

Terms and Conditions of Purchase

of Zeppelin Power Systems GmbH & Co. KG (ZPS), Ruhrstraße 158, D-22761 Hamburg

- 1. Scope; Deviating Terms and Conditions; Conclusion of Contract; Collateral Agreements**
 - 1.1 The following Terms and Conditions shall apply exclusively to orders and purchasing contracts of ZPS. On conclusion of the first contract incorporating the following Terms and Conditions the supplier recognises their applicability for the entire duration of the business relationship between the Contracting Parties. This shall apply similarly to all subsequent business concluded, also verbally and in particular by telephone.
 - 1.2 The general terms and conditions of the supplier shall only apply insofar as they agree with the following Terms and Conditions. Deviating or supplementary terms and conditions of the supplier shall not become part of the contract even if ZPS accepts the work or service without reservation in knowledge of these terms.
 - 1.3 Verbal side agreements do not exist. Without purchasing authority, the employees of ZPS are not entitled to alter or contract out the following conditions.
- 2. Offers; Offer Documents**
 - 2.1 Any offer made by ZPS (order) may only be accepted by the supplier within a period of seven (7) calendar days after receipt of the offer; after expiry of this period ZPS is no longer tied to the offer. The acceptance of the offer is made exclusively by signing and returning the attached order confirmation (copy of the order). ZPS does not therefore waive receipt of acceptance.
 - 2.2 The offer documents sent by ZPS to the supplier shall remain the property of ZPS. ZPS shall explicitly reserve copyright to the offer documents. The offer documents sent must be treated confidentially vis-à-vis third parties and returned without request to ZPS after the order has been processed.
- 3. Right to Make Changes; Delivery Dates; Delivery Default; Part Work and Services**
 - 3.1 Even after conclusion of contract, ZPS is entitled to inform the supplier of any desired changes. If, as a result of taking into consideration the desired changes communicated by ZPS, the extent of delivery/work or service on the part of the supplier is reduced, ZPS shall compensate the supplier for the delivery/work or service proportionately. If the consideration of desired changes communicated by ZPS leads to additional costs, the supplier must notify ZPS of this immediately in writing. A contract on consideration of the desired changes communicated by ZPS shall come about in this case only once ZPS has confirmed the desired changes in writing in knowledge of the additional costs or accepts the goods/service without reservation.
 - 3.2 The delivery deadlines and delivery periods are binding and must be observed. If desired changes communicated by ZPS are to be taken into consideration as part of the delivery/service, the agreed delivery period shall be extended by a period to be agreed with ZPS that is appropriate with respect to the desired changes considered.
 - 3.3 The supplier is obliged to inform ZPS immediately in writing if circumstances occur or become recognisable to him from which it is evident that the agreed delivery period cannot be observed. In the event of an infringement of this obligation for which he is responsible, the supplier must compensate ZPS for any damage arising.
 - 3.4 In the event of a delivery default, ZPS is entitled to charge default damage of 1% of the contractual price per default week commenced and a maximum of 5% of the contractual price. It is the responsibility of the supplier to prove that ZPS has sustained no damage or only considerably smaller damage. ZPS reserves the right to provide evidence of further damage from default and to assert such.
 - 3.5 If the goods/service ordered are delivered/performed or handed over early, ZPS reserves the right to store the goods/service at the expense of the supplier until the agreed delivery date or expiry of the delivery period. Paragraph 5.4 Sentence 1 shall apply to the due date of the agreed contractual price.
 - 3.6 Part delivery/part service is only permitted after the written consent from ZPS.
- 4. Transfer of Risk; Despatch**
 - 4.1 The supplier is obliged to deliver the ordered goods/service to ZPS without delay and at the latest on the agreed delivery date. The delivery/service must be provided free in the absence of any other written agreement to the contrary. The risk of accidental destruction and accidental deterioration of the ordered goods shall pass to ZPS on delivery. This shall also apply if the supplier sends the ordered goods to the place of delivery/service at the request of ZPS and hands said goods to a forwarder or freight carrier beforehand.
 - 4.2 The supplier is obliged to specify the correct order number of ZPS on all despatch papers, invoices and delivery notes. The supplier is responsible for all consequences arising from the failure to comply with this obligation insofar as he is unable to show that he is not responsible for such.
- 5. Prices; Transport and Ancillary Costs; Due Date; Invoicing**
 - 5.1 All prices set out in offers (orders) of ZPS are fixed prices. The statutory rate of value added tax is not contained in the price. If an offer does not show a price, this must be specified in the written confirmation of order (see Paragraph 2.1). In this case a contract shall come about if ZPS confirms in writing the conclusion of contract in the knowledge of the specified price or accepts the goods/service without reservation.
 - 5.2 In the absence of deviating written agreements, the agreed contractual price shall include all ancillary and packaging costs arising for a consignment as well as the delivery/service to the point of receipt set out in the order free of charge to ZPS.
 - 5.3 Invoices must be sent to ZPS as a single copy immediately after making the delivery/providing the service. Every invoice must contain the correct order number of ZPS, the date of the order as well as any drawing and production numbers. If the invoice refers to goods/services of different orders, the quantity belonging to every order must be specified separately. Paragraph 4.2 Sentence 2 shall apply mutatis mutandis.
 - 5.4 The contractual price shall not fall due for payment before the agreed delivery/service provision date or expiry of the agreed delivery/service provision period. In the absence of deviating writing agreement, ZPS shall pay the contractual price within 14 days starting from the delivery/service and receipt of invoice with 3% discount or within 30 days of receipt of invoice without deduction.
- 6. Offset; Right of Retention; Transfer of Rights and Duties**
 - 6.1 The supplier may only offset against claims of ZPS with undisputed claims or claims which have been determined res judicata.
 - 6.2 The supplier may only assert a right to refuse performance or a right of retention if the claims attributable to him and ZPS are based on the same contractual relationship and the claims he has asserted are undisputed or have been determined res judicata.
 - 6.3 The supplier may not transfer his contractual obligations and rights to third parties without the explicit consent of ZPS.
- 7. Nature of the Goods; Claims on the Ground of Defects; Self-Performance; Warranty; Statute of Limitations**
 - 7.1 The goods delivered by the supplier must comply with the state of the art. All current standards, guidelines and regulations of authorities, employers' liability insurance associations (*Berufsgenossenschaft*) etc. must be complied with.
 - 7.2 The liability of the supplier for the correctness and the completeness of his work and services shall not be restricted by recognition, approval of or consent to as-executed drawings of ZPS.
 - 7.3 An incoming goods inspection shall be made by ZPS only with respect to externally recognisable damage and externally recognisable deviations from nature and quantity. ZPS shall complain of any such defects immediately. Otherwise, ZPS shall complain of defects as soon as they are determined during the course of normal business operations. The supplier shall refrain from the objection of late complaint in this respect.
 - 7.4 After fruitless expiry of an appropriate period set for the supplier to remedy a defect, ZPS shall be entitled, notwithstanding further statutory claims, to eliminate the defects itself or have them eliminated by third parties (self-performance) at the cost of the supplier. It shall not be necessary to set a deadline in the case of minor defects or if ZPS co-ordinates with the supplier with respect to the work to be performed. The same shall also apply if a risk to operational security or the risk of unusually high damage at ZPS or third parties emanates from the defect. In this case ZPS is obliged to inform the supplier immediately after eliminating the damage or eliminating the risk about the measures performed in this way.
 - 7.5 ZPS shall be entitled to the statutory defect claims without restriction. They shall become statute barred on expiry of 24 months after acceptance of the work/service by ZPS and at the latest 30 months after delivery or handing over the goods to ZPS. The period of limitation shall be suspended for as long as negotiations on defect claims or the underlying circumstances are pending between ZPS and the supplier or the supplier is in the process of checking the existence of the defect and/or subsequent performance. The suspension shall start with the written or verbal notification of defect by ZPS and shall end once the asserted defects have been eliminated in full and the goods/service have been accepted by ZPS or a Contracting Party refuses to continue negotiations about the defect claims asserted. Section 203 Sentence 2 German Civil Code (BGB) shall not be affected by this.

- 7.6 If ZPS is obliged to take back goods sold by it as a result of faultiness of the contractual subject matter delivered by the supplier or if ZPS's purchase price is reduced or if claims are otherwise asserted against ZPS, ZPS shall reserve the right to have recourse to the supplier, whereby it is not necessary to set a deadline for the assertion of the complaint rights.
- 7.7 If the goods supplied are prototypes, the properties and serviceable life for which the supplier does not wish to be responsible, the supplier must indicate this to ZPS as well as all defects and error sources that may arise before sending the signed order confirmation (Paragraph 2.1) in a special letter. Restricted liability on the part of the supplier shall only come into consideration on written consent of ZPS and only for those defects and error sources to which the supplier has made reference.
- 8. Reservation of Contractual Penalty**
- If a contractual penalty has been agreed, ZPS shall be entitled to assert the reservation pursuant to Section 341 (3) German Civil Code (BGB) (reservation of contractual penalty) until the expiry of a period of one month following complete supply or delivery of the goods to ZPS or acceptance by ZPS of the service to be last provided by the supplier.
- 9. Infringements of Industrial Property Rights; Indemnification**
- 9.1 The supplier shall be liable for ensuring that third party property rights in Germany or, insofar as the supplier is aware of the destination of the goods/service, in the final destination of the goods, are not infringed by the delivery or use of the goods/service.
- 9.2 If a claim is asserted against ZPS in connection with an infringement of Paragraph 9.1 by a third party, the supplier is obliged to indemnify and hold harmless ZPS from this claim on first written request. The indemnification obligation shall refer to all expenses sustained by ZPS from or in connection with the third party claim. ZPS is not entitled to enter into any agreements in this respect, in particular a settlement with third parties, without the approval of the supplier.
- 9.3 The claim to indemnification to which ZPS is entitled pursuant to Article 9.1 and 9.2 shall become statute barred in 10 years starting from delivery or handing over of the goods to ZPS or acceptance of the service by ZPS.
- 10. Reservation of Ownership; Provision of Parts by ZPS**
- 10.1 Ownership to the goods delivered shall pass to ZDF on complete payment. Any extended or prolonged reservation of ownership on the part of the supplier shall be precluded.
- 10.2 When the goods are delivered to ZPS, ZPS shall be entitled to dispose of these.
- 10.3 Insofar as ZPS supplies or provides parts to the supplier, the General Terms and Conditions of ZPS shall apply in this respect. The General Terms and Conditions of ZPS in their current version shall be provided to the supplier at his request.
- 11. Packaging**
- Insofar as no deviating written agreement exists, ZPS shall be entitled but not obliged to return to the supplier free of charge the packaging supplied or used by him. If the packaging is still of value to the supplier, because it is reusable, the supplier must credit ZPS with this value to the agreed contractual price. This shall also apply if the packaging costs are not stated as such in the agreed contractual price.
- 12. Product Liability; Indemnification; Liability Insurance Protection**
- 12.1 If the supplier is responsible for a product fault in accordance with the statutory provisions, he is obliged to indemnify and hold harmless ZPS from third party damage claims at first written request and to reimburse ZPS all expenses resulting from and/or in connection with a recall campaign performed by ZPS. ZPS will inform the supplier as far as possible and as can be reasonably expected about the content and extent of the recall measures to be taken and shall give him the opportunity to comment. This shall not affect any further statutory claims.
- 12.2 The supplier shall undertake to maintain a product liability insurance policy with a cover amount of at least € 5.0 m. per personal injury/pecuniary damage as a lump sum. This shall not affect any further damage claims attributable to ZPS.
- 13. Confidentiality, Return of Documents**
- 13.1 All documents provided to the supplier by ZPS shall be the property of ZPS and may not be made accessible to third parties subject to the explicit permission from ZPS. On ending the order all documents must be returned to ZPS free of charge.
- 13.2 Any goods produced in accordance with the information, drawings and models from ZPS may not be given to third parties without the written agreement of ZPS.
- 13.3 Insofar as the agreement of ZPS has been provided for third party delivery, the obligations pursuant to Paragraphs 13.1 and 13.2 must be imposed on the third party by the supplier.
- 13.4 The know-how and the other business or operational secrets of ZPS to which the supplier becomes privy during performance of order must be treated confidentially by the supplier and may not be passed on to third parties.
- 13.5 The obligations to be satisfied by the supplier pursuant to Paragraphs 13.1 to 13.4 shall also apply after the end of the agreement. For its part, ZPS shall undertake to heed the provisions in Paragraphs 13.1 to 13.4 with respect to all business documents and operational secrets of the supplier.
- 14. Written Form; Severability Clause; Applicable Law**
- 14.1 All agreements and collateral agreements to this contract shall be concluded exclusively in writing. Verbal collateral agreements do not exist. E-mails do not satisfy this written form requirement.
- 14.2 In the event of individual contractual provisions being or becoming ineffective in whole or in part, this shall not affect the efficacy of the remaining contract; this shall also apply if the agreement has any gaps. An appropriate provision is to replace any provision that is legally ineffective in whole or in part or to fill a gap which, insofar as legally possible, comes as close as possible to that intended by the Contracting Parties or that which the Contracting Parties would have wanted according to the purpose of the agreement had they recognised the gap.
- 14.3 The law of the Federal Republic of Germany applies; in the case of agreements with foreign suppliers ousting the International Sale of Goods Convention.
- 15. Place of Performance; Venue**
- 15.1 Place of performance for all claims arising from the contract concluded between the supplier and ZPS is the point of receipt specified by ZPS.
- 15.2 Insofar as the supplier is a businessman, Hamburg is the venue. This venue is exclusively competent for any legal action taken by the supplier against ZPS. ZPS is entitled to take action against the supplier at his general venue.
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