 4.3 substantially change the economic importance or the content of the supplies or considerably affect our operations, the contract will be adjusted accordingly in good faith. Where this is not economically justifiable, we shall be entitled to withdraw from the contract. If we want to make use of this right of withdrawal, we shall notify the Buyer promptly of the fact after informing ourselves of the consequences of such action, even if an extension of the delivery period was initially agreed with the Buyer.

12. Export licenses, transfer of rights

12.1 The export of the delivery items may be subject to approval regulations – e. g. due to their nature or intended use.

12.2 We may transfer the rights and obligations under this contract to a third party. The transfer is not effective if the Buyer objects in writing within four weeks after receipt of such notification; attention will be drawn to this in the notification.

13. Place of Performance, Court of Jurisdiction, Applicable Law

13.1 Place of performance for our deliveries is Nördlingen. If we are also to provide services (e.g. assembly), the place of performance shall be the place where the services are to be provided. The place of performance for the Buyer's payment obligation is in accordance with the payment details specified in our invoice.

13.2 The exclusive court of jurisdiction for all legal disputes, including actions filed under the summary proceedings based on bills of exchange and cheques, is Nördlingen. However, we also reserve the right to sue the Buyer in the courts of his general jurisdiction or at the place of an infringement.

13.3 All legal relationships between the Buyer and ourselves shall be explicitly governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention / CISG).