



# General Conditions of Sale of ZUWA-Zumpe GmbH

status as of 01.12.2007

## ZUWA-Zumpe GmbH

### I. Validity, conclusion of the contract

- 01 The following Conditions of Sale and Payment, as well as any separate contractual agreements, shall apply to all our supplies and services to our customer – hereinafter named "customer".
- 02 Any deviating General Terms and Conditions of Business of the customer shall not form part of the contract, even through our acceptance of the order.
- 03 In the absence of a separate agreement, a contract shall materialise upon our written confirmation of the order. In the absence of any separate agreement, the type and scope of supplies and services shall substantially be in conformity with our order confirmation.

### II. Offer, reservation of right to make amendments

- 01 All offers shall always be subject to confirmation.
- 02 The documents forming part of our offers, such as illustrations, drawings and details of weights and measures are only approximate values and, as such, are only applicable in so far as they are not expressly designated binding.
- 03 Any amendments to the technical design of the goods ordered shall be admissible in so far as a significant change in function does not occur thereby or the customer does not prove that the change is unreasonable for it.
- 04 We reserve our unrestricted ownership and our comprehensive intellectual property rights and copyrights in cost estimates, drawings, models, plans and any other documentation in material and immaterial form, in particular electronic form. They are to be treated confidentially and may not be made accessible to third parties.

### III. Prices and payment terms

- 01 In the absence of any special agreement, our prices are always quoted in EUROs ex works. Within the country, the statutory applicable rate of VAT shall apply in addition to the prices. In the case of prices ex works the customer shall in addition bear the costs of packaging, insurance, despatch and any customs duties.
- 02 Our invoices are payable immediately without deduction - subject to any special written agreements.
- 03 In the event of arrears of payment and/or doubt concerning the creditworthiness of a customer we reserve the right to require the customer to pay in advance or to request a corresponding security deposit.
- 04 The customer may only assert rights of retention or offset our claims with counterclaims in so far as the latter have been determined undisputedly or with legal validity.
- 05 Partial deliveries shall be invoiced separately. In that respect, the respective above-mentioned conditions shall apply.

### IV. Delivery and delivery deadline

- 01 The specifying of particular delivery deadlines and delivery dates shall be subject to the reservation that we receive correct and timely deliveries ourselves. Should any delays in that respect become apparent, we shall inform the customer of this as soon as possible.
- 02 The customer shall be obliged to inform us in good time of the exact delivery address; we shall not accept any liability for errors occurring on the part of the customer in that respect. Any additional costs which may be incurred shall be borne by the customer.
- 03 The delivery deadline shall only begin to run following receipt of all details and documentation necessary for processing the order from the customer.
- 04 Delivery deadlines shall be extended by the period in which the customer is in arrears with the fulfilment of its principal contractual obligations, in particular the fulfilment of its payment obligations.
- 05 The delivery deadline is deemed to have been adhered to if the items to be delivered have left the factory prior to its expiry or readiness for despatch has been notified to the customer. Deliveries ex works shall be fulfilled upon provision of the goods for collection by the customer.
- 06 Partial deliveries shall be permissible, in so far as they are reasonable for the customer.
- 07 We shall not be responsible for any delay and failure to deliver for as long as we or our assistants or suppliers are not blameworthy. This shall particularly apply in the event of Acts of God. Should a claim for compensation for damage accrue to the customer as a result of our delay in accordance with the statutory provisions, this shall be restricted to the damage foreseeable at the time of concluding the contract, however a maximum of 5% of the value of the partial or entire delivery, in so far as, in consequence of the delay or non-delivery, the latter cannot be used by the customer in good time or in accordance with the contract. This restriction shall not apply in so far as we are unrestrictedly liable in cases of intent or gross negligence. The customer is required to inform us immediately in writing on any impending damage due to delay.

- 08 Should the despatch of the items to be delivered be delayed for reasons which are the fault of the customer, we shall be entitled, commencing two weeks after notification of readiness for despatch, to charge the customer for any costs incurred through the delay.

### V. Delay in acceptance

- 01 For the duration of the delay in acceptance we shall be entitled to store the delivery items at the customer's expense.
- 02 If the customer continues to refuse acceptance following the expiry of a reasonable deadline set for it, or previously finally and seriously declares that it no longer wishes to accept the delivery, we may withdraw from the contract and require compensation for damage in place of the customer's payment. As compensation for damage we may require 25% of the agreed purchase price. We reserve the right to assert a higher claim for damage.
- 03 Should the customer delay in acceptance of the delivery, the risk shall pass to it.

### VI. Passing of risk

- 01 Upon agreed delivery carriage paid or DDU, the risk shall pass to the customer upon handing over the goods. In the case of delivery ex works, the risk shall pass to the customer upon provision of the delivery. This shall also apply if despatch is delayed as a result of circumstances for which we are not responsible. Should notification of readiness for despatch not occur, the risk shall pass to the customer upon handing over the goods to the post, the carrier or freight forwarder, however at the latest upon leaving the factory premises. This shall also apply to partial deliveries and in the event that we take on further services, such as the costs of despatch or delivery charges. We undertake to conclude insurances requested by the customer, at the customer's expense, upon receipt of advance payment.
- 02 With reference to our reservation of ownership, the customer is required to ensure that the delivery is insured, since, upon asserting our reservation of ownership, we take the full value of the goods as a basis and any damage or deterioration which has occurred to the delivery items in the meantime shall be made good at the customer's expense.
- 03 In the absence of any special agreement, any returns shall always be at the customer's expense and risk.

### VII. Reservation of ownership

#### A) Business within the country

- 01 We reserve the right of ownership in the items delivered by us (reserved goods) in all cases. Respective ownership shall only pass to the customer following payment in full.
- 02 Should the customer be an independent contractor, it shall be entitled to resell the items supplied within the scope of its orderly course of business, and on its usual terms and conditions of business, for as long as it is not in arrears. In this case the customer already now assigns to us all receivables with all subsidiary rights accruing to it from the consumer or third parties as a result of the resale, and in fact regardless of whether the reserved goods are resold without or following further processing or manufacture. The customer shall continue to be entitled to collect these receivables following assignment. Our authorisation to collect the receivables ourselves shall remain unaffected thereby. We shall not make use of this authorisation for as long as the customer fulfils its payment obligations in an orderly manner. We may require the customer to make known to us the assigned claims and the debtors thereof, provide us with all details necessary for collection, hand over to us the associated documentation and inform the debtor of the assignment. Should the goods be sold on together with other goods, which do not belong to us, the customer's claim against the consumer shall be deemed to have been assigned to us in the amount of the value of the invoice due to us by the customer.

- 03 The reserved goods shall always be processed and manufactured for us as a manufacturer within the meaning of Sec. 950 German Civil Code, however without putting us under any obligation. The manufactured goods shall be deemed to be reserved goods within the meaning of these provisions. Should reserved goods be processed or inseparably mixed with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the invoice value of our retained goods to the invoice value of the other items used at the time of processing and mixing. The co-ownership rights which have arisen in this way shall be deemed to be reserved goods within the meaning of these provisions.
- 04 Should our delivery items be connected to or mixed with other moveable items to form an integrated item, and should the other item be considered the main item, we shall receive from the customer proportionate co-ownership, in so far as the main item belongs to the customer. Furthermore, the same shall apply to the item arising through the processing and connection or mixing as to the reserved goods.

05 The customer shall be obliged to keep our reserved goods in an orderly condition and store them with the due care of a trader. It shall in particular be obliged to adequately insure the latter at their new value against theft, breakage, fire, water and other damage, at its own expense.

06 The customer may not assign our reserved goods or pledge them as security, or either assign the claim to a third party or offset something else with it, nor agree a prohibition on assignment of claims with its customers. It shall also not be entitled to accept other services as payment, in particular also not other items or services in place of fulfilment.

07 Any authorisation by the customer concerning our reserved goods deviating from the aforementioned provisions shall be strictly prohibited without our prior consent, for as long as the reservation of ownership exists. Should the items supplied under reservation of ownership be subjected to levy of execution by third parties or otherwise claimed, the customer shall be obliged to inform us on this without delay and by the quickest method possible, if possible by telephone. The customer shall be obliged to forward us any bailiffs return, as well as an affidavit on the identity of the items seized.

08 Should the goods be taken back within the scope of the assertion of the reservation of ownership, the purchaser shall, in principle, remain obliged to fulfil the contract unless anything else has been expressly stated by us upon asserting the reservation of ownership. The costs of taking back the items and the realisation of the items of purchase shall be borne by the customer.

09 In the event of the customer engaging in conduct which is contrary to the contract, in particular in the case of delays in payment, we shall, following a reminder, be entitled to take back the reserved items, and the customer shall be obliged to hand over the items to us.

10 A petition for the institution of insolvency proceedings over the customer's assets shall entitle us to withdraw from the contract and require the immediate return of the goods supplied.

#### **B) Business abroad**

01 We reserve ownership in the items supplied until payment in accordance with the respective statutory provisions of the country of destination has been received in full. The reservation of ownership shall be deemed to have been expressly agreed between us and the customer. In so far as nothing else mandatorily emerges from the statutory provisions of the country of destination, the regulations agreed in these general Conditions of Sale concerning business within the country shall also apply to business abroad.

02 Should a reservation of ownership be inadmissible in accordance with the regulations of the country of destination, we shall be entitled to assert the rights to protection admissible there. The customer undertakes to advise us of the measures which we have to implement in order to protect these rights. The customer shall actively support us in implementing these measures. Should third parties assert rights in the items delivered, the customer is required to inform us of this by telephone and in writing without delay. We shall be entitled to carry out any registrations necessary based on the law of the foreign country due to our reservation of ownership.

#### **VIII. Claims for defects, warranty**

01 We shall be liable for our goods being free of defects upon the passing of risk. The nature, durability and use of our goods shall be geared exclusively towards the specification, product description and/or instructions for use agreed in writing. Any details going beyond that, in particular in introductory meetings, advertising, catalogues and/or industrial norms referred to, shall only form part of the contract through express written inclusion. If the customer wishes to use the goods supplied for purposes other than the agreed purpose, it is required to carefully examine the suitability for that purpose and/or the admissibility itself, on its own responsibility. We exclude liability for any use not expressly confirmed by us in writing.

02 The customer shall be obliged to examine the goods received for completeness, as well as any defects, the quality and the assured properties without delay following delivery. Any errors in quantity and recognisable defects are to be notified to us in writing without delay, at the latest within 5 business days of receipt, hidden defects within the same period following discovery. The warranty shall lapse for any defects not notified in good time.

03 Our liability for defects shall, in principle, be restricted to subsequent improvement. Subsequent improvement shall, at our option, be remedying the defect or supplying defect-free goods. Any further claims concerning defects shall only exist in the case of refusal, impossibility or failure of subsequent improvement. Should the purchase be a trade transaction, any increased expenditure for the subsequent improvement (in particular, costs of transportation, labour, shipping and handling and materials) resulting from the fact that the customer has brought the item purchased following delivery to a different place from its own premises shall be borne by the customer.

04 The customer shall, within the scope of the statutory provisions, have a right of withdrawal from the contract if, taking into account the statutory

exceptions, we permit a reasonable deadline set for us for the repair or replacement delivery due to a material defect to expire fruitlessly. Should there be only an insignificant defect, the customer shall only be entitled to a right of reduction in the purchase price. The right to a reduction in the purchase price shall otherwise be excluded.

05 Replaced parts within the scope of the warranty shall become our property.

06 Should the goods lack an assured quality at the time of the passing of risk, the customer shall be entitled to assert its statutory rights.

07 Any warranty claims of the customer shall become statute-barred in all cases within two years of the passing of risk.

08 We do not provide any warranty for the consequences of improper handling, use, maintenance and service of our goods by the customer or its assistants, or for normal wear and tear. This shall in particular also apply in regard to the consequences of thermal, chemical, electrochemical or electrical influences, as well as infringements of our instructions for use. The same shall apply if the defects are attributable to any intervention or arrangements made by the customer not confirmed by us.

09 Should we determine that there is no defect in the goods in which the customer has notified a defect, we shall be entitled to require compensation from the customer for the expenditure incurred to us (in particular for labour costs).

#### **IX. General limitation of liability**

01 For damage which has not been incurred to the delivery item itself, we shall only be liable – regardless of on what legal grounds – in the event of intent, gross negligence on the part of the institutions or executive staff; in the case of culpable injury to life, body and health; and in the case of defects which have been fraudulently concealed or the absence of which we have guaranteed. In the case of defects in the delivery item we shall accept liability in so far as we are liable in accordance with the Product Liability Act for damage to persons and property incurred to privately used items.

02 In the case of culpable infringement of significant contractual obligations we shall also be liable in the case of gross negligence of non-executive employees and in the case of slight negligence. In the latter case, limited to the contractually typical, reasonably predictable damage.

03 In cases other than those specified above, our liability shall be excluded. This shall in particular apply to claims for compensation for damage arising from fault upon concluding the contract, due to any other infringements of obligations or due to tortious claims for compensation for material damage pursuant to Sec. 823 German Civil Code.

04 The aforementioned limitation (Clause 3) shall also apply in the event that the customer demands compensation for futile expenditure in place of service instead of a claim to compensation for damage.

05 In so far as liability on our part is excluded or restricted, this shall apply equally in regard to personal liability for compensation for damage by our employees, workers, co-workers, representatives and assistants.

#### **X. Statute of limitations**

01 In so far as nothing else has been regulated above (Clause VIII 07), and in so far as the statutory period of limitations is not shorter, all claims on the part of the customer shall become statute-barred – regardless of on what legal grounds – no later than 12 months after the passing of risk to the customer.

02 Concerning claims to compensation for damage pursuant to Section IX, the statutory deadlines shall apply.

#### **XI. Applicable law, place of fulfilment, place of jurisdiction**

01 The contractual relationships shall exclusively be regulated in accordance with the law applicable in the Federal Republic of Germany, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

02 The place of fulfilment for all contractual or statutory claims shall be the Head Office of our company.

03 Should the customer be a trader, the Head Office of our company shall be the exclusive place of jurisdiction. The same place of jurisdiction shall apply if the customer has no general place of jurisdiction in the Federal Republic of Germany at the time of instituting judicial proceedings. We shall in addition also be entitled to file an action at the Head Office of the customer.

#### **XII. Miscellaneous provisions**

01 Any alterations or additions to these General Conditions of Sale require to be made in writing. This shall also apply to this requirement for the written form itself.

02 Should one or more of these provisions be legally invalid in whole or in part, the validity of the remaining provisions shall not be affected thereby.

03 Decisive for all contractual relationships is the German version of our General Conditions of Sale. This shall also apply if a translation of these General Conditions of Sale into another language in addition to the German conditions has been used.