

# General Terms and Conditions of Sale ZECK GmbH

Version as of: December 2019

## I. General

1. All goods, services and quotations are provided exclusively on the basis of these Terms and Conditions. In the case of permanent business relationships these terms and conditions also apply to future transactions to which no specific reference is made if they were included in an order earlier confirmed by the Vendor. Differing terms and conditions on the part of the Purchaser not acknowledged expressly in writing by the Vendor are not binding on the latter even if not expressly rejected by him.
2. Orders are binding only on the basis of the Vendor's order confirmation. Amendments and addenda must be in writing. All quotations are subject to change without notice unless designated binding offers.
3. The Purchaser's order is binding on him for a period of 6 weeks. The said period commences upon receipt of order by the Vendor.
4. Should any provision contained in our General Terms and Conditions of Sale prove to be or become invalid the validity of all remaining provisions shall not be thereby affected.
5. Rights and obligations flowing from business relations with the Vendor may only be transferred to third parties with the written approval of the Vendor.

## II. Prices

1. If nothing to the contrary emerges from the Confirmation of Order our prices are "ex stock" or "ex works" and exclusive of shipping and handling charges, customs or excise duty, packaging and are liable to the prevailing rate of statutory VAT.
2. We reserve the right to increase prices equally in line with changes in the German Federal Statistical Office consumer prices index.
3. In the case of new orders (= follow-on orders) the Vendor is not bound to abide by previous prices.
4. For pricing the respective weights and quantities calculated by the Vendor are definitive.
5. In the absence of agreement to the contrary prices are stated in EURO.

## III. Payment Terms

1. Unless otherwise agreed upon, payments have to be made by bank transfer in euros indicating the invoice number to the bank account specified in the invoice.
2. The purchase price for deliveries or other services is payable without deductions in accordance with the terms of payment stipulated on the invoice. Any agreed cash discount is subject to the settlement of all earlier due undisputed invoices. No cash discount is granted for contingent payments.
3. The buyer is in default of payment one day after exceeding the agreed upon date of payment without the necessity of a reminder. The default interest is 8 percentage points above the base interest rate, unless the seller proves a higher damage. ZECK reserves the right to remind clients with two payment reminders of the outstanding invoice. Two weeks after issuing the second reminder ZECK assigns the claim in the form of a debt collection procedure.

4. The buyer can only offset a claim or exercise a right of retention, if their claims are unchallenged or have been made legally binding.
5. Failure to comply with terms of payment or circumstances that give serious reason to question the buyer's creditworthiness result in the immediate maturity of all outstanding claims of the seller. In addition, the seller has the right to demand advance payments or collateral for all outstanding deliveries, as well as following a reasonable period of extension to withdraw from the contract and demand compensation and, furthermore, to prohibit the resale of the goods and take back any unpaid merchandise at the buyer's expense.
6. Payments of the buyer will always - notwithstanding differing terms of payment of the client - first be entered against default interest and charges of the oldest outstanding claims of the seller against the buyer.

#### **IV. Obligations to supply and accept delivery**

1. Details in respect of delivery dates are not binding. Delivery dates are only binding if agreed in writing and expressly designated as binding. Upon notification of readiness for shipment the delivery date is deemed observed if shipment fails to take place in the absence of blame on the part of the Vendor. Any delivery date agreed shall be extended as appropriate if the Purchaser fails to fulfil acts of cooperation incumbent upon him or fails to provide the same in time, in particular if:
  - The Purchaser fails to provide information or documentation needed by the Vendor to fulfil the contract or if the Purchaser amends such information or documentation retrospectively and thereby causes a delay in provision of goods or services.
  - The Purchaser or third parties fall into arrears with preliminary work incumbent upon them.
  - The Purchaser fails to make agreed payments in time.
2. Should the Vendor fall into default in delivery the Purchaser shall be entitled, following establishment of an appropriate period of grace for delivery, to withdraw from the contract. Damages claims are excluded unless the Vendor acts with intent or is guilty of gross negligence.
3. Appropriate partial deliveries are permissible.
4. In the case of call-off orders with no agreement of term, production batch sizes or delivery acceptance dates the Vendor may demand binding definition in that regard three months following confirmation of order. Should the Purchaser fail to meet the said request within three weeks the Vendor shall be entitled to set a two-week period of grace and following expiry thereof to withdraw from the Contract without prejudice to the right to claim damages. Advance payments made shall be refunded minus costs incurred and damages claims.
5. Should the Purchaser fail to meet his obligation to take delivery the Vendor, without prejudice to any other rights and following an appropriate period of grace to accept delivery, shall be entitled to withdraw from the contract and to demand damages. The Vendor shall be entitled to freely sell the goods concerned.
6. In the event of force majeure and other unforeseeable, extraordinary and circumstances in the absence of blame – e.g. difficulties in obtaining materials, operational disruptions, strikes, lockouts, lack of means of transportation, cases of official interference, energy supply difficulties etc., even if these occur at sub-suppliers - the delivery date shall be extended to an appropriate degree if the Vendor is prevented from meeting his obligations on time. If supply of goods or services is rendered impossible or unreasonable as a result of the above circumstances the Vendor shall be released from the obligation to supply. Should the delivery date be extended or should the Vendor be released from the obligation to supply the Purchaser may not base any damages claims thereon. The Vendor may only have recourse to the circumstances cited if he informs the Purchaser immediately. Any advance payments made by the Purchaser shall be refunded by the Vendor immediately.

## V. Packaging, containers, shipment and transfer of risk

1. In the absence of agreement to the contrary choice of packing, shipment route, nature of transportation and containers shall be at the Vendor's sole discretion. If containers or pallets are provided by the Vendor these are provided on a loan basis and must be returned to the Vendor immediately, otherwise the Vendor shall be entitled to invoice the said containers/pallets to the Purchaser at appropriate prices.
2. If provision of containers by the Purchaser is agreed the said containers must be received at the Vendors dispatch point in good time and free of charge. The Vendor is under no obligation to examine, clean or repair, but is entitled to charge this to the Purchaser however.
3. Risk shall transfer to the Purchaser including in the case of carriage paid delivery at the point of departure from the supplying factory. In the event of delays in shipment for which the Purchaser is responsible, risk transfers at the point of notification of readiness for shipment.

## VI. Retention of Title

1. Goods remain the property of the Vendors up to the point where all claims due to the Vendor from the Purchaser are met even if the purchase price has been paid for specifically itemized accounts receivable. In the case of running accounts the reserved title to the goods (goods subject to reservation of title) shall be deemed to act as security for the Vendor's account balance.
2. Any adaptation or processing on the part of the Purchaser shall be to the exclusion of acquisition of title under Sec. 950 BGB as authorized by the Vendor and the latter shall accordingly acquire joint title in the ratio of the net invoice value of the adapted or processed item to the resultant item, which shall serve as goods subject to reservation of title as security for the Vendor's claims as defined in Para. 1.
3. In the event of adaptation (combination/amalgamation) by the Purchaser with other goods not belonging to the Vendor the provisions contained in Secs. 947 and 948 BGB shall apply with the consequence that the proportion of the Vendor's joint title in respect of the new item shall thenceforth apply as goods subject to reservation of title as defined in this present condition.
4. The Purchaser is permitted to utilize and use goods subject to reservation of title in the normal course of business operations. The latter must be adequately insured for the duration of reservation of title against liability risks and the eventuality of damage or loss with the proviso that rights ensuing from the insurance are due to the Vendor. Any corresponding evidence of concluding such insurance cover shall be provided by the Purchaser. Should the Purchaser fail to arrange the said insurance cover by at the latest the point of delivery of the goods the Vendor shall be accordingly entitled to insure the goods subject to reservation of title himself – at the Purchaser's cost.
5. For the duration of the period of reservation of title the Purchaser hereby undertakes to maintain the goods subject to reservation of title in proper condition at his own cost, to immediately lastingly rectify all damage occurring immediately and to desist from any form of use which might lead to excessive wear and tear or unusual damage to the goods subject to reservation of title.
6. In general terms the Purchaser is forbidden to resell goods subject to reservation of title in the normal course of business.
7. Should the value of securities furnished for the Vendor exceed the latter's total accounts due by more than 20% the Vendor hereby undertakes at the Purchaser's request to release securities at the Vendor's choice.
8. Forms of distraint or confiscation of goods subject to reservation of title by third parties must be notified to the Vendor immediately. Intervention costs incurred as a result shall in all cases be charged to the Purchaser unless borne by third parties.

9. In the event of payment default on the part of the Purchaser and after establishing an appropriate 7-day period of grace the Vendor shall be entitled to revoke authorization in respect of use, processing, combination and amalgamation under Paras. 2 to 5 with immediate effect. In such event the Purchaser undertakes at the Vendor's request to surrender the goods subject to reservation of title immediately.
10. If the Vendor exercises his retention of title under the above provisions by recovering goods subject to retention of title he shall be entitled to freely sell or have auctioned the said goods subject to retention of title. Recovery of goods subject to retention of title shall be at the rate of proceeds achieved subject however to a maximum of the delivery prices agreed. The right to further damages claims, in particular lost profit, is reserved. Recovery of goods subject to retention of title only involves withdrawal from the contract if this is expressly stated by the Vendor in writing. Any Vendor claims (such as damages on the basis of lost profit) shall initially be offset against payments already made by the Purchaser.

## VII. Guarantee

1. Agreements regarding the properties and condition of the item supplied must be stated in writing in the confirmation of order. Reference to technical standards shall serve as the specification. Details contained in product descriptions, brochures and technical information sheets including assembly instructions are non-binding.
2. If the Vendor has acted as consultant to the Purchaser outside his contractual services he shall be liable for the functionality and suitability of the item supplied only in the event of express written assurance. Definitive is the state of the art at the point in time of order acceptance. In respect of the Vendor's liability for damages VIII 8 applies.
3. The Purchaser must check whether the goods supplied are of the contractually agreed properties and condition and are fit for the intended operational purpose. Deliveries must in all cases be examined in the presence of the delivery agent for completeness and cases of damage. Any cases of quantitative shortfall/damage must be clearly certified by the delivery agent in the accompanying paperwork.
4. Notices of defect must be claimed against the Vendor immediately following receipt of delivery and in the case of hidden defects immediately upon discovery.
5. Defect claims are time-barred 12 months from the point of acceptance of delivery; at the latest with effect from transfer of risk. The Vendor is not liable for any guarantee as to when and to what extent the Purchaser can have recourse vis-à-vis his customer in respect of time-barring of defect claims. For parts installed during rectification work defect claims are time-barred with time-barring of defect claims in respect of the item purchased, at the earliest one year from installation. For used items no defect guarantee is assumed by the Vendor.
6. In the case of justified defect notifications the Vendor undertakes to perform rectification work or replacement free of charge at his own discretion. Should he fail to meet these obligations within an appropriate period of grace the Purchaser shall be entitled following expiry to no avail of an appropriate period of grace either to reduce the purchase price or to withdraw from the contract. Parts replaced shall be returned to the Vendor on request freight collect.
7. The Vendor shall bear the costs of rectification or installation of spare parts at the Vendor's factory or at a Vendor's authorized service workshop. The Purchaser shall convey or send the goods the subject of complaint following notification of the workshop responsible to that location at his own cost. Should the defect complaint prove to be justified the Vendor shall refund the costs of the most economical means of shipment of the goods the subject of complaint. Rectification or replacement part installation costs at the installation location of the purchase item shall be borne by the Vendor only in the event of a separate agreement in this regard. Costs incurred due to the fact that the purchase item was transferred by the Purchaser to a location other than the original delivery location shall in any event be charged to the Purchaser and similarly costs

for necessary replacement of consumables or materials subject to wear and tear such as lubricants, hydraulic oil, filters and the like.

Costs for replacement machinery or stoppage costs in respect of the purchase item for the duration of rectification work shall only be borne by the Vendor if and to the extent that he has caused such costs through intent or gross negligence.

In total the Vendor's liability for all consequential losses in connection with the defective nature of the product is limited to 2% of the respective sale value.

8. No defect claims exist if the fault is caused by
- Overstressing or improper treatment of the purchase item.
  - Natural wear and tear or adjustments
  - Failure to follow regulations in respect of treatment, servicing and maintenance of the purchase item (e.g. in accordance with operating instructions, maintenance schedules) or failure to comply with specialist and timely implementation of customer services.
  - Undertaking modifications or corrective maintenance by the Purchaser in the absence of prior consent on the part of the Vendor, in particular fitting parts.
  - Undertaking customer services, servicing and maintenance work by a company not authorized by the Vendor.

In all the above cases the guarantee for the entire machine/plant lapses.

9. Only in order to prevent disproportionately major damage is the Purchaser entitled, following prior agreement with the Vendor, to undertake rectification himself and to request compensation of appropriate costs in that regard.

10. The sale of used machines and accessories shall be effected without warranties of any kind. This exclusion does not apply to claims for damages caused by intentional or gross negligence by the seller as well as in case of loss of life, physical injury or damage to health.

### **VIII. General limitation of liability**

In all cases in which the Vendor is liable for damages contrary to the above provisions on grounds of the contractual or statutory basis of the claim - i.e. also as a result of unlawful action - he shall be liable only if he, his legal representatives or vicarious agents are guilty of intent or gross negligence. This limitation of liability does not apply in the event of damages arising from injury to life, physical injury or injury to health attributable to negligent breach of obligation on the part of the Purchaser or any intentional or negligent breach of obligation on the part of any legal representative or vicarious agent of the Vendor.

### **IX. Place of Performance and Legal Venue**

1. Place of performance for all mutual obligations of the parties is Schesslitz, Germany.
2. Legal venue is Bamberg, including for actions in the documentary evidence, cheque or bills of exchange process. The Vendor is also entitled however to bring an action at the domicile of the Purchaser.
3. The definitive contractual language is German.
4. The laws of the Federal Republic of Germany apply. Application of the UN Convention on the International Sale of Goods is excluded.