

## **Transfer part II: General business terms and conditions for maintenances and repairs, setting up and amendment additional VDMA 04/2003**

### **§ 1 Scope, defense clause**

1. The following business terms are valid for the whole business relations with clients of Zett Mess Technik GmbH, Messmaschinen and Zett Mess Maschinen und Service UG (hb) (in the following shortened as „ZM“), even if no express reference is made to these Conditions. Contracts shall be concluded between ZM and Companies in compliance with the law § 14 BGB only.

2. Any terms and conditions of business of the customer deviating from or supplementing these general terms and conditions of business shall not be valid, even though they have not been formally contradicted or is has been delivered without reservations. On the issue of an order, the customer declares binding consent to these terms and conditions.

3. Amendments, modifications and collateral clauses to this Agreement, including this requirement of the written form, need the confirmation in writing of ZM. For amendments which have been made without written form, the burden of proof shall be on the client for establishment of the content.

### **§ 2 Conclusion of contract, offers, prices, post processing**

1. The listed prices and offers only constitute an invitation to ZM making an offer. A contract is only binding agreed upon with the confirmation of the order by ZM.

2. Prices are always quoted plus value added tax to the current amount stipulated by law within the Federal Republic of Germany.

3. The right to make amendments of the construction, the choice of materials, the specifications and the design are reserved to ZM, which is also valid after conclusion of contract, as long as these amendments do not contradict to the order confirmation.

4. If changes are requested by the client or additional trouble-shooting has to be made after conclusion of contract the incurred extra expenses will be invoiced. In such case, in absence of agreement, the prices of ZM are regarded as agreed; even this is not specially taken in reference.

5. In the case of major changes, which could not be foreseen and not influenced by ZM of material and raw material costs ZM reserves the right to invoice the changed price with regard to the changes. The performance by ZM effected up to then is to be reimbursed by the customer, if the performance is a benefit for evaluating the problem.

6. All prices are ex-works, and excluding all supplementary payments whatsoever, particularly excluding transport, insurance, postage, fees, installation, commissioning and any other expenditure concerning use by the customer. In the absence of a special agreement, the packing and the dispatch shall be carried out by ZM and will be invoiced to the customer. The packing will be taken back, if ZM is forced to it by law regulations. If the customer wishes a special insurance for the transport he is in the duty to agree this with ZM before conclusion of contract and to refund these costs.

7. If the client commissions ZM in a contractual relationship or in a specific temporal context after termination of a contractual relationship for performing re-adjustment, especially for reaching different accuracy grade, the prices are regarded as agreed, which are communicated by ZM according to their price list, even this is not specially taken in reference.

### **§ 3 Delivery and performance, passage of risk**

1. All deliveries and performances are carried out under the reservation of our sub-supplier delivery and possibly necessary customers' obligation to cooperate. If because of that reasons agreed time limits for delivery or performance cannot be met, the deadlines and terms for ZM are extended accordingly, without requiring a specific agreement. ZM will inform the customer about the reasons for a delay and about the new schedule.

2. An extension enters into force as a result of actions relating to industrial disputes, particularly strikes and lockouts, as well as reasons for which ZM is not responsible, for example force majeure (fire, natural disasters), delays in delivery by suppliers, traffic congestion, lack of raw materials, lack of power supply as well as public holidays, etc., which influence the manufacture and / or the delivery of the subject of performance / the item. ZM is also not responsible for the mentioned circumstances if they occur during an already existing delay of delivery. Also amendments by the customer of delivered or ordered goods or performances lead to extension of fulfilment- and delivery deadlines accordingly.
3. The fulfilment- and delivery deadlines are also complied with, when the customer has been notified that the goods / the items are ready to ship within the deadline.
4. Partial deliveries are permissible, especially in case of bigger orders.
5. Unless fixed acceptance periods are agreed, customer shall undertake to accept the delivery item after notification of its completion. The customer is especially in the duty to undertake the conformity of the items or performances with the contract.
6. The performances shall be deemed to be accepted by the customer after the receipt of the notice of completion and the delivery.
7. If according to agreement the delivery item is shipped to the customer or another party, the risk passes at the time of transfer of the delivery item to the carrier (forwarder, railways, company driver, etc.) on the client. The risk passes at the time ZM indicate that the goods are ready to be picked up by customer / are ready for shipping - this also applies when partial deliveries are shipped or when we have contracted to furnish other services. Should ZM take back goods based on reasons ZM do not has to maintain, then the customer assumes the risk until goods are received by ZM.

#### **§ 4 Payment, default, offsetting, compensation**

1. Payments invoiced by ZM to the contractual partner are due within the given payment deadline without deduction, unless separate agreements are negotiated.
2. If the purchaser falls into payment arrears, interest at a rate customary in banking or at least at the statutory default interest rate shall be charged. ZM reserves the right to prove higher damages due to the arrears and to enforce them.
3. Payment instructions are only accepted only on account of performance and shall not be deemed paid until credited to ZM bank account without reservation. Bank fees, discount charges, draft and other fees shall be charged to the customer.
4. ZM is entitled to demand a reasonable advance payment, especially agreed large individual orders as well as ZM is forced to make significant payments to assigned others to fulfil obligations. Until the payment of advances ZM has not the duty to produce or purchase any goods or performances out of ZM own resources.
5. The customer can only set off such counter-claims as have been established by the courts or have been recognised by ZM, and for necessary additional deliveries only in the amount of the value of the additional item or performance. The customer can only exercise a right of retention if the counterclaim of the customer relate to the same contractual relationship. As for the rest clause 1 shall apply accordingly, unless mandatory statutory provisions preclude it.
6. Discounts or bonuses, which have been granted, are been omitted if an application is made to start insolvency proceedings about the customers' assets or if the customer is in payment arrears and after 15 calendar days at the latest after the date of the invoice. The same also applies if ZM orders an attorney or a collection agency to collect the debt or takes court action to secure payment of the debt. In these cases ZM has got the right to invoice the previously granted discounts or bonuses for partial deliveries or partial executions subsequently and/or to execute subsequent deliveries or performances with advance payment only. In the cases mentioned before ZM is furthermore entitled to demand immediate payment of any open invoices not yet due, including the overdue amounts.
7. If the ordered and confirmed products or performances are not accepted, ZM reserves the right to, without being required to indicate damages specifically, to invoice 15 % of the agreed gross sum as a flat-rate compensation payment of the corresponding order.

## **§ 5 Damages in transit, warranty, liability**

1. All warranty claims and legal guarantee claims become time-barred 12 months after handover the goods. Warranty claims for used goods are excluded.
2. If the Customer notices damages to packaging upon receipt of the goods, the customer shall have the damages confirmed in written form by the transport carrier. Visible transport damage must be reported immediately. The customer has the full onus of proof for the kind of damage and for the timely dispatch of the notice. Obvious defects are to be reported without undue delay. If no such complaint is filed it shall be deemed as approval of the goods in its' kind and quality.
3. The warranty shall expire if the delivery object is changed by a third party or through the installation/processing of third-party parts.
4. The warranty does not extend to shortcomings which are caused by construction failures or the materials used, if the purchaser stipulated the material. The same applies to finishing, i.e. postprocess, of a third-party upon request of the customer.
5. Claims because of deficiencies against ZM are allowed only for the buyer himself and are not transferable.
6. At enforcement of legitimate warranty claims ZM has got the right to decide in which way the supplementary performance is carried out.
7. If the customer induces an examination of goods supplied by ZM or adjustments or executions and alleges a defect for which ZM would be responsible according to sections above, the customer shall be committed to bear the associated costs for checking, transport, repair and so on.
8. Any other or further claims of the customer, in particular as a result of consequential damage, are excluded against ZM and its servants and any persons employed by it in the fulfilment of its obligations.
9. Subject to the regulations below, claims for damages of the customer, for whatever legal reason, ZM, its statutory representatives or vicarious agents shall not be liable for the slightly negligent violation of duties. In the event of slightly negligent violations of cardinal duties the supplier's liability shall limited to the amount of the order value for the claim.
10. The aforementioned exclusions of liability and limitations of liability shall not apply to cases of liability without fault, particularly in accordance with product liability law, bodily harm and risk of health or the loss of life, in the event of intent and gross negligence.
11. If ZM provides services which do not consists of delivery of goods, the actions taken in order to ascertain the cause of repairs and re-adjustments are only free of charge if the necessity therefore has been confirmed by ZM and ZM has decided if re-adjustments have to be done. In all other cases the amount will be charged to the customer according to ZM valid price list.
12. At customer complaints, which have been legitimated by ZM, the necessary works, even at warranty cases, will be performed at ZM plant in Germany, 53757 Sankt Augustin. Therefore the customer has to sent the coordinate measuring machine (CMM) for evaluation at his own expense. If the failure is a ZM fault the costs for transport will be paid by ZM.
13. No guarantee is granted particularly in the following cases:  
in appropriate or inexpert use, wrong assembly or wrong commencement of operations by the client or a third party, natural wear and tear, wrong or negligent handling, improper maintenance, the use of unsuitable production materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences.

## **§ 6 Reservation of property rights**

1. ZM reserves the ownership of the item / the goods for delivery until total payment therefore has been effective. This reservation of proprietary rights is also valid until all payments between the ZM and the customer relating to the business connection have been made, including future and conditional demands.
2. The customer shall not be authorised to pledge or assign the goods as security.
3. In the case of delay in payment, ZM is entitled to take back the goods after notice is given. The withdrawal of the reserved goods by ZM shall not be regarded as a withdrawal of the contract by ZM. If ZM makes use of his reservation of ownership by taking back the reserved

goods, ZM will be entitled to invoice 10% of the goods' value as cost of redemption. The assertion of further damages remains unimpaired.

4. ZM is entitled to exploit the reserve goods taken back in the best possible way through direct sale, offsetting the proceeds against the purchase price.

**§ 7 Legal venue, applicable law, final provisions**

1. Place of performance for all obligations resulting directly or indirectly from this contractual relationship, including the obligation to pay, is Bonn, Germany.

2. The legal venue for any and all litigation arising or corresponding claims from this contractual relationship is Bonn, Germany. In addition ZM is entitled to initiate any action before any other place of jurisdiction given by law.

3. The invalidity of individual provisions of these general terms and conditions of business, supply and payment or of their constituents shall not affect the validity of the remaining provisions. Statutory provisions shall take the place of any provisions that are ineffective.

4. The application and interpretation of these general terms and conditions of business, supply and payment and the conclusion and interpretation of legal transactions with the customer shall be guided exclusively by the laws of the Federal Republic of Germany.

5. The customer shall authorise ZM by doing without a statement to process person-related data within the scope of the admissibility of the Federal Data Protection Act if this is required for the implementation of the contractual relation and by forwarding these information to the parties concerned within ZM for implementing the contractual relationship. This is particularly applicable to forwarding data which might be necessary for in particular cases entered (goods-) credit insurance.

6. For these business terms and conditions and for the complete legal relationship between the contractual Partners, German law is exclusively applicable.