

# General purchasing conditions of ZERA GmbH

## 1 General sphere of application

- 1.1 These General Purchasing Conditions ("GPCs") are the object of contracts concluded by and between ZERA GmbH, Hauptstr. 392, 53639 Königswinter (hereafter referred to as the "Customer"), and its business partners and suppliers (hereafter referred to as "Vendors"). They apply to all business relations between the Customer and the Vendor.
- 1.2 The GPCs particularly apply to contracts concerning the sale and/or delivery of movable goods (hereafter also referred to as "Goods"), irrespective of whether the Vendor manufactures the goods himself or whether he purchases them from suppliers (Sections 433 and 651 of the German Federal Code). The current version of the GPCs will be deemed to be an outline agreement for future contracts concerning the sale and/or delivery of movable goods with the same Vendor, without having to refer to them again in each individual case.
- 1.3 These GPCs apply exclusively. Any deviating, conflicting or supplementary General Purchasing Conditions of the Vendor will only be accepted if and in as far as they form part of the contract, if the Vendor has explicitly agreed to their validity or if they concur with the GPCs of the Customer. The requirement of agreement will apply throughout, for example also where the Customer unconditionally accepts the deliveries of the Vendor while being aware of the latter's General Terms and Conditions.
- 1.4 Individual agreements with the Vendor entered into on a case-by-case basis (including secondary agreements, additions and amendments) will always take priority over these GPCs. The content of such agreements must be set out in a written contract; alternatively, it is subject to our written confirmation.
- 1.5 Material declarations and information to be provided to the Customer by the Vendor after conclusion of the contract (e.g. deadlines, reminders, cancellations) must be in writing and will at least have to be in electronic text form to be accepted as valid.
- 1.6 Notes referring to the validity of legal regulations will only be valid for explanatory purposes. Thus legal regulations, in as far as they have not been directly amended or explicitly excluded in these GPCs, will also be deemed valid without such an explanation.
- 1.7 These GPCs will only apply if the Vendor is a contractor (Section 14 of the German Federal Code), a legal person under public law or a special fund under public law.

## 2 Consulting costs

All offers, visits, consulting services and drafting of plans will be undertaken free of charge by the Vendor at all times.

## 3 Orders

- 3.1 Orders and any changes or additions to orders placed by the Customer must be in writing or in electronic text form. The Vendor is obliged to point out any evident errors (e.g. spelling and calculation errors) and missing information in the order, including the supplementary order information, for the purposes of correction or completion before accepting the order, otherwise the contract will not be deemed to have been concluded.

- 3.2 The Customer is entitled to cancel the order free of charge if the Vendor has not confirmed the order in writing without change within two weeks after receipt or if he fulfils the contract unconditionally by sending the goods (acceptance).

## 4 Delivery period and delays

- 4.1 The delivery times stipulated by the Customer in his order are binding. If the delivery period is not mentioned on the order and has also not been otherwise agreed upon, it will be two weeks from the date of conclusion of the contract. If there should be any expected delays in the delivery of goods or rendering of services, the Vendor must inform the Customer of this delay in writing immediately, stating the expected duration of the delay.
- 4.2 If the Vendor should fail to supply the goods or to meet the delivery deadline agreed upon, or if there should be a delay, the rights of the Customer - especially with regard to cancellation and damages - will be in accordance with the legal regulations. The stipulations of Clauses 4 and 4.3 will not be affected.
- 4.3 If the Vendor should be late, the Customer may - in addition to further legal claims - claim lump-sum damages to the amount of 0.3% of the net price of the goods per calendar day, up to a maximum of 5% of the net price of the goods delivered late. The onus of proof of higher damages will be on the Customer. The onus of proof that the Customer has suffered no damages or substantially lower damages will be on the Vendor.

## 5 Services, delivery

- 5.1 Without prior, written permission, the Vendor will not be entitled to have the services to be rendered by him rendered by a third party (e.g. a subcontractor), provided that the delivery is not in respect of parts commonly found on the market. The Vendor will bear the procurement risk for his services, unless he has been commissioned to manufacture an individual part.
- 5.2 Partial deliveries may only be made with the special, written approval of the Customer.
- 5.3 Deliveries in Germany must be on a "carriage paid" basis to the location provided in the order. If no destination has been stipulated in the order and there is no other agreement, delivery must be to the registered offices of the Customer in 53639 Königswinter. The relevant destination will also be deemed to be the place of fulfilment (debt to be discharged at creditor's domicile).
- 5.4 The delivery must be accompanied by a delivery note, stating the date (date of issue and date of dispatch), the content of the consignment (item reference and number of items ordered) as well as the Customer's order reference (date and number). If there is no delivery note or if the delivery note is incomplete, the Customer cannot be held responsible for any resulting delays in processing and payment. The Customer must receive notice of dispatch with the same content as the delivery note, but separately from it.
- 5.5 Where equipment is delivered, a technical description and instructions for use must be provided free of charge. In the case of software products, the obligation to deliver has only been fulfilled once all documentation (technical and user documentation) has been handed over. Where software has been specially written for the Customer, the source code must be delivered along with the program.
- 5.6 Where deliveries or services are rendered by the Vendor at the premises of the Customer, the Vendor is obliged to adhere to the current version of the instructions regarding personal safety, environmental protection and fire safety given to visitors to the premises.

## 6 Packaging, dispatch and insurance

- 6.1 Goods are normally delivered in standard commercial disposable packaging. The Vendor must remove all packaging material at the request of the Customer. Where reusable packaging has been used, the Vendor must make such packaging available on loan. The return of such packaging is at the cost and risk of the Vendor.
- 6.2 Where the packaging costs are to be borne by the Customer by agreement, the Vendor must choose the least expensive type of packaging and may not charge a mark-up on it. The Customer reserves the right to deduct any excessive packaging costs from the amount invoiced. The return of packaging material to the Vendor at the cost and risk of the Customer will be at the discretion of the Customer, with 80% of the calculated packaging costs being deducted from the invoice. This also applies to so-called disposable packaging. In the event of non-adherence to any packaging regulations, e.g. the failure to use pallets, the Customer will be entitled to deduct the resulting additional costs incurred from the invoice. In terms of the Packaging Ordinance dated 15/05/2002, we only accept disposable or reusable packaging made from materials that pose no health risks and can be recycled.
- 6.3 Where it has been agreed that the freight costs should be borne by the Customer, the Vendor must choose the mode of dispatch and route that is most favourable for the Customer. In the event of non-adherence, the Customer reserves the right of deducting any additional freight costs from his payment. All deliveries will only be confirmed with regard to numbers, weight and quality on the basis of our findings. Where no freight papers are included, the consignment will be stored at the cost and risk of the Vendor until such documentation has been supplied. All freight papers must state the order number, position number and item number. Any delays caused by the failure to supply the order data or to issue the required freight documentation will be for the account of the Vendor. Any advance payments made in respect of freight costs, for example in the case of third-party delivery, must be notified in the form of a copy of the way-bill.
- 6.4 The Customer reserves the right of taking out transport insurance. In this case he will be the "RSV/SVS waiver customer". The Vendor must inform the freight company of this fact without fail.

## 7 Prices

The price given in the order is binding. If not otherwise agreed upon, this price will include all services and additional services incurred by the Vendor (e.g. assembly, installation) as well as all additional costs (e.g. appropriate packaging, transport costs, including potential transport and liability insurance). All prices include VAT at the legally valid rate, which will not be shown separately.

## 8 Invoices

Invoices must be sent to the Customer by separate mail and in two copies. They may not be added to the goods. The wording of the invoice must accurately match the description given by the Customer in his order and must contain the order number, position number and item number, the ordering date and the recipient. In addition, the invoice must contain all information required by the VAT Act to make the deduction of input tax possible. In the case of deliveries and services originating in a member state of the EU but not in Germany, the Vendor must state the EU VAT identification number. If these data should not form part of the invoice, the resulting delays will not be for the account of the Customer. Where a unit price has been agreed upon when placing the order, this unit price will also apply to partial deliveries, provided that the Vendor has declared his agreement.

## 9 Payment conditions

- 9.1 The claim for payment will fall due within 30 calendar days from the date of complete delivery or services rendered (including any acceptance procedure that may have been agreed upon), as well as receipt of an appropriate invoice. Where the Customer makes a payment within 14 calendar days, the Vendor will grant him a 3% discount on the net amount of the invoice, unless otherwise agreed upon in writing. In the event of payment by bank draft, the discount-related costs will be for the account of the Customer.
- 9.2 The Customer does not owe any interest after the due date. This does not affect the right of the Vendor to claim interest on arrears. Legal regulations apply to the start of the arrears period. In either case, the Vendor must send a reminder.
- 9.3 The fact that the Customer has made payment does not imply that he has confirmed that the goods or services have been delivered in accordance with the contract.
- 9.4 The Customer will be able to avail himself of any set-off or retention rights as well as the objection of non-fulfilment of the contract. In particular, the Customer will be entitled to retain any payments due as long as he still has claims resulting from incomplete or faulty goods or services delivered by the Vendor.
- 9.5 The Vendor will only be able to avail himself of a set-off or retention right in the event of a legally valid or uncontested counter-claim.

## 10 Safety, environmental protection

- 10.1 All goods and services delivered by the Vendor must be in accordance with the legal regulations governing safety and environmental protection, including the Ordinance Governing Hazardous Materials, the Electrical Appliances Act and the safety recommendations of the relevant German technical committees or associations such as the VDE, VDI or DIN. The Vendor must deliver the relevant certificates, test reports and proof free of charge.
- 10.2 The Vendor is not permitted to make use of materials prohibited in terms of the regulations mentioned in Clauses 10 and 10.1 above. The Vendor is obliged to obtain the current version of the directives and laws governing materials to be used for the components to be delivered and to adhere to them. Any hazardous materials and materials to be avoided in accordance with current laws and directives must be stated in the Vendor's specifications. Where applicable, the safety data sheets must be submitted together with the offers as well as the initial consignment and delivery note (at least in either German or English). Any information about material restrictions that could not be adhered to or the delivery of prohibited materials must be provided without delay.
- 10.3 The Vendor is solely responsible for adherence to all regulations aimed at the prevention of accidents during the delivery of goods or services. Any protective equipment that may be required and any relevant manufacturer instructions must be provided free of charge.

## 11 Import and export regulations, customs

- 11.1 Imported goods must always pass through customs at the Vendor's expense. The Vendor is obliged to provide any declarations and information requested in terms of Ordinance (EC) No. 1207/2001 at his own cost, as well as to permit inspections by the customs authorities and to provide any official statements required.
- 11.2 The Vendor must inform the Customer in detail and in writing about any approvals required for (re-)export in terms of the German, European and US export and customs regulations, as well as the export and customs regulations of the country of origin of the goods and services.

## 12 Transfer of risk, delay in acceptance

- 12.1 The risk of accidental destruction or deterioration of the goods will only be transferred to the Customer at the time of transfer at the place of fulfilment. Where an acceptance procedure has been agreed upon, this will determine the date of the transfer of risk. In the event of an acceptance procedure, the legal regulations of the laws applicable to works and services will apply accordingly. If the Customer should be late in accepting delivery, this will not change the date of transfer or acceptance.
- 12.2 The legal regulations apply to the start of the acceptance arrears period. The Vendor must also explicitly offer his services to the Customer when a specific calendar date has been agreed upon for any activity or cooperation to be performed by the Customer (e.g. the provision of material). Where the Customer is late in accepting delivery, the Vendor may demand reimbursement of the additional costs incurred by him in terms of the legal regulations (Section 304 of the German Federal Code). Where the contract concerns unique goods to be manufactured by the Vendor (individual production), the Vendor will only have further rights when the Customer has agreed to cooperate and subsequently fails to do so.

## 13 Retention of title

The transfer of title to the goods to the Customer will take place unconditionally and irrespective of the payment of the price. All forms of extended retention of title are excluded; thus a retention of title claimed by the Vendor will only be valid until the goods delivered to the Customer have been paid for and will only apply to such goods.

## 14 Models, samples, tools and drawings, etc.

- 14.1 The Customer will acquire title and copyright to all models, tools, samples, illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documentation.
- 14.2 Such documentation may only be used for the purposes of the contractual services and must be returned to the Customer once the contract has been completed. This documentation must be kept confidential with regard to third parties and may under no circumstances be handed over to a third party. This also applies after completion of the contract. The confidentiality obligation only expires once the information contained in the documents provided has become public knowledge.
- 14.3 The above also applies to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects with which the Customer provides the Vendor for production purposes. Where such objects are not immediately processed, they must be stored separately at the expense of the Vendor and secured against destruction or loss in the normal manner. Section 690 of the German Federal Code does not apply.
- 14.4 The processing, mixing or combination of the goods provided by the Vendor will be carried out on behalf of the Customer. Where such goods are processed, mixed or combined with the property of a third party with retention of title, the Customer will become a co-owner of the new goods pro rata to the value of the goods he has provided to form part of the new goods.
- 14.5 If, in his opinion, the Customer should find it necessary to demand the handover of the models, samples, tools, drawings, all other documentation and information owned by the Customer, the Vendor will not have a right of retention. If models, samples, tools, drawings, all other documentation and information are the property of the Vendor on the basis of a special contractual agreement, the Customer has the right to purchase these parts by paying their cost price - where applicable taking into account the wear and tear and amortisation thereof - and to dispose of them at his discretion. Tools and models must be stored in a different building from the associated

plans for security reasons, for example in the event of a fire, to ensure that they can be recreated.

## 15 Faulty goods

- 15.1 As far as the rights of the Customer in the event of defects of quality or title are concerned (including wrong and incomplete deliveries, improper assembly or incomplete instructions for assembly, operation or use) as well as in the event of other violations of the Vendor's obligations, the legal provisions will apply, provided that no other agreement has been concluded below.
- 15.2 According to the law, the Vendor will particularly be responsible for ensuring that the goods have the appearance and workmanship agreed upon at the time of the transfer of risk to the Customer. The product descriptions that form part of the object of the relevant contract or that have been incorporated into such a contract in the same way as these GPCs will also be deemed to form part of the agreement about the appearance and workmanship of the goods. In this respect, it is irrelevant whether the product description has been given by the Customer, the Vendor or the manufacturer.
- 15.3 In deviation from Section 442 Paragraph 1 S 2 of the German Federal Code, the Customer is also entitled to claim for flawed goods without limitations if the Customer was unaware of them when concluding the contract, even as a result of gross negligence on his part.
- 15.4 The provisions of the law (Sections 377 and 381 of the German Commercial Code) apply to the obligation of the Customer to inspect and inform the Vendor about any defects, with the following provision: the inspection obligation of the Customer is limited to faults that would become apparent during an incoming goods inspection, including an inspection of the delivery papers, or during quality control by random sampling (e.g. transport damage, wrong or incomplete deliveries). Where an acceptance procedure has been agreed upon, the obligation of inspection does not apply. It is also important to which extent an inspection can take place during the course of normal business, taking the circumstances of each individual case into account. The requirement to give notice of defects detected at a later stage remains unaffected. In all cases, the complaint of the Customer (notification of defects) will be deemed to have been made immediately and timeously if it is received by the Vendor within a period of five working days. The period in question starts on the day following delivery, whereas in the case of hidden defects, the period only begins on the day following detection of the defect.
- 15.5 The costs incurred by the Vendor during testing and repair work will be borne by the Vendor, even if it should emerge that there was no defect after all. The Customer's liability for damages will not be affected by an unjustified demand for the removal of defects; the Customer will only be liable, however, if he had detected or failed to detect as a result of gross negligence that there were no flaws.
- 15.6 Where the Vendor does not fulfil his rework obligations - either by eliminating the defects (repair) or by providing goods free from defects (replacement), as preferred by the Customer - within an appropriate time as defined by the Customer, the Customer may have the defect eliminated himself and may claim reimbursement from the Vendor for the expenditure incurred in this regard and/or an appropriate advance payment. Where rework carried out by the Vendor failed or where the Customer cannot reasonably be expected to request rework (e.g. due to special urgency, operating safety risks or impending unproportional damages), no such time has to be granted; the Customer must then inform the Vendor, if possible in advance.
- 15.7 In addition, the Customer will be entitled to a reduction of the purchasing price or to cancel the contract in the event of a defect of quality or title. In addition, the Customer will have a claim for the reimbursement of damages and expenditure incurred according to the law. Where no deviating agreements have been entered into and where the law does not make provision for a longer statute of limitations, the standard statute of limitations for claims for faulty goods instituted by the Customer will be 36 months from the date of transfer of risk.

## 16 Supplier recourse

- 16.1 The legal right of the Customer to institute a claim for regress within a delivery chain (supplier regress according to Sections 478, 479 of the German Federal Code) will be granted to the Customer without restrictions, in addition to his right to claim for faulty goods. In particular, the Customer is entitled to demand exactly the type of rework (repair work or the supply of a replacement) which the Customer must provide for his own customer in any individual case. Our legal right to choose (Section 439 Par. 1 of the German Federal Code) will not be limited as a result.
- 16.2 Before the Customer acknowledges or grants a claim for faulty goods lodged by one of his own customers (including the reimbursement of costs incurred in terms of Section 478 Paragraph 3 or Section 439 Paragraph 2 of the German Federal Code), he agrees to inform the Vendor and to request a written opinion, briefly explaining the facts of the case. If such a written opinion is not received within an appropriate period and no agreement can be reached on a solution, the claim for faulty goods lodged by the Customer's customer will be deemed to be based on fact; it is then the Vendor's responsibility to provide proof to the contrary.
- 16.3 Our claims resulting from supplier regress will also be valid if the goods have been processed by the Customer or one of his customers before sale to a consumer, for example by installation into another product.

## 17 Producer liability

- 17.1 Where the Vendor is responsible for damage to the product, he must indemnify the Customer against third-party claims to the extent that the cause of such damage is within his sphere of influence and organisation and to the extent that he is personally liable to third parties.
- 17.2 Within the framework of his indemnity obligation, the Vendor must reimburse the Customer for any expenditure incurred in terms of Sections 683 and 670 of the German Federal Code resulting from or in connection with any claim against a third party, including any recalls carried out by us. The Customer will inform the Vendor about the content and extent of recall actions in as far as this is possible and reasonable and grant him an opportunity to make representations. Any further legal claims will not be affected.
- 17.3 The Vendor must take out and maintain product liability insurance with a lump-sum cover of at least 10 million Euro per event of personal injury / damage to property.

## 18 Statute of limitations

- 18.1 The mutual claims of the contractual parties will be subject to the legal statute of limitations unless otherwise stipulated below.
- 18.2 In deviation from Section 438 Paragraph 1 No. 3 of the German Federal Code, the general statute of limitations for claims resulting from the delivery of faulty goods is 3 years from the date of transfer of risk. If an acceptance procedure has been agreed upon, the period for the statute of limitations will begin at the time of acceptance. The 3-year statute of limitations also applies to claims resulting from defects of title, with the legal statute of limitations applicable to claims for handover of goods by third parties (Section 438 Paragraph 1 No. 1 of the German Federal Code) not being affected; claims arising from defects of title are not subject to the statute of limitations under any circumstances as long as the third party can still institute a claim against the Customer.
- 18.3 The statute of limitations applicable to purchasing law, including the abovementioned extension, applies to all contractual warranty claims. Where we would be entitled to institute claims for damages beyond the scope of this contract, the normal legal statute of limitations applies (Sections 195 and 199 of the German Federal Code),

unless application of the statute of limitations in terms of purchasing law results in a longer statute of limitations in an individual case.

## 19 Breach of patent or industrial property rights

The Vendor guarantees that the Customer will not be violating the existing rights of third parties by making use of the goods supplied to him. This particularly applies to all patent, trademark and industrial design rights. The Vendor explicitly undertakes to indemnify the Customer against any liability claims resulting from an alleged violation of the rights of third parties and to reimburse him for any damages already incurred or to be incurred by the Customer. In this case, the Customer also reserves the right, at his discretion, either to require that the contract

a) be reversed and that all payments made be reimbursed,

or that

b) those parts that may not be used as a result of the industrial property rights owned by third parties be replaced with other parts,

or that

c) the Vendor will pay the owner of the industrial property rights the licence fee demanded.

## 20 Confidentiality

The Vendor is obliged to regard the orders and the resulting work as well as additional, confidential information as a business secret and to keep such information confidential. He may also only refer to his business relations with the Customer if the Customer has explicitly agreed to this in writing. These obligations will continue to exist after termination of the contract. This obligation does not apply to confidential information to which the recipient already had access when the contract was concluded or which is subsequently provided to him by a third party without violation of any confidentiality agreement, legal regulation or order of the authorities. Excluded is any confidential information that is publicly known at the time of concluding the contract or that subsequently becomes publicly known, in as far as this is not due to any violation of this contract, as is confidential information that must be disclosed as a result of legal obligations or at the orders of a court or the authorities. In as far as this is permissible and possible, a Vendor obliged to disclose such information must inform the Customer in advance and grant him the opportunity to object to such disclosure. Any culpable violation of these regulations will incur a contractual penalty to the amount of EUR 1 000.00. The right of the injured party to institute further claims will not be affected.

## 21 Insolvency

The Customer may withdraw from the contract by giving written notice if insolvency proceedings are announced or instituted against the Vendor, if the Vendor suspends payments or if his company is voluntarily or forcibly liquidated, without the Customer incurring any liability of any kind as a result. The Customer will also have the abovementioned right if the contract has been completely or partially fulfilled by one or both of the contractual parties, as long as the Vendor is subject to his obligations in terms of the warranty or if the Vendor's company passes to a third party.



## 22 Cession

The cession of claims against the Customer is hereby excluded in terms of Section 399 of the German Federal Code. This does not apply when the cession constitutes a commercial transaction for either party in terms of Section 354a of the German Commercial Code or if the claims are not pledgeable in terms of Section 400 of the German Federal Code.

## 23 Choice of law and jurisdiction

- 23.1 The laws of the Federal Republic of Germany apply to these GPCs and to all legal relations between the Customer and the Vendor, with the exclusion of all international and supranational (contractual) legal regulations, especially UN purchasing law. The assumptions and effects of retention of title are subject to the laws applicable to the relevant storage location, in as far as the German legal system chosen is deemed to be inadmissible or ineffective.
- 23.2 Where the Vendor is a dealer in terms of the German Commercial Code, a legal person under public law or a special fund under public law, the only place of jurisdiction for all disputes arising from the contractual relationship - even where these are of an international nature - is our registered office in 53639 Königswinter. The Customer will, however, also be entitled to institute proceedings at the place of fulfilment of the delivery obligation.

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