

SALES AND DELIVERY CONDITIONS of Zoller+Fröhlich GmbH (hereinafter: Z+F) – Status: 10/2003

1. Applicability of the conditions

Deliveries, services and quotations provided by Z+F are furnished solely on the basis of these terms of business. These shall also apply to all future business relationships, even if not once again expressly agreed. The validity of contrary conditions of the buyer / customer is hereby expressly excluded.

2. Quotation and contract conclusion

Z+F quotations are subject to change without notice and are non-binding. Declarations of acceptance and all orders require written or electronic confirmation by Z+F. Drawings, illustrations, dimensions, weights or other performance data are binding only if this has been expressly agreed in writing.

3. Documents and samples

- 3.1 General documents, samples, models and other items that belong to a quotation and that are made available with a quotation shall remain the property of Z+F. The customer is not permitted to pass on and copy these documents, utilise them for his own purposes or reveal their contents to third parties.
- 3.2 The delivery of samples and models shall be subject to a charge.

4. Delivery and performance time

- 4.1 Agreements on delivery deadlines, whether binding or non-binding, must be in writing.
- 4.2 The regular delivery period begins when the order confirmation is received. Irrespective of this however, the period shall commence only as from the day on which there is complete agreement between Z+F and the customer regarding the order and the details thereof. The delivery deadline being met requires that all actions to be performed by the customer be completed on time, particularly the furnishing of evidence that the necessary approvals and releases have been obtained and that the agreed payment conditions have been met. Delivery deadlines and periods of grace are deemed to have been met when the delivery item has left the premises of Z+F before these periods end.
- 4.3 Delivery and performance delays resulting from force majeure and events that make performance on the part of the seller significantly more difficult or impossible for an extended period (particularly including strikes, lock-outs, official decrees etc.), including when such events occur on the premises of the seller's suppliers or subcontractors, shall not be the responsibility of the seller even in the case of binding agreed periods and deadlines.
These entitle Z+F to postpone the delivery or performance for a period equivalent to the duration of the hindrance plus an appropriate start-up period or to withdraw from the contract either entirely or partially due to the not yet fulfilled part. In the latter case, performances on the part of the customer delivered on the unfulfilled part shall be reimbursed immediately.
- 4.4 If the hindrance lasts for more than 3 months, then after an appropriate period of grace has been set, the customer shall be entitled to withdraw from the contract with regard to the still unfulfilled part. If the delivery time is extended or if Z+F is relieved of its obligation, the buyer cannot derive from this any claims for damages. Z+F may only invoke the aforementioned circumstances if it informs the customer.
- 4.5 Reservation of correct and on-time self-supply shall apply. Z+F shall inform the client immediately if the delivery item is unavailable, and in the event of withdrawal from the contract shall immediately reimburse the contractor for the corresponding counter-performance.
- 4.6 If Z+F is responsible for bindingly agreed periods and deadlines not being met or is in arrears, the client shall be entitled to delay compensation amounting to 0.5% of the invoice value for each completed week of the delay, but not exceeding 5% of the invoice value of the deliveries and services affected by the delay. There shall be no possibility of further claims. This does not apply to liability on the grounds of intent or gross negligence, based on the Product Liability Act and arising as a result of death, injury or health damage.
- 4.7 Z+F shall be entitled to make part deliveries or furnish partial services at any time, unless the part delivery or partial service is of no interest to the client.

- 4.8. In cases involving intent or gross negligence on the part of Z+F, its representatives or vicarious agents, Z+F shall be liable in accordance with the law if delivery / performance is impossible. In cases of gross negligence however, Z+F's liability shall be limited to the predictable damage typical to the contract if none of the exceptions listed in Clause 5 of these regulations applies. Otherwise, the liability of Z+F due to impossibility shall be limited to compensation for damage and to the reimbursement of futile expenses up to a total of 10% of the value of the delivery / performance. There shall be no possibility of further claims by the client due to impossibility of delivery. This restriction does not apply if there is liability in cases of intent, gross negligence or due to death, injury or health damage. The client's right to withdraw from the contract shall remain unaffected.
- 4.9 If delivery is delayed at the customer's behest, then commencing one month after notification of readiness to dispatch, the customer shall be charged for the costs incurred for storage on the premises of Z+F, these being at least 0.5% of the invoice amount for each week up to a maximum of 5% of the invoice amount. However, after setting an appropriate period of grace that then expires without the appropriate action being taken, Z+F shall be entitled to otherwise dispose of the delivery item and to supply the customer within an appropriately extended period. Withdrawal from the contract is expressly not linked to this.

5. Transfer of risk

The risk is transferred to the customer as soon as the consignment has been handed over to the person responsible for transport or has left the Z+F warehouse for the purpose of dispatch. If dispatch is delayed at the customer's request, the risk is transferred to the customer upon notification of readiness for dispatch or collection.

6. Warranty

- 6.1 The buyer undertakes to examine the delivered goods for visible faults immediately upon receipt and to inform Z + F of these faults within one week. Concealed faults and faults that become apparent during or after processing must be reported within one week after they are detected.
- 6.2 Within the post-fulfilment framework, Z + F is under no obligation to supply or manufacture new goods. In all cases, Z + F has the option of either remedying the fault or providing a replacement / repair. If the replacement / repair is unsuccessful, the client shall have the right to either pay a reduced price or to withdraw from the contract. This does not affect the client's right to instead claim for damages under the terms of the law governing these conditions.
- 6.3 Warranty claims shall not be possible in the event of only insignificant deviation from the agreed quality or insignificant impairment of usability.
- 6.4 If the client wishes to claim damages instead of demanding performance, or if he opts for self-performance, improvement shall not be deemed to have been unsuccessful until after the second attempt has failed. This shall not affect statutory cases of dispensability of the deadline.
- 6.5 The costs necessary for the purpose of post-fulfilment shall be borne by the client if they are increased as a result of the deliveries or services being furnished at a location other than the client's branch, unless the transfer is in accordance with the correct use of the delivered item.
- 6.6 Claims under a right of recourse on the part of the customer against Z + F based on Article 478 of the German Civil Code shall be possible only if the customer has not made with his buyer any agreements beyond the statutory warranty claims.
- 6.7 These regulations apply accordingly to legal deficiencies in title.

7. Liability

- 7.1 In cases of intent or gross negligence on the part of a representative or vicarious agent, Z+F shall be liable in accordance with the law. Otherwise, Z+F shall be liable only as defined by the Product Liability Act on the grounds of death, injury or health damage or being at fault for the infringement of important contractual obligations. However, claims for compensation for the infringement of important contractual obligations shall be limited to predictable damage typical to the contract. Even in cases of gross negligence, Z+F's liability shall be limited to the predictable damage typical to the contract if none of the exceptions listed in Clause 2 of these regulations applies.
- 7.2 However, there shall be absolutely no liability for damage caused by the delivery item the client's objects of legal protection, e.g. damage to other physical objects. This does not apply in cases of intent or gross negligence or where there is liability for death, injury and health damage.
- 7.3 The regulations of Paragraphs 1 and 2 above extend to compensation in addition to the performances and compensation instead of the performance, irrespective of the legal basis and particularly based on deficiencies, the infringement of obligations arising from the obligatory relationship or from impermissible actions. They also apply to claims for damages for futile expenses. Liability for delay however is in accordance with Item 4.6, and liability for impossibility is in accordance with Item 4.8.

8. Withdrawal from the contract

Under the legal regulations, the client may only withdraw from the contract if Z+F is responsible for the infringement of an obligation. In the case of deficiencies however, the legal prerequisites still apply in accordance with the regulations outlined under Item 6. In the event of obligation infringements and at the contractor's request, the client must state within an appropriate period whether he intends to withdraw from the contract due to the obligation infringement or still insists on performance.

9. Periods of limitation

- 9.1 The period of limitation for claims and rights arising from deficiencies in deliveries and performance - irrespective of the legal basis - is one year. This does not apply in cases covered by Article 479 Paragraph 1 of the German BGB. The period stated in Sentence 2 above is subject to a period of limitation of 3 years.
- 9.2 The periods of limitation defined under 10.1 also apply to all claims for damages against the contractor that are associated with the deficiency - irrespective of the legal basis of the claim. If there are claims for damages of any sort against Z+F that are not associated with a deficiency, the period of limitation defined under Item 10.1 Page 2 shall apply to them.
- 9.3 The periods of limitation as defined under Items 9.1 and 9.2 shall apply with the following qualification: The periods of limitation do not generally apply in cases of intent. The periods of limitation also do not apply if Z+F has deceitfully remained silent about the deficiency. If Z+F has deceitfully remained silent about a deficiency, the statutory periods of limitation that would apply without the deceit shall apply instead of the aforementioned periods, namely Article 438 Para. 1 No. 1, No. 2 and No. 3 of the BGB, excluding the period extension for deceit as defined by Article 438 Para. 3 of the BGB.

The periods of limitation also do not apply to claims for damages in cases of death, injury, health damage or loss of freedom, to claims based on the Product Liability Act, in the case of a grossly negligent obligation infringement or to the infringement of important contractual obligations.

10. Reservation of ownership

- 10.1 The delivery item shall remain the property of Z+F until all related obligations of the client arising from the business relationship have been fulfilled. In the event of obligation infringements on the part of the client, particularly in the case of delayed payment, Z+F shall be entitled (also without setting a deadline) to demand that the delivery item be surrendered and / or to withdraw from the contract. The client shall be obligated to surrender the delivery item. The demand to surrender the delivery item or the return of the delivery item do not constitute a declaration of withdrawal from the contract on the part of Z+F unless this is expressly declared.

- 10.2 The customer may not pledge or transfer ownership of the delivery item as security until the agreed price has been paid in full. The customer must inform Z+F immediately and in writing about any levies of execution, confiscations or other interference with the ownership interests of Z+F by third parties.
- 10.3 Z+F revocably declares that it agrees to the customer reselling the conditional commodity within the context of his legitimate business operations. The customer shall assign to Z+F the receivables from the resale of the conditional commodity to an amount equivalent to the Z+F purchase price. The customer must inform Z+F of the debtors if requested to do so. Z+F can notify the debtor of the assignment. Until revocation, the customer is both authorised and obligated to collect the assigned receivables. This collection authorisation shall lapse without further notice if the client ceases payments.
- 10.4 All processing and further processing of the conditional commodity, as well as its combination with third-party items by the client or third parties shall be on behalf of Z+F. Z+F shall be granted co-ownership of newly created items that are defined as conditional commodities under the terms of this regulation, this co-ownership being proportional to the invoice value of the delivered objects. The customer is obligated, on behalf of Z+F, to store the object sold carefully and free of charge, to keep it in a perfect technical condition and to carry out or have carried out and repairs that may become necessary.
- 10.5 If the value of the securities to which Z+F is entitled in accordance with the above provisions exceeds the claim being secured by 20%, Z+F undertakes to release securities of its choice at the client's request.
- 10.6 If the country on whose territory the delivery item is located does not by law permit reservation of ownership but does permit the supplier to reserve other rights to the delivery item, Z+F shall be able to exercise all such rights. The customer undertakes to take at his own expense all measures necessary to allow the reservation of ownership or, in its place, other rights to take effect and be upheld with respect to the delivery item.
- 10.7 In the event of a cessation in payments or an application for insolvency, the right of resale, use or installation of the reserved commodity shall lapse, and the authorisation to collect receivables.

11. Offsetting and the right to refuse performance

The client shall have a right to offset and to refuse performance only in the event of claims that have been deemed legally valid or acknowledged in writing by Z+F.

12. Applicable law

- 12.1 The sole law that applies to all legal relationships between Z+F and the client, including these sales and delivery conditions, is that of the Federal Republic of Germany unless a different law bindingly applies.
- 12.2 If one clause of these sales and delivery conditions is not legally valid in whole or in part, is not enforceable or ceases to become legally valid or enforceable later, this shall not affect the legal validity of the remaining clauses or the usual clauses. Z+F and the customer undertake to supplement or replace the relevant clause with a legally valid or enforceable clause that approximates as closely as possible the invalid or unenforceable clause both legally and commercially.

13. Contract language, place of fulfilment and place of jurisdiction

- 13.1 The contract language is German.
- 13.2 The place of fulfilment for all deliveries, return deliveries and payments is Wangen im Allgäu, Germany.
- 13.3 The sole place of jurisdiction for all disputes arising from this contract is the court responsible for the place of business of Z+F. Z+F shall alternatively be entitled to bring disputes before the court responsible for the customer's place of business in Germany or abroad.