

GENERAL TERMS AND CONDITIONS OF SALE

I. General, Applicability

1. The goods and services of Robert Zapp Werkstofftechnik GmbH and Stahlwerk Ergste Westig GmbH (hereinafter referred to as "Zapp") are supplied exclusively in accordance with the terms and conditions set forth below. Unless Zapp expressly agreed upon in writing, Zapp does not accept any Buyer terms and conditions, which are contrary to or deviate from Zapp's own terms and conditions of sale. Zapp's terms and conditions will apply even should Zapp make a delivery to the Buyer without reservation, knowing that the Buyer has terms and conditions which contradict or vary with Zapp's terms and conditions of sale. Should Zapp's general terms and conditions of sale not contain every regulation, the equivalent statutory provision will apply.
2. Incoterms 2000 will apply for interpretation of the trading stipulations used in these terms and conditions of sale.
3. Zapp's terms and conditions of sale will also apply to all future transactions with the Buyer.

II. Prices, Payments and Settlements

1. Unless otherwise stated in the confirmation of the order, Zapp's prices are "ex works" plus sales tax at the official rate in force at the date of delivery. Zapp's prices are also subject to the alloy surcharge currently in effect or any other agreed upon surcharge.
2. Independently from being invoiced, payment claims owed to Zapp will become due for payment immediately on receipt of the goods without any deductions, unless otherwise expressly agreed upon in writing.
3. The Buyer will fall into arrears not later than ten days after the payment becomes due, without requiring a reminder notice. Should the period for payment be exceeded, latest with delay of the Buyer, Zapp charges interest on arrears at the rate of 8 % above the current base interest rate.
4. The Buyer may only set off against acknowledged, undisputed or legally binding claims and/or the Buyer may only assert a right of retention against such claims.
5. Should an appreciable change take place in terms of labor, raw materials, energy or transport costs between the conclusion of the contract and the date of delivery, Zapp reserves the right to renegotiate the prices.
6. Should, after conclusion of the contract, circumstances arise resulting in a substantial deterioration in the Buyer's finances, whereby Zapp's claim for payment is put at risk, Zapp is entitled to accelerate maturity immediately, irrespective of the period of validity of credited bills of exchange. This will also apply if the Buyer falls into arrears of payment which indicate that Zapp's claim is at risk. In such case, Zapp is entitled to take back the goods, if necessary, by entering the Buyer's premises and removing the goods. In addition, Zapp may prohibit any further processing of goods due to the Buyer under the contract. The recovery of goods does not implicate a cancellation of the contract. The Buyer may avoid any legal consequences described hereinabove by offering collateral securities equivalent to the value of Zapp's endangered payment claim.
7. Zapp will be entitled to set-off with any claims, including those resulting from bills of exchange, Zapp and its related companies within the meaning of Section 15 of the German Stock Corporation Act ("AktG") have against the Buyer.

III. Content and Scope of Deliveries

1. Deviations in dimensions or quality are permissible within the framework of the applicable German industry standard (DIN) or by special agreement. Deviations in weight are permissible within the customary range for the industry. In the case of goods produced to order, underdeliveries of 20 % are possible on orders weighing up to 500 kg, underdeliveries of 15 % on orders weighing up to 1000 kg, and underdeliveries of 10 % on orders weighing over 1000 kg. Underdeliveries up to 10 % are possible on deliveries from stock. Should the weight falls within the allowances, there is no defect in quality within the meaning of Section 434 of the German Civil Code ("BGB"). The legal obligations of inspection and complaint as laid down in Section 377 of the German Commercial Code ("HGB") are not affected by underdeliveries outside the permissible percentages (§ 7). The Buyer approves an overdelivery should the Buyer does not complain immediately after delivery or, in case of non-discernability, 14 days after discovery. Section 377 of the German Commercial Code ("HGB") applies accordingly (§ 7).
2. Weights will be established on Zapp's calibrated scales and a weighing certificate will be provided as proof of the invoiced weight.
3. Any technical information, illustrations, drawings, dimensional or weight data presented on the Internet or in brochures, and any quotations or other printed matter serve only to describe Zapp's products and are deemed to be noncommittal average values. They do not represent any information as to quality or form the basis for any guarantee of quality or durability unless expressly marked as such.

IV. Delivery Periods, Consequences of Delay

1. Should the Buyer fail to fulfill his contractual obligations on time, such as opening a letter of credit, furnishing national or foreign certificates, making a prepayment, etc., Zapp is entitled to reasonably extend its delivery periods in accordance with the needs of its production schedule, without affecting Zapp's rights under the contract and statutory provisions.
2. Zapp's deliveries are made "ex works", and the date of the shipment determines compliance with the delivery period specified in the order. In the event that the goods cannot be shipped on time for reasons beyond Zapp's control, delivery dates are deemed to be met upon notification of the shipment date to the Buyer.
3. Zapp has a minimum grace period of one week for delivery of goods for which a specified delivery date has not been set in the confirmation of the order. Only after the expiration of this additional period will the shipment be considered late.
4. Zapp is entitled to make partial shipments within reason.
5. Force majeure and other occurrences beyond Zapp's control, which make delivery difficult or impossible, such as interruption of operations at Zapp's site and/or at Zapp's suppliers' sites (e.g. fire, machine breakdowns, raw material or energy shortages), transportation delays, strikes, administrative actions, non-deliveries, and incorrect or delayed deliveries from Zapp's suppliers for essential operating materials or raw materials will release Zapp from Zapp's obligations under the respective contract. In case of temporary obstacles, the herein aforementioned occurrences will only apply for the duration of the problem plus a reasonable recovery period. Zapp will notify the Buyer of any major obstacle and its anticipated duration without delay. Should the delay make unreasonable demands on the Buyer, the Buyer may immediately give verbal notice of cancellation of the contract and follow up with a written declaration, provided the contract has not been partially fulfilled.
6. In case of Zapp's delay in delivery, the Buyer may cancel the contract on the expiration of a reasonable grace period established in writing. The Buyer's right of cancellation will, in principle, extend only to the balance of the contract. Should, however, completed partial deliveries be unusable by the Buyer without the balance of the delivery, the Buyer is entitled to cancel the entire contract.
7. In the event of delay, Zapp is liable to the Buyer for proven damages provided that the Buyer notifies Zapp as to the amount of the anticipated damages as soon as the Buyer knows. Should the anticipated damages exceed 20 % of the value of the delayed delivery, the Buyer is obliged to seek an alternate source for the product and to issue a replacement purchase order to cover as quickly as possible for the quantity of the delayed delivery, if necessary, for realization of a covering purchase opportunities proved by Zapp, under cancellation of the contract. Zapp will reimburse any documented additional costs for the new purchase order and any documented damages incurred during the delay. Otherwise, Zapp's liability for proven damages due to delayed delivery is limited to 50 % of the value of the quantity of the delayed delivery.
8. Should the Buyer default in acceptance or fails to comply with other contractual obligations to cooperate, Zapp will be entitled to demand compensation for damages, including additional expenses. Zapp's rights resulting from delay of acceptance of the Buyer remain unaffected hereby.

V. Passing of Risk

1. Zapp will choose the transport routes, methods, and haulage contractors or carriers, should the Buyer does not provide any special instructions.
2. Should the loading or shipment of the goods be delayed due to the Buyer or should the Buyer do not request delivery of the goods within four days of notification that the goods are ready for shipment, Zapp at its equitable discretion may place the goods in storage, take appropriate measures to preserve the goods, at the Buyer's expense and risk, and invoice any additional costs for storage and preservation. This provision does not preclude the use of any and all legal remedies available to Zapp due to the Buyer's default of acceptance.
3. In case of damage in transit, the Buyer will provide Zapp with a damage report without undue delay.
4. The point in time at which the goods are available "ex works" determine the passing of risk.
5. If not contrary to commercial custom or otherwise agreed, the goods will be supplied without packaging and unprotected against rust.
6. Should the Buyer or his agent collect goods not intended for sale in the Federal Republic of Germany, the Buyer is to present Zapp with all the requisite export documents.
7. At the Buyer's option and expense, deliveries may be covered by transit insurance.

VI. Blanket Orders and Release Dates

1. Annual blanket orders with release dates obligate the Buyer to accept the entire quantity of goods on which the order is based.
2. Should no particular release date are specified for a blanket order, the entire quantity is to be released within a 12-month period.
3. Should release dates are not complied with by the Buyer, Zapp is entitled to deliver and invoice the entire quantity of goods four weeks after providing written notification of the consequences of not releasing the entire quantity of goods ordered. Zapp's rights resulting from the Buyer's delay remain unaffected hereby.

VII. Claims Resulting from Defects

1. The goods are contractual, should the goods either not deviate or only deviate insignificantly from the agreed

- specification, at the time of the passing of risk. The conformity with contract and faultlessness from defects of our goods are determined exclusively. Only by express agreements as to the quality and quantity of the ordered goods will determine whether the contract has been met and the goods are defect-free. Zapp will assume liability for fitness of use, only if expressly agreed upon in advance. Otherwise, the Buyer exclusively bear the risk of suitability for intended purpose. Zapp is not liable for any deterioration, destruction or inappropriate treatment of the goods after the passing of risk.
2. Zapp offers no guarantees based on the specification or intended purpose for the goods. Any guarantee will require a separate written agreement.
3. The Buyer must inspect delivered goods immediately upon receipt. Any claim for defective material must be evidenced in writing immediately or by the sixth day after receipt at the latest. The Buyer must also notify Zapp of any hidden defects immediately upon discovery or by the sixth day after the discovery. After the completion of an agreed acceptance, complaints of defects which could have been established at this procedure will be excluded.
4. In the event of a complaint, the goods must be made available to Zapp or, if requested, a sample provided to Zapp for inspection at no expense to the Buyer. Should the complaint not have been valid, Zapp reserves the right to charge the Buyer with the cost of freight and inspection.
5. The Buyer may not submit any claims for defects from goods sold as a downgraded product (II-A material, for example) with specified defects, or any other defects, which might normally be expected from such material.
6. In cases of defects in quality, Zapp will at Zapp's discretion and taking into account the Buyer's wishes, rectify the matter by either a replacement delivery or repairs. Should neither course of action be completed, the Buyer may establish within reason a final grace period for rectification. Should this grace period expire without rectification, the Buyer may either reduce the purchase price or cancel the contract. No other claims will be admitted beyond this point and Section 8 remains unaffected.
7. In case of a defect of title, Zapp will have the right to rectify the matter by eliminating the defect of title within two weeks after receipt of the goods. Beyond that, No. 6 Sentence 2 applies accordingly.
8. The period of limitation for delivery of defective goods will expire one year after the delivery date, unless the defective product was delivered intentionally. The legal period of limitation applicable to goods which are customarily used in construction projects and caused its defectiveness remain unaffected hereby. Repairs or replacement deliveries will not result in a new start date for the period of limitation.
9. Any Buyer claims for recourse, pursuant to Section 478 of the German Civil Code ("BGB"), are limited to the legal scope of claims for defects by third parties against the Buyer and are subject to the condition that the Buyer has registered a complaint with Zapp in accordance with Section 377 of the German Commercial Code ("HGB").

VIII. General Limitations of Liability

1. Unless otherwise provided for in these terms and conditions, Zapp is liable for compensatory damages in the event of a breach of contractual or non-contractual duties and, if in the process of negotiating a contract, only in the event of intent or gross negligence on the part of Zapp's legal representatives or vicarious agents. For a culpable breach of fundamental contractual duties, other than cases of intent or gross negligence on the part of our legal representatives or vicarious agents, Zapp is only liable for foreseeable typical damages associated with this type of contract.
2. The foregoing limitations of liability do not apply in case of a fatal or physical injury or harm to health.
3. Liability as provided for in the German Product Liability Act ("ProdHG") remains unaffected by this provision. This provision does not change the burden of proof to the disadvantage of the Buyer.

IX. Retention of Title

1. Delivered goods remain Zapp's property (reserved goods) until all the debts, including any outstanding balances due to Zapp within the framework of the business relationship, have been settled. This will also apply to future and qualified debts, e.g. arising from reverse bills of exchange, etc.
2. Further processing and change of the reserved goods may take place in accordance with Section 950 of the German Civil Code ("BGB") without obligating Zapp. Should the Buyer processes combine or mix the reserved goods with other goods, Zapp is entitled to co-ownership of the new article for the full invoice value of the reserved goods. Should Zapp's ownership cease as a result of combining, mixing or processing, already at present the Buyer transfers to Zapp his ownership, alternatively his expectant rights in the new stock or article to which he is entitled to in the amount of the invoice value of the reserved goods; in the event of processing, this shall be in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. The Buyer is obligated to store the final product at no additional cost to Zapp. The rights of co-ownership preserve Zapp's rights to the reserved goods as stated in Paragraph 1, Section 9.
3. The Buyer is entitled to resell the purchased goods in the ordinary course of business, provided the Buyer retains title to the goods and the Buyer is not in arrears. The Buyer transfers to Zapp all claims for collection of the final invoice amount, including sales tax, if applicable, arising from the resale to his customers or third parties, whether or not the purchased goods were resold with or without processing. The Buyer is continually empowered to collect the outstanding debts, without precluding Zapp's right to collect the debt at any time. Zapp will not exercise its right to collect the debt as long as the Buyer fulfills his payment obligations to Zapp from the proceeds of sales, is not in arrears of payment and, in particular, is not subject to an application for the institution of insolvency proceedings or is not ceasing payments as provided for in Section 2 Paragraph 6. Should any of the aforementioned conditions exist, Zapp may ask the Buyer to provide the necessary information and documents related to the transferred claims and associated debtors, and to inform the debtors (third parties) of the transfer. The term "resale" also applies not only to the use of the reserved goods to fulfill contracts of work and material, but also to fulfill contracts of work and labour.
4. The Buyer must inform Zapp immediately in writing of any liens or levies filed against the Buyer by third parties, so that Zapp can preserve its rights in accordance with Section 771 of the German Civil Code of Procedure ("ZPO"). Should a third party not be able to reimburse Zapp for the court and out-of-court costs associated with its efforts to preserve its rights, the Buyer is liable to Zapp for the costs and damages incurred.
5. The Buyer is not authorized to transfer claims to any other party. Zapp's authorization to collect outstanding debts does not include the right to transfer any claims. Transfers of claims are permissible only should the transfer be part of a genuine factoring arrangement, of which Zapp has been notified and from which the proceeds exceed the value of Zapp's secured claim. Zapp's claim is due immediately upon receipt of the proceeds of the factoring deal.
6. Should the Buyer place securities as collateral and the total value of the existing securities exceeds the nominal value of Zapp's secured debts by more than 20 %, Zapp must at the Buyer's request release securities of his choosing.

X. Legal Venue, Place of Fulfilment, Applicable Law

1. The place of fulfillment and legal venue for both parties to the contract shall be the seller's registered offices. At its discretion, Zapp is entitled to select the legal venue applicable to the partner's registered office.
2. The laws of the Federal Republic of Germany will apply to all the legal relationships between Zapp and the Buyer with the exception of the provisions of International Conflict Law. Neither the United Nations Convention on Contracts for the International Sale of Goods (CISG) nor any other international treaties will apply, even after adoption into German law.

As of: March 2003