

## ***Terms and Conditions of Delivery and Payment of ZENTNER SYSTEMS GmbH***

### **Section 1 APPLICATION**

1. These terms and conditions are part of all offers and agreements on the delivery of goods and services rendered by the seller in current and future business relations. Differing conditions of purchase of the buyer shall only be binding for the seller if they have been explicitly acknowledged as binding by him in writing.

### **Section 2 OFFER**

1. Offers are subject to change without notice unless confined to be binding.
2. Test-pieces, samples and other documents and particulars such as illustrations, drawings, weights and measures specifications as well as the reference to DIN standards are only essential character as per agreement if we have expressly confirmed them in writing. Guarantees within the meaning of the law must have been explicitly and separately given by us in writing. The seller reserves the right to conduct modifications with regard to the permanent further development and improvement of his products.
3. Orders shall only be binding with the order confirmation of the seller. Changes and supplements must be made in writing.

### **Section 3 PRICES**

1. Prices are valid ex works excluding packaging plus value-added tax to the respective legal amount. Sales prices shall only be fixed prices if the seller has confined them in writing. Packaging shall be invoiced at the original costs. If the buyer returns packaging used for the transport of the delivered item in accordance with the German ordinance of packaging to the seller, the buyer shall bear the cost of the return transport and the recycling of the used packaging.
2. If deliveries and/or services are performed later than four months after the confirmation of the order the seller shall be entitled to invoice new prices provided catalogue prices and/or materials, wage and other costs have changed in the meantime.

## **Section 4 DELIVERY**

1. Terms of delivery shall commence upon receipt of all documents necessary for the execution of the order, the agreed advance payment and if materials have been supplied in time. They shall be valid subject to correct and timely self-supply unless the seller has promised binding delivery terms in writing. On notification of the readiness for delivery the delivery term shall be deemed to have been kept if the delivery is impossible without the fault of the buyer.
2. Appropriate partial deliveries as well as deviations from the ordered quantities are allowed up to 10 %.
3. In case of, all orders without explicit agreement and call-off dates the seller may, at the latest three months after the delivery of the last partial delivery, request a binding fixing on the delivery of the additional call-off amount. If the buyer does not comply with the request within three weeks the seller shall be entitled to stipulate a two-weeks extra period for delivery and to withdraw from the agreement or refuse the delivery and claim damages.
4. Even in a delivery delay the delivery period extends within reasonable limits in unforeseeable events which the seller was unable to avert despite due care and other circumstances of the case, no matter whether they occurred at the works of the seller or with his subcontractors, for instance owing to strike and lock out, operation breakdown, official interference, energy supply difficulties or delay in the supply of essential raw or building materials.

## **Section 5 PROVISION OF MATERIALS**

1. If materials are provided by the buyer these shall be provided at his cost and risk in time and in faultless condition including a reasonable quantity allowance of at least 5%.
2. Provided these prerequisites are not fulfilled the delivery period extends appropriately. Events of force majeure excluded the buyer shall bear the accruing extra costs even in case of production delays.
3. The seller's liability as to storage and care of the supplied materials is limited to care as in his own affairs. If applicable the costs of insurance shall lie with the buyer.

## **Section 6 RISK TAKING**

1. Carriage paid deliveries included the risk passes to the buyer with the forwarding of the delivered item even if partial deliveries are made or if the seller has undertaken additional services such as shipping costs, carriage of installation. If the delivery is delayed due to circumstances for which the buyer is responsible the risk passes to the buyer from the day the delivery is ready.
2. Upon written request of the buyer the goods shall be insured at his own cost against damage caused by storage, transport and fire as well as breakage.

## **Section 7 RESERVATION OF TITLE**

1. Until the delivered goods are paid and all claims from the business relation, the claim to arise in connection with the purchase item, as well as all claims arising in the future, have been settled the delivered goods remain the property of the seller as reserved goods. The inclusion of individual claims into a current account or the casting of accounts and its acknowledgement shall not cancel the reservation of title. If in connection with purchase price payment a liability of the seller is established and a bill basis the reservation of title shall not expire prior to encashment of the bill by the buyer as drawee. If buyer is in default of payment the seller has the right to withdraw the reserved goods after a reminder and the buyer shall be obliged to restitution.

2. If reserved goods are processed by the buyer into a new chose in possession this processing shall be for the seller without obligations arising for him hereof; the new chose shall be the property of the seller. On processing in combination with goods which are not the property of the seller acquires joint property of the new chose according to the relation of the value of the reserved goods to the other goods at the time of processing. If reserved goods are connected, mixed or mingled with goods which are not the property of the seller according to sections 947 and 948 of the German Civil Code the seller shall be joint owner corresponding to legal provisions.

If the buyer acquires the sole ownership with the combination, mixing or mingling he shall even now transfer joint ownership to the seller in accordance with the value of the reserved goods to the other goods at the time of combination, mixing or mingling. In this case the buyer is obliged to cost-free storage of the chose in ownership or joint ownership of the seller that is also deemed to be a reserved good.

3. If reserved goods are sold by the buyer by themselves or conjunct with goods not in the ownership of the seller the buyer shall even now cede claims arising from the resale to the amount of the value of the reserved goods including all subsidiary rights and ranking prior to the rest. The seller accepts the cession. The value of the reserved goods shall be the invoiced amount of the seller plus a security surcharge of 10% which however will not be raised if barred by third party rights. If the resold reserved goods are in joint ownership of the seller,

the cession of claims shall extend to the amount equivalent to the value of the seller's share in the joint ownership. Subsection 1 clause 2 shall correspondingly apply for the extended reservation of title. The prior cession according to subsection 1 clauses 2 and 3 pertain to the balance claim.

4. If reserved goods are installed as an integral part into the landed property of a third party the buyer shall even now cede remuneration claims against third parties, or to whom it may concern, to the amount of the value of the reserved goods along with all subsidiary rights including the right to register a claim-securing mortgage ranking prior to the rest; the seller shall accept the cession. Subsections 2 and 3 shall apply correspondingly.

5. If reserved goods are installed as an integral part into the landed property of the seller the buyer shall even now cede all claims arising from the commercial sale of the landed property or landed property rights to the amount of the value of the reserved goods along with all subsidiary rights and ranking prior to the rest; the seller shall accept the cession. Subsection 3 clauses 2 and 3 shall apply correspondingly.

6. The buyer shall immediately notify the seller about third party enforcement proceedings pertaining to reserved goods or ceded claims while simultaneously submitting documents required for the objection. Intervention costs accruing thereof shall in any case be to the debit of the buyer.

7. If claims ceded are collected by the seller the buyer is obliged to co-operate comprehensively in the collection by the seller and shall in particular conduct the accounting, give information and hand over documents if these are required in the collection.

Provided the payment is suspended or insolvency proceedings have been filed or opened the right to resale, use or installation of reserved goods and the authorization to collect the ceded claims shall expire. In case of a protest of a bill of exchange or cheque the authorization to collection shall also expire.

8. If the value of the securities allowed for exceed the claims by more than 20% the seller shall in this respect be obliged to retrocession or release at his choice. Upon settlement of all claims of the seller from the business relation the property in the reserved goods and the ceded claims shall pass to the buyer.

9. If the seller makes use of his reservation of title within the scope of the above provisions by withdrawing the reserved goods he shall be entitled to sell the goods or have them auctioned by private contract. The repurchase of the reserved goods is conducted at price obtained, however at no more than the agreed delivery prices. Further claims to damage compensation, in particular to lost profit, shall be reserved.

10. For machines which fulfil their main function only with chemicals the seller provides warranty only for the delivered item and guarantees appropriate function of the machine. The seller holds no responsibility for the chemical process which means that it is excluded.

## **Section 8 TERMS AND CONDITIONS OF PAYMENT**

1. Unless otherwise agreed, our invoices are due 30% on order placement, 60% on delivery and the remaining 10% within 30 days. The payment is only deemed to have taken place if we can dispose of the amount without regress (payment receipt).
2. As a matter of principle assembly works, wage works, repairs and other services rendered are due without deduction.
3. The settlement of an invoice by cheque or bill is conducted on account of payment and in the case of bills requires the prior consent of the seller. All costs arising thereof shall be to the debit of the buyer.
4. Delay of payment or the emergence of circumstances appropriate to deduce the creditworthiness of the buyer shall result in the immediate pay ability of all claims of the seller. In addition the seller shall be entitled to only conduct deliveries against advance payment, to call due all outstanding or delayed invoice amounts and to demand against return of bills accepted an account of payment, cash payment or securities, to withdraw from the agreement after a reasonable extra time and to demand damage compensation owing to non-fulfilment, in addition to bar the buyer from a resale of the goods and to retrieve goods unpaid to the debit of the buyer.
5. Overshooting provided interests or arrears customary in banking, however at least 8% above the respective basis rate of the European Central Bank, shall be invoiced. The buyer is at liberty to submit evidence of a smaller damage.  
Independent of this the seller is at liberty to claim further damage caused by the delay.

## **Section 10 WARRANTY**

1. The buyer is obliged to inspect the goods immediately upon delivery for defects or to ascertain if goods other than agreed were delivered.
2. Notices of defects in the meaning of subsection 1 can only be considered if they have been asserted in writing within 14 days after the goods were received.

3. In case of a defect which cannot reasonably be identified during an immediate inspection the complaint must be forwarded without delay within the 12-months warranty period.

4. If the delivery, the installation or the start of operation is delayed without the fault of the seller the liability shall expire at the latest 12 months after passing of the risk.

5. Deviations customary in trade regarding measures, quantity, weight, quality, color etc. shall not justify complaints. As far as the condition of our products within the meaning of section 434 of the German Civil Code is concerned on principle only our product description shall be deemed to have been agreed on. Public statement, advertisement or commercials of our products shall not be considered as statement of condition with the meaning of this agreement. A reference to DIN standards shall imply a more detailed description of the goods but not a warranty undertaking within the meaning of section 443 subsection 1 of the German Civil Code.

## **Section 11 LIABILITY**

The liability of the seller shall exclusively be governed by the arrangement stipulated in these conditions. Damage claims of the buyer against the seller and his vicarious agent or servant no matter for what legal reason, in particular from recourse in the meaning of section 478 of the German Civil Code, negligence upon completion of agreement, violation of accessory contractual obligations

and unauthorized action shall be excluded unless they rest upon intent or gross negligence or if imperative according to the product liability law. Claims of the buyer for expenditure in case of recourse shall remain unaffected. This exclusion does also not apply to physical as well as health injuries not attributable to us.

## **Section 12 INDUSTRIAL PROPERTY RIGHTS**

1. The buyer shall be liable to the seller for the exemption of ordered deliveries and performances from industrial property rights of third parties, shall hold the seller safe and harmless from all corresponding claims and shall be obliged to compensate him for the damage accrued. The seller has the right to stop deliveries, productions and other works without delay if a third party affirms opposing industrial property rights. This applies without examination of the juridical position.

2. The seller reserves property and copyright-related utilization rights to cost estimates, drawings, software and other documents without limitation; these may not be made accessible to third parties and may only be handled in accordance with the legal provisions of section 69 a cont. of the

German Copyright Act. Drawings and other documents pertaining to the offers must be returned upon request without delay if the order is not given by the buyer.

### **Section 13 CESSION OF CLAIMS**

The buyer may cede claims from this agreement only with the explicit consent of the seller.

### **Section 14 CONCLUSION**

1. Only German law shall apply. This shall also be valid if the buyer is a foreigner or if his domicile is abroad. The provisions of the United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply.
2. As a supplement to the above provisions the stipulations of the German Commercial Code for business among general merchants, and subordinately the provisions of the German Civil Code, shall apply.
3. Place of fulfillment for delivery, performances and payments shall be Detmold, Germany.
4. The sole place of jurisdiction including summary proceedings and summary bill enforcement proceedings shall for both parties and for all present and future claims from the business relation be the court at the seller's domicile. (Detmold, Germany)
5. If a provision is not binding in law this shall not affect the validity of the remaining provisions.