

1. **Scope; customer's terms and conditions; changes**
 - 1.1 The following General Standard Terms and Conditions of Sale and Delivery ("GSTCS") shall apply to all ZBM products and services provided the customer is an entrepreneur (Section 14 BGB), a legal entity under public law, or a special asset body under public law. The General Standard Terms and Conditions of Sale and Delivery shall apply in particular to contracts on the sale and delivery of movable objects ("goods") by ZBM.
 - 1.2 Upon conclusion of the first contract in conjunction with the General Standard Terms and Conditions of Sale and Delivery, the customer acknowledges their effectiveness for all future contracts it concludes with ZBM (including orally or by e-mail). The latest version of the General Standard Terms and Conditions of Sale and Delivery can be downloaded from the homepage of ZBM (www.zeppelin-cat.de) and will be sent to the customer upon request.
 - 1.3 The General Standard Terms and Conditions of Sale and Delivery shall apply exclusively to the business relationship between ZBM and the customer. Differing, conflicting or supplementary terms and conditions of the customer shall not become part of the contract. This shall also apply if ZBM is aware of these terms and conditions and provides the customer with the service without reservation.
 - 1.4 Employees at the branch offices of ZBM shall not be authorised to change the content of the General Standard Terms and Conditions of Sale and Delivery (in writing or orally). Written confirmation of any changes is required from the head office of ZBM (Graf-Zeppelin-Platz 1, Garching near Munich, Germany).
 - 1.5 The legal requirements shall remain valid to the extent that they are not amended or expressly excluded in the contract or in these General Standard Terms and Conditions of Sale and Delivery.
2. **Offer; acceptance period; quality and scope of services; new and used goods**
 - 2.1 Offers from ZBM shall be without obligation; they are merely a request to the customer itself to issue a binding offer.
 - 2.2 ZBM can accept the customer's offer within 4 weeks of the offer being issued (acceptance period). A contract shall only be concluded when ZBM declares its acceptance in writing or by providing the service or delivering the goods to the customer. A failure to respond to an offer from the customer does not constitute acceptance of it.
 - 2.3 The subjective requirements concerning the type, quantity, quality, durability, functionality, compatibility, interoperability, safety and the other characteristics ("quality") of the goods shall be exclusively compliant with the information specified in the contract. The agreements in these General Standard Terms and Conditions of Sale and Delivery shall also apply. Insofar as a particular quality or use of the goods has been agreed, the customary use or the usual or expected quality of goods of the same type shall be of no relevance to the contractually agreed (defect-free) performance by ZBM.
 - 2.4 If goods with digital elements (Section 327a (3) sentence 1 BGB) are sold, the provision of the digital elements forms part of the scope of services owed by ZBM only if this is specifically agreed in the contract. In this case, ZBM shall be liable to provide updates only if this is expressly agreed in the contract and only for the period specified therein. If the period is not defined in the contract, any existing obligation to provide updates on the part of ZBM ends one year after acceptance of the goods unless an earlier end to the obligation to provide updates arises from the contract or due to the nature and purpose of the goods and their digital elements, taking into account the individual circumstances. Within the scope of any existing obligation to provide updates, ZBM shall be obliged to merely make updates available; the customer is responsible for their procurement and installation. In particular, ZBM shall not be obliged to inform the customer of any updates or their necessity or the consequences of failing to install them.
 - 2.5 Details of the goods in brochures, advertising and other offer documents or on the Internet, as well as pictures or drawings of the goods, shall only be binding if expressly designated as binding by ZBM. ZBM assumes no liability for the public statements of third parties. "Third parties" in this sense also includes the manufacturer of the goods, if the goods have not been manufactured by ZBM.
 - 2.6 The manufacturer reserves the right to make design or dimensional changes, color alterations, and changes to the scope of delivery during the delivery period, to the extent that this is acceptable to the customer in consideration of the interests of ZBM.
 - 2.7 Packaging or the assembly of the goods or their installation in, or attachment to, another item shall form part of the scope of services owed by ZBM only if this is expressly agreed in the contract. The same applies to the installation of digital elements and other ancillary services of ZBM. Furthermore, ZBM shall be liable to provide only those accessories expressly specified in the contract and only the assembly, installation or other instructions specifically mentioned in the contract.
 - 2.8 Unless otherwise agreed, used goods shall be sold in the condition and with the qualities they have when they are handed over to the customer. The contractual qualities of used goods shall include in particular typical damage due to the goods' age, wear and tear to date and previous use of the goods ("damage from wear and tear").
 - 2.9 Replacement parts shall also be used goods within the meaning of these General Standard Terms and Conditions of Sale and Delivery. They are used spare parts that have been reconditioned and regenerated by the manufacturer or ZBM, but have a reduced remaining service life.
 - 2.10 Goods that have not yet been put into operation (apart from for testing or demonstration purposes or as part of implementation or transportation) shall be new. The year in which the object was made is not material as to whether it qualifies as new.
3. **Performance periods and handover deadlines; hindrances to performance; non-availability of goods; force majeure; early performance; partial services**
 - 3.1 If performance periods or handover deadlines are stated in the contract, they shall be non-binding details based on the anticipated duration of performance or customary delivery times for similar goods. Fixed-deadline transactions shall not be concluded.
 - 3.2 If ZBM is temporarily impeded in effecting the service it owes for reasons for which it is not responsible, the due date for the service shall be postponed until the impediment to performance is removed. ZBM shall inform the customer of the impediment to performance and its anticipated duration immediately.
 - 3.3 If the goods owed by ZBM are not available, ZBM shall be authorised to withdraw from the contract if the non-availability is not just temporary and ZBM is not responsible for it. In this event, ZBM shall be obliged to inform the customer of the unavailability without undue delay, and to refund any consideration already received from the customer without undue delay. Non-availability in this sense shall be deemed to exist, in particular, if ZBM is itself not supplied under a congruent covering transaction by a supplier, or is not supplied properly (under reservation of self-delivery). Non-availability shall also be deemed to exist if the goods to be delivered cannot be or can no longer be supplied from ZBM stock.
 - 3.4 If ZBM is prevented from performing the service for reasons of force majeure or other circumstances ZBM is unable to resolve, ZBM's performance obligation shall lapse. Sentences 1 and 2 of Section 3.3 shall accordingly apply. If the hindrance to performance is merely temporary, ZBM shall not be obliged to perform the service until the hindrance to performance is removed. This shall also apply if ZBM is already behind schedule when the hindrance to performance arises. Force majeure in this sense shall be deemed to exist, in particular, if there is an import or export ban or embargo on the goods. Force majeure also includes, in particular, hindrances due to acts of war, terrorism, natural disasters, significant risks to human health (for example, illnesses, pandemics), government intervention (for example, plant closures, closure of transport routes), explosion, fire, destruction of equipment, or the prolonged failure of means of transport, information systems or energy supplies.
 - 3.5 ZBM shall be authorised to perform services prematurely and partially. ZBM shall be authorised to invoice premature and partial services immediately.
4. **The customer's rights of withdrawal and termination; cancellation of contract in return for cancellation fee; non-performance of contract**
 - 4.1 The customer can withdraw from or terminate the contract due to a breach of duty by ZBM not consisting of the supply of defective goods only if ZBM is responsible for the breach of duty. The customer shall have no free right to terminate the contract (particularly in accordance with Sections 648, 650 BGB).
 - 4.2 If ZBM is in delay in effecting a service owed by it, the customer shall be authorised to withdraw from the contract only if it has set ZBM a reasonable period of time to effect the service and this has elapsed without success.
 - 4.3 The customer shall not have the right to withdraw from the contract after conclusion for reasons that fall within its own area of risk and responsibility (e.g. due to a change in their financial circumstances, order position, or the possibility of using the goods). However, in exceptional cases the customer shall have the right to request annulment (cancellation) of the contract within 2 weeks of receipt of the order confirmation from ZBM, if ZBM has agreed to annul the contract and if the customer has paid a cancellation fee for this purpose, amounting to 20% of the net purchase price agreed in the contract. The customer has no claim to ZBM's agreement to annul the contract. If ZBM does not agree to annul the contract, any cancellation fee already paid by the customer must be refunded.
 - 4.4 If the customer withdraws from the contract following delivery of the goods, Sections 7.4 and 7.5 shall accordingly apply to ZBM's claim for compensation for use and damages. The same shall apply if the contract is annulled following delivery of the goods (e.g. in accordance with Section 4.3).
- 4.5 In the event of unauthorised withdrawal or unauthorised termination by the customer, ZBM shall be entitled to damages in accordance with the statutory provisions. The same shall apply if the contract is not performed for reasons for which the customer is responsible. In these cases, Sections 5.4 to 5.6 and Sections 7.4 and 7.5 shall accordingly apply.
5. **Acceptance; sale to destination according to the buyer's instructions; transportation costs; delay in taking delivery; failure to take delivery; damages; annual increment and change in model series**
 - 5.1 Unless otherwise agreed in the contract, acceptance of goods shall be effected at the ZBM branch establishment that has concluded the contract (place of performance). If the customer wishes to have the goods delivered to a different place (sale to destination according to the buyer's instructions), it shall bear the costs of consignment. That shall also include paying customs duties, taxes, fees and other public charges.
 - 5.2 Unless otherwise agreed, ZBM shall define the carrier and manner of consignment in the case of a sale to destination according to the buyer's instructions. ZBM shall not be liable for selection and monitoring of the carrier. ZBM shall also not be obliged to choose the cheapest or fastest means of shipment. ZBM shall take out transport insurance only if instructed by the customer. The customer shall bear the costs of the transport insurance.
 - 5.3 In the event of sale to destination according to the buyer's instructions, the risk of accidental loss or accidental deterioration and the risk of delayed delivery shall pass to the customer when the goods are handed over to the carrier. This shall also apply if partial services are provided, or if ZBM has arranged the transportation or assumed the costs of transportation.
 - 5.4 If the customer is in delay in accepting the service of ZBM or the service is delayed for reasons for which the customer is responsible, ZBM can demand reimbursement for the resultant damage it has incurred (e.g. storage and transportation costs). In particular, ZBM shall be authorised to store the goods itself and to demand a lump sum of € 4.50 per calendar day as of the agreed handover date or, if a handover date has not been agreed, as of notification that the goods are ready for shipment until they have been accepted. Value-added tax shall be payable on top of the lump sum. The lump sum and the value-added tax owed on it shall not exceed a total maximum amount of 5% of the gross purchase price of the goods. The customer has the right to prove that ZBM has incurred no or only far less damage as a result of storage ZBM shall be authorised to assert further claims and prove higher damage in connection with storage of the goods; however, the lump sum shall be offset against that.
 - 5.5 The provisions in 5.4 shall apply accordingly if the customer does not meet its acceptance obligation, and ZBM then sells the goods to another buyer (following withdrawal from the contract). In this case, the lump sum in accordance with sentence 2 of Section 5.4 is charged until delivery or transfer of goods to the other buyer.
 - 5.6 If the customer does not fulfill its acceptance obligation, ZBM shall also have a claim to damages in accordance with the statutory provisions. In particular, ZBM must be compensated for any depreciation of a machine incurred at the end of a calendar year (annual increment) or as a result of a change to the model series (change of model series) or within the model series, regardless of actual use. This shall not apply if ZBM does not incur any damages as a result of the depreciation.
 - 5.7 At the request of ZBM, the acceptance of the goods and their condition must be documented in an Outgoing Goods Delivery Document or acceptance confirmation, which must be signed upon handover of the goods by the customer or its representative, or by the relevant collector (carrier) of the goods. If the Outgoing Goods Delivery Document or acceptance confirmation is not signed, then ZBM shall be entitled to withhold the agreed service. In particular, ZBM may refuse to deliver the goods to the customer or collector (carrier) until the Outgoing Goods Delivery Document or acceptance confirmation has been signed. This shall also apply if ZBM has arranged the transportation or specified the carrier.
6. **Prices; payments by the customer; default in payment**
 - 6.1 Unless otherwise agreed, the final price to be paid by the customer shall be calculated on the basis of ZBM's net prices applicable at the time the contract was concluded plus value-added tax at the applicable statutory rate.
 - 6.2 Payments by the customer shall be credited in accordance with Section 366 (2) BGB. This shall also apply if the customer has specified a different form of settlement.
 - 6.3 If the customer is in delay in paying a claim of ZBM in full or in part, ZBM shall be authorised to
 - (1) terminate any existing financing and/or payment extension agreement with immediate effect and to demand immediate payment of all claims therefrom;
 - (2) withhold services from contracts that have not yet been fulfilled;
 - (3) assert the rights from the agreed retention of title (Section 11);
 - (4) withdraw from the contract in accordance with Section 7.
 - 6.4 If the customer is in default in payment, ZBM shall be entitled to interest on arrears of 12% of the overdue amount. ZBM reserves the right to assert further lawful claims. The customer shall have the right to prove that ZBM has incurred no or only far less damage.
7. **Withdrawal from the contract by ZBM; claims to compensation for use and damages**
 - 7.1 ZBM shall be entitled to withdraw from the contract if the customer is behind schedule in making a payment due to ZBM, in full or in part. The same shall apply if the customer violates cardinal provisions of the contract or of these General Standard Terms and Conditions of Sale and Delivery, in particular its obligations in accordance with Section 11 below (retention of title), despite a deadline being set or a warning issued. No deadline or warning is required if it can be waived in accordance with the statutory provisions.
 - 7.2 ZBM shall be authorised to withdraw from the contract if it has not yet provided the service it owes and it becomes apparent after the contracts has been concluded that the claim for payment of ZBM is at risk because the customer lacks the ability to pay. This shall be the case in particular if the customer (before or after the contract has been concluded) issues a statutory declaration regarding its financial circumstances or execution measures are instigated against it. In this case, the withdrawal from the contract is only approvable if ZBM has set the customer a reasonable period of time to effect payment concurrently upon the provision of the service by ZBM or to provide security therefor and this period of time has elapsed without payment or security being rendered. There shall be no requirement to set a period of time if this would be superfluous as a prerequisite for withdrawing from the contract in accordance with the law.
 - 7.3 ZBM shall be authorised to withdraw from the contract if the customer ceases its payments or its financial circumstances deteriorate significantly. The same shall apply if an application for the commencement of insolvency proceedings on the assets of the customer is filed or rejected or the insolvency proceedings are discontinued.
 - 7.4 In the event of withdrawal from the contract, ZBM shall be entitled to payment of compensation for use for the time period from acceptance of the goods until their return to ZBM (utilization period). The amount of compensation for use shall correspond to the customary rent the customer would have had to pay if it had leased the goods or a similar object for the utilization period. However, if the purchase price was subject to a financing agreement, the compensation for use shall be at least as much as the sum of all advance payments and financing installments that would have been due in the course of the utilization period had the financing agreement been performed without interruption. The customer is permitted to prove that ZBM has incurred no or only far less damage.
 - 7.5 ZBM reserves the right to assert claims for damages or compensation for use above and beyond this. However, payments by the customer in accordance with Section 7.4 shall be offset against further claims for compensation for use.
8. **Offsetting; right to refuse performance and right of retention; prohibition on assignment of claims**
 - 8.1 The customer can only offset a claim against claims of ZBM if its claim is undisputed or legally binding.
 - 8.2 The customer may only assert the right to withhold payment or the right of retention based on undisputed or legally binding claims. This shall also apply to the commercial right of retention in accordance with Sections 369 to 372 of the German Commercial Code (HGB). In addition, rights of retention can be asserted only if the claim of ZBM and the counterclaim of the customer relate to the same contractual relationship.
 - 8.3 The right of the customer to offset justified counterclaims to which it is entitled for the costs of rectifying defects or completion costs against the claim for payment by ZBM or to assert for this reason the plea of non-performance shall remain unaffected. The customer can only retain part of the payment proportionate to the defect or the degree of incompleteness.
 - 8.4 Any assignment of claims against ZBM shall be possible only with the consent of ZBM.
9. **Guarantee claims of the customer; limitation of action for guarantee claims**
 - 9.1 ZBM's liability for defects and legal imperfections in title shall be as defined by law, unless otherwise specified in the provisions of this Section 9. Guarantee claims by the customer relating to claims for damages or reimbursement of futile expenses shall remain unaffected; these may only be asserted subject to the requirements of and within the limits specified by Section 10.

- 9.2 Damage due to wear and tear or damage due to previous wear and tear shall not constitute a defect. Damage shall also not constitute a defect if it is causally connected to the fact that
- (1) the goods were put into operation incorrectly or were mounted or installed incorrectly (in particular not in compliance with the operating instructions) by the customer or a third party; or
 - (2) the goods were used incorrectly, contrary to their purpose or excessively; or
 - (3) the goods were not adequately maintained or cared for; or
 - (4) the goods were previously modified or repaired improperly by the customer or a third party without the consent of ZBM; or
 - (5) incorrect spare parts (in particular any that were incompatible or not intended by the manufacturer) were installed or attachment parts were added; or
 - (6) unsuitable operating supplies were used, or the goods were subjected to harmful (e.g. physical, chemical or electrical) influences; or
 - (7) earlier defects or damage were not reported to ZBM on time; or
 - (8) in the case of goods with digital elements, the customer has not performed the updates required in order to maintain the contractual conformity of the goods in a timely manner or has not done so properly without this being due to a breach of any existing obligation to provide updates on the part of ZBM under Section 2.4.
- 9.3 Guarantee claims shall exist only if the customer has met its responsibilities to examine the goods and report any defects in accordance with Sections 377 and 381 HGB. Obvious defects must be reported to ZBM within 2 weeks of accepting delivery. This deadline shall be regarded as having been met if the notice of defects is sent off on time.
- If the goods are installed in or attached to another item, inspection and reporting must always be carried out before installation or attachment takes place. Moreover, defect reporting must be carried out in such a timely fashion that it is possible and reasonable for ZBM to cure the defect before the goods are installed in or attached to another item. If this is not done, guarantee claims cannot be asserted.
- 9.4 If the defects or legal imperfections in title are covered by the manufacturer guarantee for certain properties or quality of goods, however, the customer shall be obliged to assert its claims from the guarantee initially against the manufacturer. Until this has been done, ZBM may refuse to satisfy the customer's guarantee claims. However, the customer shall not be obliged to take court action against the manufacturer. ZBM is obligated to fulfil the customer's guarantee claims insofar as the manufacturer does not voluntarily fulfil the claims from the guarantee asserted against it or the customer's claims are not fully settled as a result.
- 9.5 If a defect or legal imperfection in title exists, ZBM shall first of all be authorised to either cure the defect (rectification) or to supply an object that is free from defects (delivery of substitute goods) at its own discretion. The customer shall not have the right to choose the means of cure. ZBM can make cure contingent on payment of the purchase price. However, the customer's rights in accordance with Section 8.3 shall remain unaffected.
- 9.6 If ZBM has agreed to install the goods in or to attach the goods to another object as part of the contract and the installation or attachment has taken place before the defect became apparent, the obligation to rectification shall also include removing the defective goods as well as installing or attaching the reworked or substitute goods. In all other cases, ZBM shall not be obliged to remove the defective goods and install or attach the reworked or substitute goods as part of rectification, or to reimburse the necessary costs to the customer. The same applies if the customer knew of the defect at the time of installation or attachment.
- 9.7 The customer may not request an advance from ZBM on costs incurred by it in the course of rectification by ZBM and which are to be borne by ZBM. If, when the customer requests rectification by ZBM for the purpose of curing a defect, it transpires that there was in fact no defect, the customer shall be obliged to reimburse ZBM for the costs and expenses incurred as a result.
- 9.8 In the event of a defect or legal imperfection in title, the customer shall be authorised to reduce the purchase price or, at its own discretion, to withdraw from the contract and demand damages or reimbursement of expenses in accordance with Section 10 if cure 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 cure or if cure is superfluous under the law. The same shall apply if ZBM justifiably refuses cure or it is impossible for it to perform cure. However, there shall be no right to withdraw from the contract due to an insignificant defect.
- 9.9 Any additional guarantee claims by the customer shall be excluded. In particular, the customer shall not be entitled to cure any defects itself and then request from ZBM reimbursement of the expenses required to do so.
- 9.10 Guarantee claims of the customer for used goods shall be excluded.
- 9.11 Unless otherwise agreed, the provisions of Section 445a BGB (rights of recourse) and Section 445b BGB (limitation of recourse claims) shall not apply. If the customer has claims to reimbursement of expenses in accordance with Section 445a (1) BGB in an individual case, these shall fall under the limitation period specified in Section 9.12. However, the cases set out in Section 9.13 sentence 2 shall remain unaffected by these provisions.
- 9.12 Guarantee claims by the customer shall expire one year from acceptance. If a new machine is sold, the limitation of action shall become effective before the end of the one-year period as soon as the machine has been in operation for a total of 2,000 hours. If, in the particular case, the limitation of action resulting from the statutory provisions enters into force before the limitation period pursuant to this Section 9.12, the statutory provisions shall apply to the limitation period.
- Guarantee claims for parts installed as part of rectification shall become statute-barred upon expiry of the period of limitation for guarantee claims relating to the goods.
- The limitation period for guarantee claims relating to buildings or third-party claims for surrender in rem (Section 438 (1) no. 2, no. 1a BGB) shall remain unaffected.
- The statutory limitation period for guarantee claims relating to damages or the reimbursement of futile expenses shall also remain unaffected. However, a claim to damages may not (in the absence of breach of duty) be based on the grounds that ZBM refused to carry out rectification after expiry of the limitation period for guarantee claims specified here, making reference to the limitation of action (Section 214 BGB).
- 9.13 The exclusions and limitations specified in this Section 9 shall not apply if ZBM has concealed a defect with intent to deceive, or if a quality guarantee assumed by ZBM specifies otherwise. In addition, the special statutory provisions for entrepreneur's recourse shall remain unaffected if the last contract in the supply chain is a purchase of consumer goods (Sections 474, 478 BGB). However, in this case, the compensation of expenses paid by the customer to its contractual partner in the course of rectification shall also be limited to an appropriate amount. In particular, the value of the goods in their defect-free state and the significance of the defect must be taken into account when calculating this amount.
- 10. Compensation for damages and reimbursement of futile expenses by ZBM**
- 10.1 Claims by the customer against ZBM for damages or for reimbursement of futile expenses shall exist only within the scope provided for in this Section 10 and under the conditions specified here; otherwise, any liability of ZBM for damages and reimbursement of futile expenses shall be excluded. This shall apply to contractual liability on the part of ZBM and its liability due to tort or on other legal grounds.
- 10.2 ZBM shall be liable in accordance with the statutory regulations for damage that is caused by a breach of duty through intent or gross negligence by ZBM, its representatives or vicarious agents. However, ZBM shall be liable for gross negligence on the part of ordinary vicarious agents (who are not legal representatives or executive employees of ZBM) only if essential contractual obligations pursuant to Section 10.3 sentence 2 are breached.
- 10.3 ZBM shall be liable in accordance with legal provisions for damage that is caused by negligence by ZBM, its representatives or vicarious agents only if cardinal contractual obligations are breached. These are obligations the fulfillment of which is a prerequisite of proper performance of the contract, and on the fulfillment of which the customer regularly relies or may rely. The liability of ZBM shall be limited in amount to foreseeable damages that are typical for the contract.
- 10.4 ZBM shall not be held liable for any lesser fault than negligence (e.g. neglect in its own affairs). Liability without fault on the part of ZBM shall be excluded. If ZBM is liable on the grounds of and in accordance with sentences 1 and 2 (for example, because statutory liability cannot be excluded), this liability shall be limited to foreseeable damages that are typical for the contract.
- 10.5 If, in accordance with Section 10.2, ZBM is liable for a fault on the part of ordinary vicarious agents (who are not legal representatives or executive employees of ZBM), ZBM's liability is likewise limited to foreseeable damages that are typical for the contract.
- 10.6 The above exclusions and limitations of liability in this Section 10 shall not apply to the following damage and claims:
- Damage resulting from injury to life, body or health;
 - Claims by the customer under the German Product Liability law (Produkthaftungsgesetz);
 - Claims due to defects that were not disclosed with intent to deceive or from a guarantee of quality assumed by ZBM;
 - All other claims, where statutory liability regulations are mandatory.
- 10.7 The provisions in this Section 10 shall also apply to any personal liability on the part of the management bodies, representatives and vicarious agents of ZBM.
- 11. Retention of title by ZBM**
- 11.1 ZBM retains title until payment of the whole purchase price. Transfer of title shall also be subject to payment of all ZBM claims; both claims that exist on conclusion of the contract, and future claims arising from the business relationship with the customer (extended retention of title).
- 11.2 The customer is obliged to treat the goods ("goods subject to retention of title") with care and to maintain them. The customer shall have the regular maintenance and inspection work specified by the manufacturer and any necessary repairs carried out at its own expense. ZBM or a business establishment recognised by ZBM or the manufacturer shall be tasked with carrying out this work.
- 11.3 The customer shall be obliged to take out and maintain at its own expense a machinery insurance policy that also covers in particular the risk of fire and theft for the goods subject to retention of title. The customer shall furnish ZBM at any time with proof that said insurance has been taken out and remains valid. The customer hereby assigns to ZBM all claims to which the customer is entitled now and in the future in relation to the goods subject to retention of title against the insurance company or other third parties; ZBM accepts this assignment.
- 11.4 The customer shall be authorised to resell the goods subject to retention of title, pledge them, or otherwise dispose of them only with the consent of ZBM. Any leasing of the goods subject to retention of title shall also require the consent of ZBM. The same shall apply to export of the goods subject to retention of title or their use outside the Federal Republic of Germany.
- 11.5 Any change in the owner or location of the goods subject to retention of title must be communicated to ZBM on request. The same shall apply to any change in the customer's address. In the event of third-party access to the goods subject to retention of title (e.g. pledges), the customer shall inform the third party of ZBM's ownership and notify ZBM without undue delay.
- 11.6 If the customer processes or re-forms the goods subject to retention of title and in doing so creates a new object, the processing or re-forming shall be carried out on behalf of ZBM as the manufacturer. ZBM shall acquire co-ownership of the new object in proportion to the value of the goods subject to retention of title in comparison with the value of the other processed or re-formed object.
- If the goods subject to retention of title are linked inseparably to an object belonging to the customer to create a new object, and if the customer's object is considered the primary component, then the customer hereby assigns co-ownership of the new object to ZBM to the ratio of the value of the goods subject to retention of title to the other linked objects.
- The customer shall safeguard any ownership or co-ownership of the new object created through processing, re-forming or linkage on behalf of ZBM in each case. The legal circumstances that existed in relation to the goods subject to retention of title shall continue in relation to the new object. In particular, ZBM hereby already conditionally assigns the ownership or co-ownership due to it in the new object to the customer, in accordance with Section 11.1. The provisions in this Section 11 shall apply accordingly to the new object.
- 11.7 The customer hereby assigns to ZBM the claims arising from reselling of the goods subject to retention of title or of the new object (Section 11.6) to the amount of the value of the goods subject to retention of title as security; ZBM accepts the assignment. This shall also apply if resale takes place (contrary to contract) without the consent of ZBM.
- 11.8 In the event that the customer links the goods subject to retention of title with an item of real estate, the customer hereby assigns to ZBM all claims accruing to it from third parties due to this linkage by way of collateral amounting to the value of the goods subject to retention of title; ZBM accepts the assignment.
- 11.9 The customer shall be obliged to provide ZBM with all information and documents that may be required by ZBM to pursue its ownership rights to the goods subject to retention of title or the new object (Section 11.6) or the claims assigned to it.
- 11.10 If the value that can be realised from the security to which ZBM is entitled exceeds the secured claims of ZBM against the customer by more than 10%, ZBM shall be obliged at the request of the customer to release security to the relevant extent at its own discretion. However, this shall apply only if the security is divisible.
- If ZBM is authorised to withdraw from the contract, it may request surrender of the goods subject to retention of title even if it does not first withdraw from the contract. In particular, the request to surrender the goods does not automatically also constitute a declaration of withdrawal from the contract.
- If ZBM requests surrender of the goods subject to retention of title without withdrawing from the contract, ZBM shall purchase these goods from the customer subject to prior notice on the basis of their value as estimated by an expert (e.g. DEKRA Automobil GmbH). The costs of this estimate shall be borne by the customer. ZBM shall be authorised to demand a flat rate of 15% of the net purchase price; however, the customer shall have the right to prove that ZBM has incurred no or only far lower costs for the estimate. ZBM shall offset the purchase price (minus the costs for the estimate) against the outstanding claims of ZBM against the customer. ZBM shall be authorised to issue a credit note to the customer for the purchase price.
- 12. Import and export controls; provisos; authorization; delayed authorization; reimbursement of consideration**
- 12.1 The parties are aware that ZBM's goods or ZBM's services agreed in the contract may be subject to import and export restrictions. In particular, authorizations may be required, or the use of the goods at the agreed destination may be subject to restrictions.
- 12.2 ZBM shall comply with all relevant provisions of import and export law, particularly the import and export provisions of the Federal Republic of Germany and of the European Union. As such, ZBM's contractual declaration shall be subject to the proviso (condition) that no hindrances due to national or international provisions of import and export law, and particularly no import or export bans, embargoes or other trade restrictions, prevent the conclusion and performance of the contract.
- 12.3 If the conclusion or performance of the contract (particularly export of the goods) requires authorization according to the relevant import and export law, ZBM's contractual declaration shall also be subject to the proviso (condition) that the authorization is granted. ZBM shall undertake all reasonable measures to obtain the authorization.
- 12.4 The customer shall be obliged to notify ZBM of any import or export restrictions, as well as all evidence known to it for the existence of such restrictions or equivalent penalties. This obligation already exists even before or at the time of the conclusion of the contract. ZBM and the customer shall each be obliged to provide one another with all documentation and information accessible to them which is required for obtaining the necessary authorizations or, for other reasons, for export, transfer and import of the goods (in particular any end-use statement by the customer). The customer shall be obliged to provide authoritative information to ZBM regarding which documents are required to clear goods for import.
- 12.5 If there is a delay in obtaining an authorization in accordance with Section 12.3, ZBM shall inform the customer immediately of the delay and its foreseeable length (if known). The same shall apply if there is a delay in verifying any import or export restrictions. The due date of services owed by ZBM, or any performance or handover deadlines agreed in the contract, shall be postponed according to the length of the delay. In particular, ZBM shall not be deemed to be behind schedule due to delays in payment or delivery resulting from import or export restrictions or verification of these restrictions. In this respect, claims against ZBM for damages shall be excluded.
- 12.6 If the contract ultimately does not come into effect due to national or international provisions of import and export law, and therefore cannot be performed by ZBM (e.g. because authorization in accordance with Section 12.3 is not obtained, or export of the goods is prohibited for other reasons), ZBM must reimburse any consideration already received from the customer without undue delay. Apart from this, the customer shall have no claims against ZBM, particularly for performance, damages, or reimbursement of expenses.
- 13. Completeness of the contractual document; subsequent changes and additions; form; severability clause**
- 13.1 All agreements reached between ZBM and the customer during conclusion of the contract are set out in writing in the contract. There are no oral side agreements. Unless explicitly specified otherwise in the contract, ZBM has given no undertakings and made no statements concerning the goods or the performance of the contract.
- 13.2 Subsequent changes or additions to the contract shall be agreed in writing or in text form. In the absence of proof to the contrary, therefore, statements made in text form shall be decisive in proving the substance of such agreements. The same shall apply to agreements that deviate from Sentence 1.
- 13.3 Notifications or declarations issued by the customer to ZBM (e.g. defect reports, deadlines) must be made in writing or in text form (Section 126b BGB).
- 13.4 If individual provisions of the contract or the General Standard Terms and Conditions of Sale and Delivery are or become invalid or unworkable in full or in part, this shall not affect the remaining provisions. The parties shall replace the invalid or unworkable provision with a stipulation which corresponds most closely – where legally possible – to the economic and legally intended purpose of the provision. The same shall also apply if it transpires that there is a loophole.
- 14. Choice of law; place of jurisdiction**
- 14.1 The law of the Federal Republic of Germany shall apply to the legal relationships between the customer and ZBM. Application of uniform international law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall be excluded.
- 14.2 The national and international place of jurisdiction for all disputes arising from or in connection with the contract shall be Munich (Regional Court District Munich I). This place of jurisdiction shall have sole jurisdiction and venue for legal actions brought by the customer against ZBM. ZBM shall also be authorised to file legal action against the customer at its place of general jurisdiction.