

# General terms and conditions

Zambelli Fertigungs GmbH & Co. KG

Valitation: 01.11.2013

## 1. Incorporation of conditions/Written form

- 1.1 These general terms and conditions principally apply for business transactions between us and our customers in advance. The same shall apply for future orders.
- 1.2 Conditions in order documents of our customers diverging from, supplementary or adverse to our terms and conditions are not admitted even if they were not expressly rejected. In particular, this applies when we render the service without reservation, in spite of conflicting conditions.
- 1.3 Diverging agreements within the meaning of number 1.2 shall only be valid in a particular case, when expressly confirmed by us in writing. The validity of the remaining general terms and conditions shall remain unaffected.
- 1.4 Individual agreements made with the customer in a particular case (including subsidiary agreements, reservations, amendments and supplements) shall precede these general terms and conditions in any case. A written contract and our written agreement respectively shall be authoritative for the contents of such agreements. Changes of this written form clause shall also be made in writing.

## 2. Prices and conditions

- 2.1 Prices of the price list applicable at the time of contract conclusion shall be valid. Previous lists become invalid upon publication of a new price list.
- 2.2 All prices are principally ex works and do not include packing, freight, postage and VAT.
- 2.3 In principle, they are based on commodity prices and indication of quantities existing at the contract conclusion. If not all information required for a material order with our subcontractors (e.g. measures, colour, etc.) was available at the contract conclusion, the customer shall file this information subsequently as soon as possible. If total costs increased by at least 5 percent between contract conclusion and performance of cooperation acts by the customer, we shall be entitled to perform a corresponding price increase to compensate the increase in costs.
- 2.4 For reduced quantities, a surcharge in the amount of € 1.50 is charged per item, e.g. items ordered below the minimum purchase volumes stated.
- 2.5 A handling fee is charged for small orders below € 250 in the amount of € 15.

## 3. Delivery/Default in delivery/Security

- 3.1 Delivery is principally made on the most favourable freight route. Express delivery is only made on explicit request by the customer. This also applies to any other shipment type expressly requested by the customer.
- 3.2 Delivery is principally made without unloading at the head office of the customer within Germany.
- 3.3 Partial deliveries shall be admissible.
- 3.4 Delivery time commences when the customer performed his cooperation acts according to 2.3. A date of delivery de-

termined calendar-based is postponed by the same period than performance of the cooperation acts by the customer is delayed.

- 3.5 For preservation of the date of delivery, it shall be sufficient that the goods left our plant before expiration of the delivery time or we have made the goods available and informed the customer on our readiness for dispatch.
- 3.6 We may make the execution of an order contingent on an advance payment or payment of invoices still outstanding from previous orders. The customer shall be obliged to deliver a contract performance guarantee of a big bank licensed for business operation in the EU in the amount of the payment amount still outstanding or any other security within the meaning of section 232 subsection 1 BGB – Civil Code, before the start of delivery and/or installation of our goods. We shall have a right to refuse performance until delivery of this guarantee.
- 3.7 Should circumstances arise after the contract conclusion beyond our control or the control of a subcontractor and unforeseen, e.g. raw material and energy shortage or breakdown of machines required for the production, industrial action, act of god or circumstances for which we are not responsible and significantly impede delivery, we will inform the customer immediately and, at the same time, communicate the estimated new delivery time. Should delivery still not be possible within the new period, we shall be entitled to withdraw from the contract in whole or in part. We will reimburse any consideration already made by the customer immediately. Our statutory right to give notice and right of rescission as well as statutory provisions regarding the winding up of the contract when the obligation to perform the contract is excluded (e.g. impossibility or unconscionability of the performance and/or subsequent performance) shall remain unaffected. The right of rescission and right to give notice of the customer shall also remain unaffected.

## 4. Default of acceptance

- 4.1 The customer has failed to accept delivery when he refuses acceptance of the faultless goods on delivery. Should he expressly declare not to accept the delivery already before this time, delivery shall be dispensable and the customer has failed to accept delivery after our verbal offer. Default in acceptance shall oblige the customer to reimburse any cost of storage. These costs are assessed with at least 0.5 percent of the net order amount for each month commenced, however, no more than 5 percent of the net order amount. The customer shall be entitled to furnish proof that we did not incur any damage or impairment due to the default in acceptance or the amount is considerably below this lump sum.
- 4.2 Furthermore, we shall be entitled in the event of default in acceptance to withdraw from the contract on the conditions of paragraph 323 BGB (Civil Code) or to claim damages due to non-performance on the conditions of sections 280 subsection 1, 3, 281 BGB (Civil Code). We may request 20

percent of the order price including VAT as damages due to non-performance should the customer not produce any proof that we did not incur any or minor damage. We reserve to assert a higher proofed damage for customized goods, in particular.

## **5. Shipment, Passage of risk**

- 5.1 Our plant is the place of performance for payment and performance.
- 5.2 Should goods be shipped to another place (not our plant) upon the request of the customer, risk of accidental perishing or deterioration of the goods shall pass to the customer on delivery to the forwarding agent, carrier or any other person or institution appointed to perform delivery. The provisions of paragraph 447 BGB (Civil Code) shall also apply if shipment is made with our means of transport or employees as well as regardless of who bears freight. In this case, paragraph 278 BGB (Civil Code) shall apply with regard to our employees.
- 5.3 Transport insurance is only made after separate agreement and for the account of the customer.
- 5.4 Notwithstanding the provisions of 5.2, risk shall pass to the customer after we delivered the goods to the customer or the customer has failed to accept delivery, in accordance with the provisions of 4.1.

## **6. Customer's duty of evidence for intra-community deliveries**

- 6.1 According to §§ 17a-17c UstDV, the supplier is for every tax-free intra-community delivery obliged to request the reception evidence in the form of a Certificate of Entry or in specific cases in the form of an alternative proof from the customer.
- 6.2 In case that the supplier or the customer commissions an external carrier to transport the consignment, the CMR is accepted as alternative proof which may replace the Certificate of Entry, provided that field 24 is filled in correctly and completely.
- 6.3 In case that the customer transports the consignment with his own vehicle, only the Certificate of Entry may prove the intra-community delivery.
- 6.4 In case that the consignment is transported by parcel service or break bulk cargo, the supplier retrieves the proof directly from the respective service contractor.
- 6.5 For all deliveries according to 6.2 and 6.3, the customer is obliged to furnish the proof within a narrow time frame. The respective proof has to be transmitted electronically to [zf-confirmation@zambelli.de](mailto:zf-confirmation@zambelli.de).
- 6.6 Non-fulfilment of this duty of evidence results in subsequent billing of the German VAT by the supplier as the requirement for tax exemption for intra-community deliveries according to § 6a sections 1 and 3 UStG is not fulfilled.

## **7. Warranty**

- 7.1 Agreements as to quality shall only be binding when expressly made with the customer in writing. In particular, all information in lists or offers regarding measures, weights and illustrations was only roughly established and thus is not binding at any time.
- 7.2 The actual delivery may deviate from any sample within customary tolerances. Such deviations do not constitute any defect in any way. Item 1.4 shall remain unaffected.
- 7.3 The customer shall inspect the goods immediately. Obvious defects of any type and/or delivery of a type or quantity of goods other than ordered shall be noticed immediately on acceptance of the delivery and shall be noted down in a delivery record to be prepared by the customer. Other defects arising within a proper inspection of any type, without delivery of a non-obvious type or quantity of goods other than ordered shall be noticed in writing immediately, however, within 7 days as of the date of delivery. Delivery shall be considered approved with regard to a notice not in due form and time. Hidden defects which are also not discovered within a proper inspection shall be noticed in writing within 1 year from the date of delivery.
- 7.4 Until clarification of the complaint, goods complained about shall not be further processed. We shall be given the opportunity to inspect defects noticed on-site.
- 7.5 We remedy defects or deliver subsequently at our option. Should a subsequent performance fail within an appropriate period, the customer (at his option) may reduce, withdraw from the contract or claim damages in the event of fault. Should the customer withdraw from the contract, he shall not be entitled to any other damages than performance due to the defect. Claims for damages by the customer shall only exist in accordance with item 9 and shall otherwise be excluded.
- 7.6 We shall be entitled to make a subsequent performance due conditional on the fact that the customer pays the purchase price due. However, the customer shall be entitled to retain an appropriate part of the purchase price in relation to the defect.
- 7.7 The warranty period is 12 months from delivery. However, if goods concern a construction or another object used in accordance with its usual type of use and caused the defectiveness of the construction (building material), the limitation period is 5 years according to the statutory regulation, paragraph 438 subsection 1 number 2 BGB (Civil Code). Statutory special regulations on claims for return in rem of third parties (paragraph 438 subsection 1 number 1 BGB – Civil Code), fraudulent intent (paragraph 438 subsection 3 BGB – Civil Code) and claims in recourse to the supplier of the final delivery to a consumer (paragraph 479 subsection 3 BGB – Civil Code) shall also remain unaffected.

7.8 The foregoing limitation periods of the purchase right shall also apply to contractual and extra-contractual claims for damages by the customer based on a defect of the goods, unless application of the standard statutory limitation period (paragraph 195, 199 BGB – Civil Code) would result in a shorter limitation period in the individual case. Limitation periods of the Product Liability Act shall remain unaffected in any event. Statutory limitation periods shall apply for other claims for damages by the customer.

## **8. Terms of payment/Delay in payment**

- 8.1 Unless otherwise agreed, our invoices are payable without deduction after receipt immediately.
- 8.2 Counterclaims including warranty claims of the customer do not entitle to a set-off or retention, unless a counterclaim exists which has become *res judicata*.
- 8.3 The customer is in default should he not make payments due within 30 days after receipt of the invoice or similar payment schedule. The customer is also in default without a reminder should it be agreed that the purchase price shall be paid on a date determined calendar-based and the customer does not perform until this date at the latest. Notwithstanding, it shall be left at our discretion to remind the customer when our purchase price claim is due. In this event, the customer is in default with the reminder, unless delivery is not made due to a circumstance for which he is not responsible.
- 8.4 Should the customer be in default with the payment, we shall be entitled to demand interest in the amount of 8 percent above the base interest rate as flat-rate damages from the time when default commences. Damages shall be assessed at a lower value should the customer prove a lower damage. The proof of a higher damage by Zambelli shall be admissible.
- 8.5 Should the customer not pay the agreed price on the due date and no delay in payment exists, we shall have a claim for default interest in the amount of 7 percent p.a. (paragraph 352, 353 HGB – Commercial Code).
- 8.6 We reserve assertion of another or higher damage. Should the customer not make payments due, we shall be entitled to withdraw immediately, in accordance with section 323 subsection 1 BGB (Civil Code). We shall be entitled to withdraw immediately, should the customer suspend payments, files a petition to commence insolvency proceedings or such proceedings are commenced with respect to the assets of the customer.
- 8.7 Payments by bill or cheque are accepted on account of performance subject to payment. Acceptance of bills is only made after a corresponding agreement should the corresponding costs for negotiation of a bill are fully paid in cash and this concerns eligible for rediscount bills.

## **9. Reservation of title**

- 9.1 Goods delivered shall remain our property until performance of all current and future claims from business relations with the customer (reserved goods).
- 9.2 The customer shall be obliged to store and mark reserved goods separately.
- 9.3 Processing or transformation of reserved goods is performed by the customer on our behalf without any obligations arising for us. Should the customer combine, mix or process our reserved goods with other goods we shall be entitled to co-ownership on a pro rata basis of the goods created. Value of our co-ownership depends on the proportion of the invoice value of our reserved goods to the market value of the goods created by combining, mixing or processing. These goods shall be considered in this extent as reserved goods within the meaning of these conditions.
- 9.4 Sale of reserved goods shall be admissible in the ordinary course of business should the customer guarantee our extended reservation of title (assignment of a claim in accordance with 8.5). Other disposals and pledging and transfer by way of security, in particular, shall not be admissible.
- 9.5 Hereby, the customer assigns to us in advance any claims with regard to reserved goods due from resale or any other legal ground in the amount of claims to be secured. We hereby accept the assignment. Should the customer contribute the above-named claims to current account relations, the current account claims are hereby assigned to us in full. After balancing, the balance supersedes which is considered assigned up to the amount of the original current account claims. This shall apply correspondingly for the final balance in the event of termination of the current account relations.
- 9.6 The customer shall only be entitled to collection of assigned claims in the ordinary course of business and revocable. Upon our request, he shall notify the debtor of the assignment and we shall also have a right of notification should the customer be in default with the payment of a secured claim and the customer was previously notified of the disclosure.
- 9.7 The authorization of the customer to dispose of reserved goods as well as processing, combining and mixing and, in addition, to collect claims assigned shall become extinct in the event of non-compliance with terms of payment, unauthorized disposal, significant deterioration of the financial position of the customer, bill or cheque protest and insolvency proceedings filed against the customer. We shall be entitled in these events to take possession of reserved goods after a statement of withdrawal, enter upon the plant of the customer for this purpose, obtain useful information as well as inspect his books.
- 9.8 We undertake to release securities due to us in accordance with the foregoing provisions at our option and upon request by the customer to the extent that its value exceeds the claims to be secured by more than 10 percent.

9.9 The customer shall notify us immediately about impending or executed attachments by third parties of reserved goods or claims assigned.

9.10 Unless registration and/or fulfillment of other requirements is a precondition for the validity of the reservation of title, the customer shall be obliged to inform us about this and, at his expense, to take any actions required for this immediately and to give all notifications required. Should the authoritative legal system not permit the agreement on a reservation of title, the customer shall provide appropriate other securities when using a credit on goods.

#### **10. General limitations on liability**

10.1 We shall be liable in accordance with statutory provisions, should the customer asserts claims for damages based on intent, gross negligence including intent or gross negligence of our representatives or vicarious agents. Should we not be accused of intentional contract violation, liability for damages shall be limited to the foreseeable and typically occurring damage.

10.2 We shall be liable in accordance with statutory provisions, should we commit an essential breach of contract intentionally. Liability for damages in this event shall also be limited to the foreseeable and typically occurring damage.

10.3 Liability for intentional injury to life, body or health shall remain unaffected at any time. This shall also apply to the obligatory liability according to the Product Liability Act.

10.4 Unless not agreed otherwise above, liability shall be excluded.

10.5 Any additional liability for damages shall be excluded – without taking the legal nature of claims asserted into consideration. In particular, this shall apply for claims for damages from negligence on contract conclusion, other failures to comply with one's duty or tort claims for compensation of property damage according to paragraph 823 BGB (Civil Code).

10.6 This limitation shall also apply should the customer not demand performance but a replacement of useless expenses instead of a claim for reparation of the damage.

#### **11. Violation of third party's rights**

Should deliveries be made according to drawings or specifications by the customer and this infringes any third party's rights and property rights, in particular, the customer shall indemnify us against any claims arising therefrom upon initial request, unless we are participated in the accrual of the claim due to intent or gross negligence. In this case - notwithstanding the provisions of 9. – paragraph 830, 840, 254 BGB (Civil Code) shall apply for the damage apportionment between us and the customer.

#### **12. Place of performance, Jurisdiction, Applicable law**

12.1 Grafenau is the place of performance for all obligations from the contractual relations.

12.2 The court competent for Grafenau is the jurisdiction for all disputes arising from the contractual relations should the customer be a merchant who has been entered in the commercial register as a merchant, legal person under public law or separate estate. However, we shall be entitled to bring an action against the customer also at the court competent for his seat.

12.3 Substantive law of the Federal Republic of Germany shall apply exclusively to all legal relations between us and the customer under the exclusion of any international and supranational (contractual) legal system and the UN Convention on Contracts for the International Sale of Goods (CISG).

#### **13. Data storage**

Data is stored in accordance with the Data Protection Act.