

# General Terms and Conditions

## Section 1 Validity of the Terms and Conditions

1. All deliveries, services and offers from Zehnder Pumpen GmbH (hereinafter referred to as "ZP") are exclusively subject to these Terms and Conditions. They shall thus apply to all future terms and conditions, even if they are not expressly agreed upon again. Upon receipt of the goods or services, the terms and conditions shall be deemed accepted at the latest. Any counter-confirmations by the Customer with reference to its general terms and conditions are hereby expressly objected to.
2. Deviations from these Terms and Conditions shall only be effective if confirmed in writing by ZP.

## Section 2 Offer and Conclusion of the Contract

1. For orders with customers outside Germany, the prices are ex Grünhain plus statutory VAT and packaging. If the price basis changes until the day of delivery, ZP reserves the right to price changes, provided the price customary in the market are not exceeded through such price change.
2. If the value of an order with customers outside Germany exceeds EUR 1,000.00 without VAT, 1/3 shall be paid when placing the order, 1/3 upon notification of readiness for shipment and 1/3 upon handover.
3. For deliveries within Germany, the freight-free limit of ZP is at EUR 1,000.00 net value of goods. For deliveries with a net value below EUR 1,000.00, freight costs are staggered according to weight and/or dimension. At a net value of more than EUR 1,000.00, delivery within Germany shall take place carriage paid.
4. ZP shall be entitled, notwithstanding any contrary provisions of the Customer, to initially offset payments against the Customer's previous debts. If costs and interest have already been incurred, ZP shall be entitled to offset the payment first against the costs, then against the interest and finally against the principal performance.
5. A payment shall only be deemed effected if ZP can dispose of the amount. Cheques and bills of exchange are only accepted for payment purposes, the latter only by special agreement, whereby discount, bill of exchange tax, collection charges and other costs and fees shall be charged to the Customer.
6. When exceeding the agreed upon term of payment, ZP shall be entitled to charge default interest in the amount of 9 (nine) percentage points (among merchants) or 5 (five) percentage points (among ultimate consumers) above the applicable base rate of the European Central Bank. The Customer shall only be entitled to offset and retention if the counterclaims have been determined by declaratory judgement or if they are undisputed (even if complaints or counterclaims are asserted).

## Section 3 Prices, Terms of Payment, Set-Off

1. For orders with customers outside Germany, the prices are ex Grünhain plus statutory VAT and packaging. If the price basis changes until the day of delivery, ZP reserves the right to price changes, provided the price customary in the market are not exceeded through such price change.
2. If the value of an order with customers outside Germany exceeds EUR 1,000.00 without VAT, 1/3 shall be paid when placing the order, 1/3 upon notification of readiness for shipment and 1/3 upon handover.
3. For deliveries within Germany, the freight-free limit of ZP is at EUR 1,000.00 net value of goods. For deliveries with a net value below EUR 1,000.00, freight costs are staggered according to weight and/or dimension. At a net value of more than EUR 1,000.00, delivery within Germany shall take place carriage paid.
4. ZP shall be entitled, notwithstanding any contrary provisions of the Customer, to initially offset payments against the Customer's previous debts. If costs and interest have already been incurred, ZP shall be entitled to offset the payment first against the costs, then against the interest and finally against the principal performance.
5. A payment shall only be deemed effected if ZP can dispose of the amount. Cheques and bills of exchange are only accepted for payment purposes, the latter only by special agreement, whereby discount, bill of exchange tax, collection charges and other costs and fees shall be charged to the Customer.
6. When exceeding the agreed upon term of payment, ZP shall be entitled to charge default interest in the amount of 9 (nine) percentage points (among merchants) or 5 (five) percentage points (among ultimate consumers) above the applicable base rate of the European Central Bank. The Customer shall only be entitled to offset and retention if the counterclaims have been determined by declaratory judgement or if they are undisputed (even if complaints or counterclaims are asserted).

## Section 4 Delivery Period

1. The delivery time shall begin with the sending of the order confirmation, but not before complete technical clarification with the Customer and the provision of documents to be procured by it, and not before the fulfilment of the down payment agreed upon and other obligations to be performed in advance.
2. The term of delivery shall reasonably be extended in the event of delivery delays due to labour disputes and the occurrence of unforeseen hindrances that are outside the responsibility of ZP, as far as such hindrances are demonstrably of significant influence on the completion or delivery of the delivery item. This is especially the case if a supplier of ZP delivers belatedly within the supply chain or fails to deliver at all. The aforementioned circumstances shall also not be the responsibility of ZP, even if they occur during an already existing delay. In important events, the beginning and the end of such hindrances shall be notified by ZP to the Customer as soon as possible.

## Section 5 Transfer of Risk

The risk of deterioration or destruction of the delivery item shall pass to the Customer once the shipment has been handed over to the person performing the transport, which can also be an employee of ZP, or the shipment has left ZP's factory/warehouse for the purpose of dispatch. If delivery is delayed due to a cause the Customer is responsible for, the goods shall be stored at the Customer's risk and expense. In such an event, the notification of the readiness for shipment shall be deemed to be tantamount to the shipment.

## Section 6 Retention of Title

1. All deliveries shall take place under retention of title in accordance with Section 449 BGB (German Civil Code), pending receipt of all payments from existing claims and claims arising in the future that are due to ZP for any legal ground against the Customer.
2. The pledging and transfer by way of security of the goods subject to retention of title shall not be permitted. Impairments of the rights of ZP by a third party, the Customer shall ward off, in the best possible way and at its own expense, and notify ZP immediately.
3. To the extent to which the Customer sells or processes goods subject to reservation within the ordinary course of business, the Customer herewith already assigns to ZP, by way of security, any receivables and ancillary rights against third parties arising from such transactions in full. At ZP's request, the Customer shall inform the debtor of the assigned receivables and of all details required to collect the receivables and to notify the debtor of the assignment. The Customer shall be entitled to collect the receivables from the resale in its own name and for the account of ZP and shall be obliged, as long ZP does not make use of its right of collection, to which ZP shall be entitled at all times.
4. The goods shall remain the property of ZP; processing or transformation shall always be carried out for ZP, but there shall be no obligation for it. If the co-ownership of ZP lapses through connection, it is hereby agreed upon that the Customer's co-ownership in the regular matter shall pass to ZP pro rata of the value (invoice value). The Customer keeps the co-ownership for ZP in custody free of charge.
5. If the Customer acts in breach of contract, particularly in the event of default of payment, ZP shall be entitled to withdraw from the contract and reclaim the delivery item or to claim damage for non-performance. ZP shall further be entitled - in breach of contract or the Customer's default of payment - to demand the assignment of existing claims for return. In the event of withdrawal from the contract, the Customer shall pay ZP for use and impairment loss a compensation for use and lost value at least in the amount of the official depreciation rate according to the depreciation table (rounded up to full years).

## Section 7 Material Defects

1. ZP ensures that its products are free of material defects. Claims for material defect shall expire after 12 months. This shall not apply insofar as the law under Sect. 438 para 1 no. 2 (building structures and components used for the structures); Sect. 479 para. 1 (right of recourse) and Sect. 634a para. 1 no. 2 (building defects) BGB prescribe longer periods, as well as in cases of injury to life, limb or health, in an intentional or grossly negligent breach of duty of ZP and fraudulent concealment of a defect by ZP. The legal provisions regarding suspension of expiration of prescription, suspension and recommencement of limitation periods shall remain unaffected. The limitation period shall begin with the transfer of risk.
2. The warranty shall be void for delivery items that are subject to premature wear and tear (wearing parts) due to their material properties or the way they are used, such as stuffing boxes, seals, clutch parts made of rubber, etc. Furthermore, the warranty shall not refer to normal wear and tear and to such damages, which are caused by improper installation, inadequate maintenance, or by improper operating conditions (such as dry running, unsuitable conveyed liquid or chemical and electrical influences). ZP's liability shall also be excluded if the Customer arbitrarily makes changes or repairs to the delivery items, or the Customer commissions such changes or repairs without granting ZP both the time required and the opportunity to fulfill its obligations under the material defect claims.
3. The Customer must immediately notify ZP of defects in writing, at the latest within one week after receipt of the delivery item. Any hidden defect shall be notified in writing immediately after becoming aware of the defect, but no later than within the period specified in Sect. 7 para. 1 sentence 2. In the event of neglect or delayed notification of defect, there are no claims for material defect based on warranty. With damage to goods in transit, the Customer shall make an entry on the delivery note of the forwarding agent or the Customer shall refuse acceptance. In the interest of a speedy clarification of the facts, the Customer shall document any damage appropriately (in particular, by photographs).
4. In the event of a notification by the Customer that the delivery item has a material defect, ZP demands at its option that
  - a) the defective part or device shall be sent to ZP to examine the cause of the defect, including possibly subsequent repair and subsequent return (this shall not apply to devices/parts firmly connected to buildings or to devices/parts otherwise difficult to remove).
  - b) the Customer keeps the defective part available, and a technician of ZP is sent to the Customer to make the repair.For unjustified notice of defect, the Customer must reimburse ZP for the costs incurred through the examination of defect or repair.
5. Material defect claims against ZP are only due to the Customer and are not assignable.
6. No warranty shall be given for used products, except in case of an intentional or grossly negligent breach of duty of ZP, fraudulent concealment of a defect by ZP and in cases of injury to life, limb or health.
7. Any claim of the Customer due to expenses required for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded if the expenses increase because the delivery item has subsequently been transported to a location other than the Customer's branch, unless such shipment corresponds to its intended use.
8. The Customer's right of recourse against ZP under Sect. 478 BGB (recourse of the entrepreneur) shall exist only insofar as the Customer has not made agreements with its customers exceeding the statutory warranty claims. In addition, under Sect. 478 para. 2 BGB, sub-paragraph 7 shall apply accordingly to the scope of the Customer's right of recourse against ZP.
9. In other respects, Sect. 8 (other damage claims) shall apply to any claim for damage. Any further or other claims than those regulated in Sect. 7, asserted by the Customer against ZP and its vicarious agents due to a defect, shall be void to the extent not mandatorily required by law.

## Section 8 Limitation of Liability

1. Claims for damages from impossibility of performance, positive breach of contract, culpa in contrahendo and tort shall be excluded both against ZP and against its vicarious agents, unless mandatory liability is given (e.g. under the Product Liability Act, in cases of intent, gross negligence, due to injury to life, limb or health or because of breach of essential contractual obligations). Such a claim for damages for breach of essential contractual obligations shall be limited to contract coherent, foreseeable damage, as far as there is no intent or gross negligence or liability for injury to life, limb or health. A change in the burden of proof to the detriment of the Customer shall not be connected with the above regulations.
2. To the extent the Customer is entitled to damages pursuant to subparagraph 1, these shall become statute-barred upon expiration of the applicable statute of limitations for claims for material defects in accordance with Sect. 7 subparagraphs 1 and 2. In the event of claims for damages under the Product Liability Act and for tort, the legal statute of limitations shall apply.

## Section 9 Place of Performance, Jurisdiction, Applicable Law, Severability

1. The law of the Federal Republic of Germany, under the exclusion of the UN Sales Convention, shall apply to these Terms and Conditions and to the entire legal relationship between the Customer and ZP.
2. Grünhain-Beierfeld shall be the place of performance for deliveries and payments. For all legal disputes, Zwickau shall be the exclusive place of jurisdiction. ZP shall also be entitled to sue at the Customer's headquarters.
3. If any provision in these Terms and Conditions or a provision under other agreements between ZP and the Customer is or becomes invalid, then the validity of the other provisions or agreements shall remain unaffected.

**Zehnder Pumpen GmbH**  
As of August 2015