

General Standard Terms and Conditions of Sale and Delivery of Zeppelin Baumaschinen GmbH (ZBM), Zeppelinstraße 1, 85748 Garching near Munich

1. Scope; differing terms and conditions; offers; additional agreements

- The following terms and conditions shall apply exclusively to offers and deliveries of ZBM. Upon conclusion of the first contract in conjunction with the following terms and conditions, the customer acknowledges their effectiveness for the entire duration of the business relationship between the parties. This shall apply especially to all successive business transactions which might be also concluded orally or by telephone.
- Terms and conditions of purchase and other terms and conditions of the customer shall only apply if they are consistent with the following terms and conditions. Differing or supplementary terms and conditions of the customer shall not become part of the contract even if ZBM is aware of these terms and conditions and supplies or hands over the object of purchase to the customer without reservation.
- Offers from ZBM shall be without obligation. A contract shall only be concluded when written confirmation is issued by the head office of ZBM or when the object of purchase is supplied or handed over to the customer.
- There are no oral supplementary agreements. Employees of ZBM shall not be authorised to modify or extend the following terms and conditions.

2. Performance; agreement on condition and nature; reservation of ZBM to oneself obtaining delivery

- ZBM shall hand over the object of purchase to the customer in the contractually agreed condition and transfer ownership of it in accordance with the provisions in section 11.
 - The condition of a new object of purchase is in accordance with the contract if it is suitable for customary use or respectively is of a quality that is customary for objects of the similar type and that the purchaser can expect in accordance with the type of object of purchase. In case of selling used objects of purchase, the contractually agreed condition shall be defined by the condition when being given to the customer. This shall also apply if the object of purchase has defects that were not recognisable at the time it was given to the customer or nor have been specified in the purchase agreement. The contract has been concluded.
 - Replacement parts and reconditioned parts shall also be regarded as used objects of purchase within the meaning of these terms and conditions.
 - If the object of purchase is only defined by its kind and if ZBM is not supplied, is not supplied correctly or is not supplied in time as part of a covering business transaction concluded to ensure fulfilment of the performance obligation pursuant to section 2.1, the performance obligation pursuant to section 2.1 (reservation of ZBM itself obtaining deliveries) shall not apply. ZBM shall be obliged to inform the customer of the unavailability of the object of purchase without undue delay and to immediately refund any payment which might have been made.
 - Any agreement on the condition of the object of purchase differing from the above mentioned terms and conditions as well as the assumption of any guarantee for its condition and nature shall not be valid unless given in writing in accordance with section 12.1.
 - The above mentioned terms and conditions shall not apply if the customer is a natural person and conclusion of the contract cannot be ascribed either to his commercial or to his freelance occupational activity (consumer as defined by § 13 BGB (German Civil Code)).
- ### 3. Performance period; hindrance to performance; partial performance
- The compliance of agreed performance periods requires that any necessary permission, documents, releases and services as well as other obligations of the customer will be provided and obtained by him in time. If this is not the case, the performance period will be extended by a suitable time. Transactions where time is of the essence shall not be concluded.
 - The performance period is kept if the object of purchase has left the warehouse or ZBM has informed the customer that it is ready for shipment by the time the period expires.
 - If an agreed performance period cannot be kept due to force majeure, labour disputes, fire, breakdown of machinery, unforeseeable hindrances or other circumstances for which ZBM is not responsible for, the performance period shall be extended for the duration of these events. This shall apply analogously if ZBM is in delay in performance when one of these events occurs.
 - If a hindrance to performance in accordance with section 3.3 sentence 1 lasts more than 6 weeks, ZBM and the customer shall be authorised to rescind the contract in respect of the service that has not been performed; rescission in the cases stated in section 3.3 sentence 1 shall be excluded before expiry of this period. Pre-condition for the customer's right to withdraw from the contract is to give ZBM a reasonable performance period in writing together with a warning that it will otherwise refuse the performance.
 - Claims for damages and reimbursement of expenses by the customer due to delay in performance or exclusion of the performance obligation on the part of ZBM shall – even if they have arisen up to the time of rescission of the contract – be excluded within the framework of the provision in section 10.
 - ZBM shall be authorised to perform services prematurely and to perform partial. ZBM shall be authorised to invoice partial performance immediately.

4. Acceptance; passing of the risk; transport

- The customer shall be obliged to accept the object of purchase within eight days of receipt of notification of its supply at the agreed place of delivery.
- The object of purchase shall be handed over at the contractually agreed location or at the contractually agreed ZBM branch. The delivery shall be at the customer's risk and on its account if the customer wishes the delivery to a different location. The same shall apply to any return shipments. ZBM will appoint the carrier to the exclusion of any liability for choice of the cheapest and quickest means of shipment. Shipping instructions of the customer shall only be binding upon ZBM if they have been confirmed by ZBM in writing.
- The passing of the risk shall be transferred to the customer when the object of purchase is given to him, at the latest when it is given to the carrier. This shall also apply to partial performance or if ZBM has accepted additional services, such as transport.
- If the customer is in delay in accepting the object of purchase or performance of the service is delayed for any other reason for which the customer is responsible for, the passing of the risk shall be transferred to the customer as from the day of the notification. The customer shall bear the costs of storage at ZBM or at a third party. The right to assert claims for damage against the customer above and beyond this provision shall remain unaffected.
- ZBM will conclude transport insurance solely at the special written instruction and for the account of the customer.

5. Remuneration; terms of payment; financing of the purchase price

- Unless specified otherwise in writing in the contract or in the confirmation from the head office of ZBM, contractual demands to which ZBM is entitled to shall be due for payment without deduction at the latest 3 weeks after conclusion of the contract. ZBM shall be authorised to hand over the object of purchase only in exchange for simultaneous payment of the agreed remuneration.
- Payments must be made in cash or free of charges and expenses to the business accounts of ZBM specified on the invoice. Receipt of the owed amount by ZBM shall be relevant for determining the compensation.
- Payments shall be settled exclusively in accordance with § 386 BGB, even if the customer has stated another amortisation aim.
- Bills of exchange and cheques shall only be accepted as conditional payment.
- All prices stated do not include value-added tax at the statutory rate on the date of invoicing.

6. Default of payment; financing of the purchase price; damage caused by delay

- If the customer is in default of payment in full or in part, ZBM shall be authorised – without prejudice to further rights – to
 - terminate any existing financing and/or payment extension agreement with immediate effect and to demand immediate payment of all claims therefrom;
 - withhold services from contracts that have not yet been fulfilled;
 - assert the rights from the agreed retention of title (section 11);
 - rescind the contract in accordance with section 7.1.
- If the customer is in default of payment, ZBM shall be entitled to interest for default of 8 percentage points above the respective base interest rate but at least 12 % of the overdue amount. If the customer is a consumer within the meaning of § 13 BGB the level of interest for default shall be 5 percentage points above the base interest rate, but at least 12 % of the overdue amount. The entitlement to interest for default will be reduced if and insofar as the customer proves that ZBM has incurred no or a far lower damage.
- ZBM reserves the right to claim higher damages caused by a default if and insofar as this claim is undisputed or proven.

7. Rescission; compensation for use

- ZBM shall be authorised to rescind the purchase agreement if
 - the customer does not settle a due claim within a reasonable period of time set for it by ZBM or is in delay in settling a due claim in full or in part or dishonours bills of exchange or cheques protested and fails to pay or fails to pay in full the amount in question within a reasonable time-limit set by ZBM;
 - the customer, despite being set a deadline/issued with a warning, violates cardinal provisions of the contract, in particular the provision under section 11.3 of these terms and conditions; or
 - the financial circumstances of customers deteriorate significantly, in particular if distrains or other compulsory execution measures are instigated against it; or
 - an application for the commencement of insolvency proceedings on the assets of the customer is filed, a retention of title in accordance with section 11.1 exists and the object of purchase has not yet been handed over to the customer; or
 - an application for the commencement of insolvency proceedings on the assets of the customer is rejected or the insolvency proceedings are discontinued or set aside.
- In the event of rescission, ZBM shall be entitled to payment of compensation of the purchase price respectively financing instalments owed and the advance payment made or owed by the customer until the equipment is returned. The amount of compensation shall correspond at least to the rent customary in the market to be paid for the period of hire. ZBM reserves the right to assert claims for damages or compensation for use above and beyond this. The claim shall be reduced if and insofar as the customer proves that ZBM has incurred no or a far lower damage.

8. Offsetting; right of retention

- The customer can only offset a claim against claims of ZBM if its claim is undisputed or legally binding.
 - The customer can only exercise a right to withhold performance or a right of retention if both, the claim for payment of ZBM and the counterclaim of the customer relate to the same contractual relationship.
- ### 9. Warranty claims; duty to examine and give notice of defects; limitation of actions
- ZBM warrants within the framework of the following terms and conditions that the object of purchase is free of redhibitory defects or defects in title and that it has the condition and nature agreed in section 2. If the manufacturer has issued a guarantee for specific qualities or the condition and nature of the object of purchase the following terms and conditions shall only apply if the customer has asserted its claims to which it is entitled to under the guarantee against the manufacturer and the latter has not fulfilled the claims of the customer voluntarily or completely.
 - Before the customer can assert warranty claims, it shall submit a written and complete description of the claimed defects to ZBM upon request and – if the customer is a merchant within the meaning of the German Commercial Code (HGB) – shall have fulfilled its obligation to examine and give notice of defects in accordance with §§ 377 and 378 HGB. Warranty claims outside commercial business transactions shall be excluded if the customer does not report obvious defects in writing to ZBM within 4 weeks of delivery.
 - Warranty claims shall not exist if the occurred defect is causally linked to the fact that
 - defects that have previously occurred have not been reported in due time in accordance with section 9.2; or

- the purchaser has not met the regulations, the manufacturer's stipulations or operating instructions relating to handling, maintenance, care and conditions of use; or
 - the object of purchase has been previously repaired or maintained by a plant not recognised by the manufacturer/importer or by the customer itself; or
 - spare parts or attachments not approved by the manufacturer/importer have been installed in or on the object of purchase.
- If a redhibitory defect or defect in title exists, ZBM shall be authorised to either correct the defect or to supply an object that is free from defects, at its own discretion. The customer shall not have the right to subsequent improvement or a specific type of subsequent improvement. If the purchase price has not yet been fully or partly paid, ZBM can make subsequent improvement dependent on the customer paying a reasonable part of the purchase price reflecting the claimed defect.
 - The customer shall be authorised at its own discretion to reduce the purchase price or to rescind the contract and demand damages instead of performance in accordance with the provisions in section 10 if ZBM seriously and definitively refuses subsequent improvement in accordance with section 9.4 or if the type of subsequent improvement chosen by ZBM fails or if the customer cannot be reasonably expected to accept it or the customer has unsuccessfully set ZBM a reasonable period of time for subsequent improvement. Subsequent improvement shall be regarded as having failed after the second unsuccessful attempt, unless a different situation arises due to the type of object or defect or the other circumstances.
 - The rights to rescind the contract and demand damages instead of performance in accordance with section 9.5 shall be excluded if and insofar as the claimed defect does not restrict or merely insignificantly restricts the suitability of the object of purchase for its use as contractually presupposed or for its use in a way customary for objects of the same type.
 - If the customer is a consumer within the meaning of § 13 BGB, the statutory regulations shall apply instead of the provisions in sections 9.2 to 9.6.
 - The rights of the customer to reduce the purchase price or to rescind the contract as stated in section 9.5 shall become statute-barred one year after handover/delivery of the object of purchase. This shall also apply to any claim for supplementary performance by the customer which may arise; however, this shall not affect para. 9.4. If the object of purchase is new, the period of limitation shall come into effect before the expiry of the period of one year if and as soon as 2,000 operating hours have been reached according to the operating hours counter. If the customer is a consumer within the meaning of § 13 BGB, the period of limitation for warranty claims for new objects of purchase shall commence 2 years after handover/delivery; the provision in sentence 1 shall still apply for used objects of purchase. The provisions above shall not apply if and insofar as ZBM has kept a defect maliciously silent.
 - The period of limitation for warranty claims shall be suspended for as long as negotiations on warranty claims or the circumstances substantiating them between ZBM and the customer are unresolved. The suspension shall commence with the written notice of defects by the customer and shall end with the written rejection of warranty claims by ZBM, but at the latest 2 months after the last written declaration issued by a party as part of the negotiations.
 - Any further liability for redhibitory defects or defects in title shall be excluded if these defects have not been kept silent maliciously by ZBM or ZBM has assumed a written guarantee for the condition or nature of the goods. No warranty claims can be asserted in relation to used objects of purchase with regard to the arrangements agreed under section 2.2 if the customer is not a consumer within the meaning of § 13 BGB.
 - Assignment of the claims specified in para. 9.1 to 9.10 must be approved by ZBM.

10. Liability; damages and reimbursement of expenses

- Claims for damages against ZBM shall be – regardless of the legal grounds, in particular due to the infringement of industrial property rights of third parties and unlawful acts – excluded subject to the following provisions. ZBM shall in particular not be liable for damage that is not caused through intent or negligence or breach of duty by its legal representatives, employees or vicarious agents; this shall also apply to the existence of defects of an object of purchase that is only defined by its genus within the meaning of section 2.3. Sentences 1 and 2 shall not apply to claims under the Product Liability Act.
- ZBM shall be liable in accordance with statutory regulations for damage resulting from injury to life, limb or health that is caused through intentional or negligent breach of duty by one or more of its legal representatives, employees or vicarious agents and for any other damage that is caused through intentional or negligent breach of duty by one or more of its legal representatives, employees or vicarious agents.
- ZBM shall be liable in accordance with statutory regulations to pay damages or reimburse expenses incurred by the customer if a damage occurs due to the violation of a guarantee given by ZBM for the condition or nature of the object of purchase or one or more of the legal representatives, employees or vicarious agents of ZBM have negligently breached a duty that is of cardinal importance to achievement of the purpose of the contract. ZBM shall likewise be liable if one or more of its legal representatives, employees or vicarious agents have negligently breached a duty to respect the rights, objects of legal protection and interests of the customer and the customer can no longer be reasonably expected to accept the service performed by ZBM.
- For breaches of duty within the meaning of section 10.2 ZBM shall be liable without restriction. In the cases stated in section 10.3 the level of damages shall be limited to the foreseeable damage. Reimbursement for consequential damage, such as loss of profit, shall always be excluded.
- Claims for damages against ZBM shall become statute-barred 6 months after handover of the object of purchase. This shall not apply to the claims stated in sections 10.2 and 10.3.
- If the liability of ZBM is excluded or limited, this shall also apply to the personal liability of employees, representatives and vicarious agents of ZBM. Section 10.5 shall apply analogously to the limitation of action for personal claims against employees, representatives and vicarious agents of ZBM.

11. Retention of title

- ZBM reserves the ownership of the object of purchase (goods subject to retention of title) until the whole purchase price has been paid. The retention of title shall also be extended to all claims of ZBM against the customer that have already arisen at the time of conclusion of this contract; it shall also be extended to all claims from subsequent business transactions, in particular deliveries of spare parts and customer services (extended retention of title).
- The customer shall be obliged to treat the goods subject to retention of title carefully and to conclude and maintain at its own expense a machinery insurance policy that also covers the risk of fire and theft. The customer shall conduct maintenance and inspection work or have it conducted by ZBM or a plant recognised by ZBM or the manufacturer in good time, at its own expense and in compliance with the manufacturer's stipulations.
- The customer shall be authorised to resell the goods subject to retention of title, pledge them, assign them as security, lease them or relocate them abroad only with the prior written consent of ZBM.
- If, despite being set a deadline/issued with a warning, the customer violates the provisions in section 11.3 or the goods subject to retention of title are misappropriated or stolen from the customer or otherwise lost, ZBM shall be authorised to terminate any existing financing and/or payment extension agreement with immediate effect and to demand immediate payment of all claims therefrom.
- The customer hereby assigns to ZBM all the claims to which it is entitled to in regard of the goods subject to retention of the title amounting up to the invoice value of the goods, or if a current account has been agreed, to the level of the claim balance (e.g. due to unlawful acts, insurance claims). ZBM accepts the assignment.
- If a third party seizes the goods subject to retention of title, the customer shall point out that they are the property of ZBM and shall notify ZBM immediately in writing. If the third party is not able to refund ZBM the court and out-of-court expenses of legal actions in accordance with § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the loss incurred.
- If the goods subject to retention of title are linked inseparably with other objects that do not belong to ZBM, ZBM shall acquire co-ownership of the new object to the ratio of the value of the goods subject to retention of title to the other linked objects at the time they were linked. If the goods and objects are linked such that the object of the customer is to be regarded as the main object, it shall be agreed that the customer shall assign co-ownership to ZBM on a pro rata basis. The customer shall safeguard the resultant sole ownership or co-ownership on behalf of ZBM.
- The customer also assigns to ZBM his claims against a third party that arise as a result of linkage of the goods subject to retention of title with an item of real estate; ZBM accepts the assignment.
- If the value that can be realised from the security to which ZBM is entitled to from the retention of title exceeds the overall claim of ZBM against the customer by more than 20%, ZBM shall be obliged at the request of the customer to release the security to which ZBM is entitled to under this contract if they are divisible to the stated value limit at its own discretion.
- If the customer acts in violation of the contract – in particular if one of the cases stated in section 6.1 or 11.3 prevails – ZBM shall be authorised to demand surrender of the goods subject to retention of title without declaring its rescission beforehand or claiming damages instead of performance. ZBM shall be authorised to collect the goods subject to retention of title and for this purpose to enter the place at which the goods subject to retention of title are stored or used if the customer does not comply with the request for their surrender or this is necessary to prevent definitive destruction or loss of the goods. The customer shall waive the rights that would be entitled to from unlawful interference with possession. The provisions stated in sentences 1 to 3 shall not apply if the customer is a consumer within the meaning of § 13 BGB.
- If ZBM demands surrender of the goods subject to retention of title, this shall not be regarded as a rescission of the purchase contract. In the cases stated in section 11.9, ZBM shall be authorised to realise the goods subject to retention of title following prior announcement by sale or by purchase at the dealer purchase price on the basis of the estimated value of a publicly appointed expert or of DEKRA Automobil GmbH. In the event of purchase, ZBM shall be authorised to issue a credit to the customer for the purchase price. The costs of realisation shall be borne by the customer. The generated project from realisation shall be set off against the liabilities of the customer taking into account a flat rate for the costs of realisation of 15 % of the project from realisation. The flat rate for the costs of realisation shall be reduced if and insofar as the customer proves that ZBM has incurred no or a far lower damage.

12. Written form; severability clause; applicable law

- Special agreements and additional agreements relating to the purchase contract shall not be valid unless given in writing. Deviations from this requirement for written form shall only be possible pursuant to a written agreement. Any amendments to or modifications of the present terms and conditions shall only be effective if they are confirmed by the head office of ZBM in writing.
 - If individual provisions of this contract are or become invalid in full or in part, this shall not affect the remaining provisions of the contract; the same shall also apply if it occurs that the contract has a loophole. The fully or partially invalid provision shall be replaced or the loophole closed by a suitable stipulation which corresponds most closely – where legally possible – to what the parties to the contract wanted or would have wanted in accordance with the spirit and purpose of the contract if they had considered this point.
 - The law of the Federal Republic of Germany shall apply. Application of the uniform international sales law (UNCITRAL convention) shall be excluded.
- ### 13. Place of performance; place of jurisdiction
- The place of performance for all claims arising from the contract concluded between the customer and ZBM shall be the place of the head office of ZBM in Garching near Munich.
 - The place of jurisdiction shall be Munich; this place of jurisdiction shall have sole jurisdiction and venue for legal actions brought by the customer against ZBM. ZBM shall be authorised to file legal action against the customer at the respective location of the item of equipment.