

## ZENDOME GmbH Standard terms and conditions of sale (version 10/06)

### 1 Scope of application

1.1 The following terms and conditions of sale shall apply to all contracts we make for the supply of goods and the provision of services. Even where the incorporation of these terms and conditions has not been expressly agreed they shall apply also to all future business dealings with the customer. Even where we do not expressly repudiate such customer terms and conditions as diverge from ours, unless expressly accepted by us, we shall not be bound by them.

1.2 Unless agreed otherwise, all agreements made in connection with our contractual agreements and services, shall routinely be recorded in writing in the contract, its terms and conditions and in our order confirmation.

### 2 Offer / Documentation

2.1 Unless we have in writing expressly characterised our offers as binding, they shall be subject to change and shall not have binding force. Unless provided otherwise in the relevant offer, our binding offers shall bind us routinely for a period of four weeks.

2.2 Illustrations, drawings, calculations and other documents shall remain our property and we retain our copyright therein. Where these do not form the subject-matter of a contract we may require the customer to return them to us. Only to the extent that the customer's own use of the contractual goods and services necessitates the reproduction or any other exploitation of the documents shall this be permitted. In addition, this rule shall apply also to such documents, information, material, and such like marked as "confidential". All documents, materials, etc. in respect of which in accordance with the contractual purpose the customer enjoys a nonexclusive user licence shall be clearly marked with a reference to us incorporating our url [www.zendome.de](http://www.zendome.de) or shall retain our company symbols and/or copyright notices without amendment.

The preceding rule shall apply independently of the medium of communication and of the mode of availability, for example, in paper or electronic format.

2.3 Only in so far as it is reasonable for the customer to accept variations in our measurements, illustrations, descriptions of materials, technical details, designs, drawings, sketches and other documents contained within our non-binding offers or which result from our catalogues and other public announcements concerning our products shall they have binding force. We reserve the right to make modifications, in particular, as a result of design amendments. Even without the customer's consent, modifications which it is reasonable for the customer to accept, in particular, those necessary

and/or appropriate for technical or production reasons or to satisfy official requirements shall be treated as in accordance with the contract.

### 3 Prices / Payment terms

3.1 Except where agreed otherwise with the customer, our prices are "ex works" exclusive of packaging costs.

3.2 Where no other agreement has been made with the customer, the purchase price (in full) including any charges for installation services or assistance shall be payable in advance with the placement of the order.

3.3 Except where the contract provides otherwise, fees for additional supplies, services etc shall be payable in accordance with our price lists prevailing at the time. Additional supplies shall on each occasion be due for payment five days following the date of invoice. Monthly service fees shall on each occasion be payable in advance and shall fall due on the third working day of the month.

3.4 Where the agreed supply period exceeds a period of four months from the date the contract was made or where, for reasons for which the customer alone is responsible or which fall within the scope of the risk to be borne by the customer alone, supply is deferred to a date more than four months from the date the contract was made we shall be entitled to charge the price in force on the supply date. Where delay in supply occurs for reasons for which neither we nor the customer are responsible, we reserve the right to amend our prices accordingly if during the intervening period, in particular, on account of pay settlements or changes in the price of materials there has been an increase or decrease in our costs. We shall substantiate such price amendments at the customer's request.

3.5 Even where no payment reminder is issued, where the customer does not pay fees within 10 days of them falling due, he shall be deemed to be in default. Where the customer is in default on a payment, we shall be entitled to charge interest from the relevant date at a rate of 5 percentage points (for consumers) or 8 percentage points (for business customers) above the relevant statutory base rate. We reserve the right to demonstrate that we have suffered further losses resulting from the default over and above such losses as relate to the cost of borrowing.

3.6 Even where the customer makes claims concerning defects or counter-claims, he shall be entitled to make set-off, only if those counter-claims have been determined by final judgment of a court, have been acknowledged by us or are uncontested. Only where the customer's counter-claim derives from the same contract shall he be entitled to apply a retention.

#### **4 Installation services and assistance**

4.1 The fees charged for installation services and/or assistance as provided for in 3.1 (prices/payment terms) are based on our understanding of the task recorded in the quote submitted. If during the course of installation the customer requests modifications or additions, a charge shall be made for the additional expenses thereby arising as provided for in 3.3.

4.2 Unless the contract provides otherwise, the customer shall make available at his own expense such tools, lifting platforms and installation workers as the needs of the contract require.

4.3 In accordance with contractual agreements the customer shall inform us in good time of the on-site conditions for installation work and shall provide us with the relevant documentation concerning, for example: infrastructure, access, arrival, delivery, ground.

4.4 It shall be the customer's responsibility to ensure that the installation workers supplied by him are adequately insured and that all labour and social insurance law requirements are observed.

4.5 We shall compile an installation / service report which details the progress of the installation. The customer shall be required to confirm the progress / completion of the work. Where the Building Code and/or other official regulations require a final inspection and approval or such like to be performed, the customer shall apply to the relevant authority in good time for such inspection to be held in the presence of the installation supervisor / construction foreman prior to the customer handover of the contractual product duly installed / constructed.

4.6 The customer shall designate a contact person for the installation / service work who has been given the task and is authorised to take decisions in the course of the installation work which have binding effect and on which we can rely.

#### **5 Supply and performance times**

5.1 Only where we have expressly agreed supply dates and deadlines to be binding shall they have such effect.

5.2 Our ability to adhere to supply dates or deadlines depends on the resolution of all technical questions and on the customer making timely payment. We reserve the right to rely on the defence of failure to perform.

5.3 If we default or there is a threat of this happening the customer shall grant us a reasonable additional period of time in which to perform beginning with the day on which written notice of default was received. If on expiry of this additional period performance has not ensued, the customer shall be entitled to terminate the contract. Where time is of the essence as regards the supply date it shall not be a requirement that we be granted an additional period of time for performance.

5.4 To the extent that we suffer loss, including any additional expenses arising, where the customer defaults through non-acceptance or where he infringes his obligations to cooperate we shall be thereby entitled to claim damages. In such cases, from the time when the customer defaults through non-acceptance or through non-performance of his obligations risk of accidental destruction or deterioration of the contractual product shall pass to the customer.

5.5 Where the underlying contract concerns a transaction where time is of the essence within the meaning of the fourth point of Paragraph 286(2) of the German Civil Code (BGB) or Paragraph 376 of the German Commercial Code (HGB) or where following a default in supply for which we are responsible the customer is entitled to claim that he no longer has an interest in the continued performance of the contract, we shall be liable in accordance with the statutory provisions.

5.6 In addition, to the extent that our default in supply results from an intentional or grossly negligent breach of a contractual obligation for which we are responsible – including the culpable conduct of our servants and agents for which we are vicariously liable – we shall be liable in accordance with the statutory provisions. To the extent that our default in supply does not result from any intentional conduct for which we are responsible, we shall be liable only for such losses as are reasonably foreseeable.

5.7 Further, to the extent that the default in supply for we are responsible results from our culpable breach of a fundamental term of the contract we shall be liable in accordance with the statutory provisions. In such a case our liability to pay compensation shall be limited to those losses which are reasonably foreseeable.

5.8 For the remainder, in the event of a default in supply, for each complete week of default, we shall be liable to pay flat-rate compensation for the default – to be set-off against any further damages claims in the matter – in the amount of 0.2 % of the value of the goods, subject to an overall maximum, however, of 5 % of the value of the goods.

#### **6 Passage of risk / Shipping / Packaging**

6.1 Unless the order confirmation indicates otherwise, the parties shall be deemed to have agreed on supply "ex works".

6.2 With the exception of pallets, we shall not take back transport packaging and all other packaging as defined in the Regulation on avoidance and recycling of packaging waste (*Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen*). It shall be the customer's responsibility to arrange for the disposal of the packaging at his own expense.

6.3 At the customer's request we shall insure the supply with shipping insurance. The costs arising thereby shall be borne by the customer.

6.4 On delivery the customer shall inspect the packaging without delay and shall notify the shippers – in accordance with their provisions – of any damage to the packaging. The customer shall inform us thereof without delay.

6.5 Where supply is to be made to a foreign destination, the customer shall obtain the necessary consents, in particular the export licence, at his own expense.

6.6 If at the customer's request or if through the customer's fault a delay to shipping occurs, the purchase object shall as a result be stored by us at the customer's risk and expense. In such a case our notice indicating that the product is ready to ship shall be treated as equivalent to the supply thereof.

6.7 Provided that it is reasonable to expect the customer to accept such, we shall be permitted at all times to make part shipments and part supplies.

## **7 Liability for defects / Liability**

7.1 To the extent that the contractual product is defective and the customer has clearly complained thereof, it shall be our responsibility to remedy the defect within a reasonable period, either by repairing the defect or, if we so choose, by supplying a replacement for the contractual product. In so far as our costs have not been increased through any relocation of the contractual product from the place of performance we shall bear all necessary expenses arising in this connection. During the period of supplementary performance the customer shall be permitted neither to reduce the purchase price nor to terminate the contract.

7.2 Following the third unsuccessful attempt to remedy the defect, the process shall be deemed to have failed. Where supplementary performance has failed or where in definitive terms we have unjustifiably refused to make supplementary performance, the customer may insist on a reduction in the purchase price (price reduction) or, if he so chooses, may terminate the contract.

7.3 To the extent that the customer is entitled to claim damages resulting from our intentional conduct or gross negligence, including that of our servants or agents, we shall be liable in accordance with the statutory provisions. To the extent that our conduct was not intentional nor in breach of a fundamental term of the contract, nor motivated by malice nor constituted the undertaking of a guarantee in the matter our liability for damages shall be limited to such losses as are reasonably foreseeable. In such cases our liability for consequential losses, that is to say, in particular, loss of profit shall be excluded.

7.4 Our liability for personal injury resulting from our culpable conduct shall remain unaffected; the same shall apply also to our liability under the Law on product liability (*Produkthaftungsgesetz*).

7.5 Where default in supply or our breach of a contractual term results from natural disasters and

forces of nature, terrorist attacks, armed conflict, political disturbances, strikes or such like, we shall not be liable.

7.6 In all claims of whatsoever legal nature any more extensive liability shall be excluded.

7.7 For business customers, the limitation period for claims as to defects shall be a period of 12 months calculated from the date of delivery.

7.8 In the event of recourse being had against the supplier in accordance with the provisions of Paragraphs 478 and 479 of the German Civil Code (BGB) the limitation period shall remain unaffected, it shall be a period of five years from the date of delivery of the defective item.

7.9 To the extent that testing is required, the contractual products shall be tested by the relevant bodies for conformity to the standards of DIN 4112 / DIN EN 13814. As required by DIN rules, the documentation relating thereto shall be included with the contractual products. As regards contractual products which are not subject to these testing requirements, testing in accordance with DIN / DIN EN standards and / or appropriate documentation may, where applicable, be commissioned at an additional fee. Where the customer's intended use of the product requires other certifications or such like, the customer at his own expense and at his own risk shall arrange for those to be undertaken. Unless provided otherwise in the contract, we shall assume no liability for the award of certification in respect of States which impose requirements other than conformity to the standards of DIN 4112 / DIN EN 13814.

## **8 Safeguarding the seller's lien / Use of the contractual products / Collateral**

8.1 Until all payments arising out of our commercial relationship with the customer have been received we shall retain title to the goods (reserved property). In the event of the customer's breach of contract, in particular when he defaults on payment, we shall be entitled without serving further prior notice to demand that he delivers up the goods supplied. The shipping costs thereby arising shall be borne by the purchaser. Except where we contemporaneously indicate our termination of the contract, our retaking of the contractual product shall not constitute such termination. Our pledging of the reserved item shall constitute always a termination of the contract. Following the retaking of the reserved property we shall be entitled to realise its value. The sum realised – less reasonable realisation expenses – shall be set against the customer's liabilities. In the event of the contract being terminated and the transaction being reversed the customer shall be required to compensate us for use and enjoyment on the basis of the normal market hire fee chargeable for such use of similar items.

8.2 In order to safeguard the seller's lien, the customer shall handle the contractual product with

due care. He shall be required, in particular, to insure adequately, at his own expense, the contractual product against the risk of loss or damage caused by fire, water or theft in the amount of a new item.

Where maintenance and inspection work is necessary, the customer at his own expense shall in good time and in a proper manner undertake this work himself or arrange for such to be undertaken.

Where the customer's use of the contractual product requires official requirements and other provisions to be observed, he shall be required at his own expense to ensure compliance therewith. He shall be required to take out third-party liability insurance relating to his use of the product. On request, the customer shall furnish us with proof thereof. Further, the customer undertakes to have regard to the external parameters (forces of nature and infrastructure) relevant for use and to take timely action by way of appropriate measures to prevent damage to the contractual product and harm to persons and property from arising. If the customer intends to use the contractual product under conditions which deviate from the usual or agreed parameters regarding external conditions, he shall verify its suitability for that intended use at his own expense and shall arrange for a suitable structural analysis to be undertaken.

8.3 The customer shall notify us in writing without delay of all third-party appropriations, in particular of measures in execution of judgment, so that we may bring an action in accordance with Paragraph 771 of the German Civil Procedure Code (ZPO) and he shall do likewise with regard to other legal impairments affecting the purchase product. All losses and expenses incurred by us which result from an infringement of this obligation and from the intervention measures necessary to contest third-party appropriations shall – to the extent that such sums cannot be recovered from the relevant third parties – be reimbursed by the customer.

8.4 The customer shall not be entitled on a permanent basis to attach the purchase product to land, such that it forms an essential element of that land. As collateral, the customer shall assign to us at this stage such rights vis-à-vis the owner of the land as may accrue to him, in the event of such attachment occurring nevertheless.

8.5 If the contractual product becomes inseparably intermingled with items which we do not own, we shall acquire thereby a co-ownership share in the new item in such proportion as the value of the purchase item to the other intermingled items at the time of the intermingling.

8.6 Only with our consent shall the customer in the ordinary course of business be entitled to resell the contractual product. In anticipation of that situation, as collateral for our debts, he shall at this stage assign to us, however, in the amount of our invoice total inclusive of VAT, all those debts as accrue to

him from the resale of the contractual product and, in particular, irrespective of the fact whether the contractual product has been resold without or following treatment.

8.7 In anticipation of the situation that the customer defaults, for such period until full satisfaction of his contractual payment obligation prevails, he shall assign to us as collateral his third party payment claims as accrue from the use and surrender for use of the contractual product. For those purposes the customer shall be required to inform us of such claims and to notify third parties of the assignment thereof. We shall be entitled of our own volition to notify third parties of the assignment.

8.8 To the extent that the realisable value of our collateral exceeds by more than 10 % the debts thereby secured, we undertake, at the customer's request, to release the collateral to which are entitled in accordance with the preceding paragraphs. It shall be at our discretion to select the collateral to be released. The customer shall be entitled to replace the collateral to which we are entitled in accordance with the preceding paragraphs by provision of an irrevocable, directly enforceable guarantee of a large European bank payable on first request.

## **9 Final provisions, choice of law**

9.1 The relations between the contracting parties shall be governed exclusively by the Law of the Federal Republic of Germany. The United Nations Convention on contracts for the international sale of goods shall not apply.

9.2 In the absence of our written agreement the customer shall not be entitled to assign claims resulting from the sales contract nor in the absence of our prior consent shall he be entitled in whole or in part to transfer to a third party his contractual rights and duties.

9.3 If a provision of these standard terms and conditions of sale is or becomes ineffective, void or unenforceable, this shall not affect thereby the remaining terms and conditions of sale. The ineffective, void or unenforceable provision shall be replaced by a provision with the same business aim. As for lacunae in these provisions the same rule shall apply.

9.4 In disputes arising out of or in connection with this agreement the courts in Berlin shall have jurisdiction.

9.5 We shall be entitled to amend these terms and conditions of sale with prospective effect. If within two weeks of receipt the customer does not repudiate the amended terms and conditions of sale, the amendments shall be deemed to take effect.