

Delivery and Payment Terms and Conditions of Zfx GmbH

§ 1 General provisions

- 1.1 The following terms and conditions are applicable to all our current and future offers and to contracts entered into with us. Divergent and contrary business and purchase terms and conditions of the customer are not accepted, unless we authorize them in writing.
- 1.2 Our terms and conditions apply exclusively vis-a-vis entrepreneurs pursuant to section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), legal entities under public law or special funds under public law.
- 1.3 The customer shall be notified in writing of any changes to these terms and conditions. Such changes shall be deemed to have been approved by the customer if the customer does not object to their validity in writing within six weeks from the reception of the notification of change and the customer was informed of this legal consequence in the notification of change.
- 1.4 Individual agreements take precedence over terms and conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written order confirmation.
- 1.5 The customer is only entitled to assign claims from the existing contractual relationship to third parties with our prior written consent.

§ 2 Contract establishment and content

- 2.1 Our offers are subject to change and non-binding unless expressly marked as binding.
- 2.2 A contract exists only after we have issued our written confirmation of order or upon delivery of the products. If a written confirmation of order is issued, such confirmation shall constitute the only authoritative version of the contract contents.
- 2.3 We reserve the customary trade changes with respect to illustrations, descriptions, drawings, and measurements in our brochures, catalogues, and offers provided that 1) the contract purpose is not thereby essentially changed; 2) the quality of the reference materials is not altered and 3) the changes are reasonable for the customer.
- 2.4 Unless otherwise agreed in individual cases, we do not assume any obligation to procure products from third party suppliers. Our obligation to deliver shall be limited to our existing stocks, unless we are expressly obliged to deliver a product to be manufactured for the customer or to be procured from a third party

§ 3 Price and payment terms and conditions

- 3.1 Our prices are expressed in EUROS. Sales tax and the costs of packing, insurance, and carriage are in addition.
- 3.2 The price agreed between the parties shall be the one indicated in the order confirmation or, in case that the product has been delivered without order confirmation, the one reflected in the delivery note.
- 3.3 If the agreed delivery date is more than four months later than the conclusion of the contract and if, after conclusion of the contract, we have incurred unforeseeable cost increases with regard to the products we supply for which we do not bear responsibility, we shall be entitled, at our reasonable discretion, to pass on such higher costs by increasing the agreed price on a pro rata basis.
- 3.4 The price adjustment provision of subsection 3.3 does not apply if the price has been explicitly confirmed as a fixed non-reviewable price.

- 3.5 Unless otherwise agreed with the customer, invoices are due and payable within 30 days from the date of the invoice.
- 3.6 If we become aware of the risk of the customer's impossibility to perform (mangelnde Leistungsfähigkeit) after conclusion of the contract, we shall be entitled to make outstanding deliveries only against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiry of a reasonable grace period, we may partially or totally rescind individual or all of the affected contracts. We shall remain entitled to assert further rights.
- 3.7 In case of default of payment by the customer, we may charge default interest on overdue sums at the applicable statutory rate that we are entitled to claim for late payments on a daily basis until payment is received.
- 3.8 The customer may offset our claims only against undisputed or legally confirmed counterclaims

§ 4 Delivery; shipment

- 4.1 Delivery deadlines are governed by the agreements made in the individual case. A specific delivery date shall only be binding if we expressly state this in the order confirmation. For delivery from stock, the delivery deadline has been met if the shipment is given to the carrier or shipment readiness has been established and reported.
- 4.2 Delivery periods commence once the customer receives our confirmation of order, however, not before all obligations to cooperate have been fulfilled by the customer, particularly not before the agreed advance payments are effected. Bindingly agreed delivery dates shall be postponed for the period of the corresponding delay if the customer has not fulfilled his obligations to cooperate. If the customer requests changes to the subject matter of the order after receipt of the order confirmation, a new delivery period or a new delivery date shall be agreed.
- 4.3 Events that are unforeseeable, unavoidable and outside our control and sphere of influence and for which we do not bear responsibility, such as acts of God, war, natural disasters, strike, lockout, stock shortage due to health authorities inspection or product recall and other similar events or causes release us from our obligation to perform the contract within the agreed deadline and to the extent such obstacles continue to exist. With regard to products that we do not produce ourselves, our obligation to deliver shall be subject to our correct and timely receipt of such products from our suppliers if we have entered into a specific corresponding cover transaction, neither we nor the supplier bear any culpability or if we are not obligated to source the goods in the individual case. We shall immediately inform the customer of any obstacles pursuant to this Section 4.3.
- 4.4 We are entitled to make partial deliveries provided the products covered by the order are not immediately available. Partial deliveries will be invoiced separately.
- 4.5 In the event of a delay in customer acceptance of the products for which the customer is responsible, we are entitled to demand compensation for damages caused to us, including any additional reasonable expenses. For this purpose, we shall charge liquidated damages amounting to 2.5% of the net invoice amount of the delivery to be stored for each complete month, beginning with the delivery period or with the notification that the goods are ready for dispatch. For shorter periods of time, invoicing shall be made pro rata per calendar day. The proof of a higher damage and further legal rights remain unaffected; however, liquidated damages are to be set off against further monetary claims. We are not entitled to claim the aforementioned amount of liquidated damages if the customer can prove that the damages actually incurred by us are significantly lower than the amount of liquidated damages or that we have not accrued any damages at all. The customer may prove that we have incurred no damage at all or only considerably less damage than the aforementioned liquidated amount. Agreed delivery dates and periods shall be postponed by the period of delay in acceptance.

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- 4.6 Unless otherwise agreed between the parties, the goods shall be delivered according to DAP, Incoterms 2020. Unless otherwise agreed in writing, products are dispatched by us ex-works uninsured and at buyer's risk and expenses.
- 4.7 At the customer's request and expense, the goods shall be shipped to another destination (Versendungskauf). Unless otherwise agreed, we are entitled to determine the mode of dispatch (in particular transport company, dispatch route, packaging) ourselves. If we owe an assembly/installation, delivery and assembly/installation shall take place in accordance with the order confirmation at the customer's premises or at a third party named by the customer.
- 4.8 The risk of accidental loss or accidental deterioration of the goods passes to the customer at the latest with the handing over of the goods. If the goods are shipped to another destination (Versendungskauf), however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If an acceptance (Abnahme) has been agreed, the acceptance shall be decisive for the transfer of risk. The statutory provisions of the law governing contracts for work (Werkvertragsrecht) shall apply accordingly to an agreed acceptance. Delivery or acceptance shall be deemed to have been effected if the customer is in default of acceptance.
- 4.9 In case of payment delays on the part of the customer we are entitled to retain deliveries or performances based on all contracts existing with the customer until the complete payment. This right of retention can be averted by the customer by providing an absolute and indefinite guaranty of a German major bank in the amount of all due outstanding amounts to be paid to us.

§ 5 Assembly/installation

- 5.1 If we are obliged to assemble/install the delivered product on the basis of the contractual agreements, the ready-to-operate assembly/installation at the customer's premises or at the third party designated by the customer requires that the customer fulfils his obligations to cooperate (in particular proof and provision of a suitable site along with connections for energy, water, ventilation etc. for the proper operation of the product) and that the customer or the third party does not make any changes to the product prior to assembly/installation.
- 5.2 The customer undertakes to confirm the operational readiness by counter-signing the "Set-up Protocol" after a successful functional test has been carried out on the basis of suitable test methods developed by us. If the customer does not sign the delivery note despite the successful performance of the functional test, the readiness for operation shall nevertheless be deemed to have been accepted from the date of the functional test if the customer does not confirm the readiness for operation within an additional period of at least 14 days or asserts not minor defects in the readiness for operation.
- 5.3 Unless explicitly agreed otherwise in writing, we are not obliged to connect the products with other devices of the customer that have not been delivered by us upon assembly/installation.

§ 6 Retention of title

- 6.1 We retain title to the products we supply until we have received the full purchase price for said products and all current and future claims to which we are entitled against the customer arising from the business relationship, including the settlement of all outstanding current account balances. Any products subject to the retention of title under this Section 6.1 are referred to as "Reserved Goods".
- 6.2 The customer must properly store the Reserved Goods and adequately insure them at its own expense. The customer hereby assigns to us all claims against the insurance company due to the loss of or damage to Reserved Goods in the amount of the value of the Reserved Goods. We accept the assignment.

- 6.3 The customer is entitled to resell the Reserved Goods in the ordinary course of business as long as it is not in default of payment. The customer is prohibited from assigning by way of security or pledging as well as any other disposal of the Reserved Goods which thwarts or hinders the security purpose of the reservation of title. The customer shall notify us immediately in writing if the Reserved Goods are seized by third parties or if an application has been made to open insolvency proceedings against the customer's assets.
- 6.4 For the event that the Reserved Goods are resold, the customer hereby assigns to us the claims to which he is entitled against his customers from the resale. We accept the assignment. If the Reserved Goods are resold together with goods from other suppliers and a total invoice is issued, the customer assigns to us that part of the total resale price claim which is attributable to the Reserved Goods contained in the total invoice. If the Reserved Goods are not shown separately on the total invoice, the sales price charged by us to the customer shall be taken as the value of the Reserved Goods.
- 6.5 If the customer includes claims from the resale of the Reserved Goods in a current account of its customer, it hereby assigns to us the final balance in his favor up to the amount corresponding to the total invoice value of the Reserved Goods. We accept the assignment.
- 6.6 In addition to us, the customer is entitled to collect the claims assigned to us from the resale. We undertake not to collect the claims as long as the customer meets its payment obligations, there is no significant deterioration in its financial situation, no application has been made for the opening of insolvency proceedings and there is no other defect in its ability to pay.
- 6.7 Any combination, mixing or processing of the Reserved Goods by the customer shall be made on our behalf without this giving rise to any obligations on our part. If the Reserved Goods are combined, mixed or processed with other objects not owned by us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the Reserved Goods to the other combined, mixed or processed objects. Furthermore, the same provisions shall apply to the resulting product as to the Reserved Goods.
- 6.8 At the customer's request, we shall be obliged to release securities to which we are entitled at the customer's option to the extent that their realizable value exceeds the value of our outstanding claims against the customer from the current business relationship by more than 10% in total.
- 6.9 If the retention of title is not effective under the law in the jurisdiction in which the goods are located, the parties shall agree on a provision which comes as close as possible to the essence of the retention of title under the then applicable law. If special prerequisites are required for this, the customer hereby agrees to bring about these prerequisites at his own expense.
- 6.10 If the customer does not pay the purchase price of the products on time and should we rescind the contract as a result thereof in accordance with the statutory provisions, we will be entitled to the immediate return of the products and customer hereby irrevocably authorizes us to recover the products and to enter the premises of the customer for that purpose. Demand for or recovery of the products by us does not affect other legal rights we may have.

§ 7 Property rights and copyrights to documents and software

- 7.1 We reserve all property rights and copyrights to illustrations, drawings, weight specifications, dimensional data, descriptions of services or other product characteristics, cost estimates and other documents relating to our products and services. These documents may not be passed on to third parties without our express written consent.
- 7.2 "Insofar as the delivered goods also include the provision of software, the customer shall acquire the right to use this software for a limited period of time, but shall not acquire ownership of the delivered software. The Customer will have to enter into a Perpetual license or a Flex license agreement to use the software. The Flex license requires the payment of the initial software license fee and a subscription based annual license fee. The annual license fee includes ongoing software updates. The software will deactivate upon non-payment of the annual license fee.

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The Perpetual license only requires one-time payment of the initial software license fee: Notwithstanding the foregoing, Customer may, at any time, subscribe the annual fee license to receive ongoing software updates. No software updates will be provided without the annual license fee payment."

§ 8 Quality, customer's rights in case of defects and duty to inspect the products

- 8.1 The rights of the customer in case of material and title defects (including incorrect and short delivery as well as incorrect installation or insufficient installation instructions) are subject to statutory laws, unless otherwise specified below. The special legal provisions for our recourse in case of ultimate delivery of the goods to a consumer within the scope of a sale of consumer goods (Sections 445a, 445b BGB in conjunction with Sections 474, 478 BGB) shall remain unaffected in all cases.
- 8.2 Upon passing of the risk, the products shall be of the agreed quality; the quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the products. The agreed quality shall only include a specific intended use which goes beyond the use stated in the operating instructions if we confirm this in writing. Section 2.3 shall however remain unaffected.
- 8.3 Information provided in sales catalogues, price lists and any other informative literature provided by us or any other descriptions of the products shall under no circumstances constitute a guarantee for any specific quality of the products; such specific quality or durability guarantees must expressly be made in writing.
- 8.4 If we assume a manufacturer's guarantee for certain products or if one of our suppliers assumes a manufacturer's guarantee, guarantee claims shall be exclusively governed by the corresponding guarantee provisions. The statutory warranty rights applicable in accordance with these terms and conditions shall remain unaffected by the assumption of any guarantees.
- 8.5 The customer's rights in case of defects of the products shall require that he inspects the products upon delivery without undue delay and notifies us of any defects in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to us in writing without undue delay upon their discovery. If the goods are shipped to a destination other than the place of performance (Versendungskauf), the defects recognizable upon delivery to the customer shall also be reported to the transport company and the customer shall obtain confirmation from the transport company that the defect has been reported.
- 8.6 Notwithstanding Section 8.5, the customer must inspect the products at the latest and notify us in writing of all recognizable defects before the products are installed in another item or attached to another item. If an incoming inspection has already taken place at an earlier point in time, the customer must carefully inspect the products again immediately before installation or attachment to another item in order to determine whether any defects have become apparent in the meantime and report any defects immediately in writing. If the customer does not comply with this obligation, the claim for reimbursement of expenses for dismantling and installation costs within the scope of subsequent performance shall be excluded.
- 8.7 In the event of a notification of a defect, we shall have the right to inspect and test the products to which objection was made. The customer will grant us the required period of time and opportunity to exercise such right. We may also demand from the customer that he returns to us at our expense the products to which objection was made. Should the customer's notification of the defect prove to be unjustified and provided the customer has realized this prior to the notification of the defect or has not realized it in a negligent manner, the customer shall be obliged to reimburse us for all costs incurred in this respect, e.g. shipping costs.
- 8.8 We shall be entitled to remove the defect at our discretion by remedying the defect or, alternatively, by delivering a replacement, both free of charge to the customer (together "Subsequent Performance").
- 8.9 We are entitled to make the Subsequent Performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.
- 8.10 The customer shall give us the necessary reasonable time and opportunity for the Subsequent Performance.
- 8.11 The customer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the products due to reasons for which the customer bears responsibility, such as inappropriate or improper use, the non-observance of the operational instructions, faulty treatment, or unsuitable chemical, electrochemical or electrical influences (iii) incorrect assembly and/or installation by the customer or a third party commissioned by the customer, and (iv) the use of unsuitable accessories or unsuitable operating equipment or the performance of inappropriate repair or maintenance works by the customer or a third party commissioned by the customer.
- 8.12 We shall bear the necessary costs for shipment, travel costs in the EU Territory, labor and material that accrue for the purpose of a Subsequent Performance. We will not bear travel costs outside EU that accrue for the purpose of a Subsequent Performance. If the customer has installed the defective item in another item or attached it to another item in accordance with its type and intended use, we shall reimburse the customer for the necessary expenses for removing the defective item and installing or attaching the repaired or delivered defect-free item. However, Subsequent Performance does not encompass the installation and removal of the defective products unless we were originally obliged to install them.
- 8.13 Should the Subsequent Performance fail, should such remedy be unreasonable for the customer or have we refused such remedy pursuant to Section 439 (3) BGB, the customer may, at its option, rescind the contract in accordance with the statutory provisions or reduce the purchase price and/or claim either damages pursuant to Section 9 or the reimbursement of its futile expenses.
- 8.14 The limitation period for the customer's claims for defects shall be twelve months beginning with the delivery of the products. The provisions on the statute of limitations of Section 479 BGB shall remain unaffected. The statutory limitation period shall apply:
 - (a) to the customer's rights with respect to defects concealed in bad faith or caused intentionally;
 - (b) if and to the extent we have assumed a guarantee;
 - (c) to the customer's damage claims due to culpably caused personal injuries;
 - (d) to the customer's damage claims for damages caused by us intentionally or by gross negligence;
 - (e) to the customer's damage claims due to other reasons than defects of the products; and
 - (f) to claims under the German Product Liability Act or any other mandatory statutory liability.
- 8.15 If the last customer in the supply chain is an entrepreneur (Section 14 BGB), the independent right of recourse of the customer pursuant to Section 445a (1) BGB is excluded and, contrary to the statutory provision in Section 445a (2) BGB, a deadline for the assertion of rights specified in Section 437 BGB must be set.

§ 9 Liability

- 9.1 To the extent not regulated otherwise in these terms and conditions, we may only be held liable for breaches of our contractual or non-contractual obligations in accordance with the applicable statutory provisions. Our obligation to pay damages shall be limited as follows:
 - (a) For damages caused by a breach of a material contractual obligation (i.e. an obligation the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the customer may generally rely), we shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract; we shall not be liable for damages caused by a breach of a non-material contractual obligation.

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(b) In addition to (a), our obligation to pay damages including financial losses is limited to an amount of €100,000.00 per claim.

(c) Claims for damages by the customer based on a defect in the goods can only be asserted within twelve months, unless the application of the statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.

9.2 The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent we have assumed a guarantee. The limitation of liability shall apply to the same extent in favor of our corporate bodies, legal representatives, employees and other vicarious agents.

9.3 The customer shall take all reasonable measures necessary to avert and reduce damages.

9.4 We shall not be liable for damages occurring as a result of unskillful processing of our products or combination of our products with third-party components if operating instructions and references to our user instructions and manuals are ignored in the processing and combining. This applies particularly if our products are combined with third-party supplier components that are not certified by us for this purpose.

9.5 The products are intended for Customer use. Furthermore, the Customer acknowledges and agrees that (i) the distribution and re-sale of the products is a regulated activity and, as such, the distribution and commercialization of the products is subject to having an authorization from the relevant authorities and (ii) Customer may not lawfully resell the products unless Customer holds the relevant authorization to do so.

In the event of non-authorized resale of our products, we reserve the right to take any action we deem necessary for compensation of damages caused to us, including the right to cancel any order and stop selling our products to the non-complying Customer. We fully disclaim any liability arising out of the resale of our products.

§ 10 Third Parties' Property Rights

10.1 Unless otherwise agreed, our products will be free from third party industrial property rights and copyrights existing in Germany. We do not give any warranties in relation to third party industrial property rights and copyrights existing in other jurisdictions. If a third party raises justified claims because of an infringement of its property rights by the products delivered to the customer and such infringement has been existing at the time of delivery to the customer, we shall be liable to the customer within a term of twelve months as follows:

(a) We shall at first at our own discretion try to obtain either a right to use for the industrial property rights or copyrights in question at our own expenses, or to modify the products in such a manner that the industrial property rights or copyrights are no longer infringed, or we shall exchange said products with replacement products which meet the contractual specifications agreed with the customer without infringing and third party rights. If this is not possible with appropriate conditions, the customer has its rights provided by law, which, however, shall be subject to the provisions of these terms and conditions regarding the customer's rights in case of defects.

(b) The customer shall only be entitled to rights, if it immediately informs us in writing about the claims set forth by a third party, if it does not admit such infringement and if it does not waive our right to implement any and all defence measures and settlement negotiations.

10.2 Claims of the customer are excluded if it is responsible for a property right infringement.

§ 11 Product liability

11.1 The customer will not modify the goods with respect to security-relevant features; it will particularly not change or remove the existing warnings about perils in case of improper use of the goods. If the customer violates this obligation, it shall internally exempt us from product liability claims of a third party, given that the customer is responsible for the error causing the liability case.

11.2 If due to a defect of the products we are forced to recall a product or give out a warning, the customer will support us and take all appropriate measures expected or ordered by us. The customer is obliged to bear the costs of such a product recall or warning insofar as it is responsible for the product error and the damage occurred according to the principles of Product Liability Act (Produkthaftungsgesetz). Any further claims on our part shall remain unaffected.

11.3 The customer shall immediately notify us about any risks in using the goods and possible defects once it got knowledge of them.

§ 12 Warranty

12.1 The statutory warranty of twelve months shall apply to all our products except to Gentek products. An extended warranty shall apply to Gentek products.

§ 13 Closing provisions

13.1 If one provision of the contract is or becomes null and void, the validity of the other provisions of the contract shall not be affected.

13.2 The contract shall be governed by the laws of the Federal Republic of Germany, expressly excluding its conflict rules and the United Nations Convention on Contracts for the International Sale of Goods.

13.3 The courts of Munich, Germany shall have exclusive jurisdiction to solve any dispute or controversy related to the contract entered into between us and the customer. In our discretion, we may sue the customer also before the courts and tribunals of its domicile.

Dachau, September 2020

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