

# GENERAL TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

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Z.I.S. Kunststoff GmbH, Industriestraße 15, 33184 Altenbeken-Buke  
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This document is a translation of the original German text and is not legally binding. Only the text of the original document in German is legally binding.

## 1. Scope of application of the general terms and conditions for the sale of products

1.1 The following terms and conditions for the sale of products (hereinafter: "Conditions") shall apply exclusively to all contractually agreed sales Z.I.S. Kunststoff GmbH (hereinafter "Z.I.S.") to the customers apply the following Conditions. "Products" include any sort of merchandise which is especially produced for the Customer by Z.I.S. On conclusion of the contract the Customer agrees to the following Conditions. These Conditions shall also apply to all future sales between Z.I.S. and the Customer, even if they have not been separately agreed upon.

1.2 Any terms and conditions which differ from those contained in these Conditions shall not apply unless Z.I.S. has given its prior written consent beforehand. These Conditions shall apply even if Z.I.S. accepts the Customer's offers or delivers Products to the Customer without reserve knowing that the conditions of the Customer differ from or conflict with its own. Z.I.S. may withdraw from the contract if the Customer protests against these Conditions. If this occurs the Customer is not entitled to any claims against Z.I.S.

1.3 Amendments and additional agreements must be made in writing in terms of § 126b German Civil Code "text form" (e.g. fax, e-mail). This shall also apply to any waiver of this requirement.

1.4 These Conditions shall apply exclusively vis-à-vis businessmen/companies, legal persons under public law and separate public property within the meaning of Sec. 310 (1) German Civil Code.

## 2. Offer, Conclusion of Contract

2.1 All offers of Z.I.S. are subject to change and are nonbinding, as far as they are not specifically labelled binding or do not include a certain term of acceptance.

2.2 In absence of the submission of an express statement, the Customer shall bind himself to his contractual offer for a period of two weeks.

2.3 A purchase agreement is considered to have been concluded if Z.I.S. has entered into a written contract with the Customer or if Z.I.S. confirms the acceptance of the order within the period in accordance to 2.2. of these Conditions or executes the delivery (decisive: date of dispatch of the Products). If Z.I.S. executes the delivery

after expiry of this period, the agreement shall also be deemed to have been concluded in as far as the Customer does not return the delivered Products without undue delay.

2.4 The contractual relationship between the Customer and Z.I.S. is solely governed by the written purchase contract, including these conditions. It fully expresses all agreements between the contracting parties on the subject-matter. Oral agreements by Z.I.S. prior to the conclusion of this contract are legally nonbinding and oral agreements by the contracting parties shall be replaced by the written contract, unless they specifically imply that they will continue in force bindingly. Additions and amendments to the agreed conditions, including these terms and conditions, need to be issued in writing to be valid. With the exception of the Managing Directors or the Authorised Officers, employees of Z.I.S. are not entitled to meet diverging oral agreements. Transmission by telecommunication, in particular by telefax or email, shall be sufficient to meet the requirement of submission in writing.

2.5 All information in the delivery programme of Z.I.S. catalogues, brochures, and other advertising documents, specifications and other technical supply conditions, in certificates and in other forms represent quality descriptions and are not guarantees within the meaning of Sec. 276 (1) German Civil Code.

2.6 Information according to cipher 2.5 of these Conditions on the produced and/or distributed Products (e.g. information on weight, measures, practical value, capacity, tolerances and technical data) as well as on the presentations of these Products (e.g. illustrations and drawings) are only roughly decisive, as far as the usability for the contractually intended purpose does not presuppose an exact accordance. Customary deviations and variations which occur upon legal regulations or constitute technical improvements as well as the replacement of component parts with equivalent parts are permissible, as far as the usability for the contractually intended purpose is not affected.

2.7 Z.I.S. reserves its ownership and copyright for all its quotations and estimates of costs as well as for all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliary material placed at the Customer's disposal. Without explicit consent from Z.I.S., the Customer must not, either as such or with regard to the contents, make these objects available to third parties, disclose them, use them or reproduce them themselves or via third parties. At the request of Z.I.S., the Customer has to return these objects completely to Z.I.S. or destroy potentially manufactured copies if they are no longer needed in the proper course of business, or if negotiations do not lead to the closing of a contract. The storage for backup purposes of electronic data placed at the Customer's disposal is exempted from this regulation.

### **3. Date of Delivery and force majeure**

3.1 The beginning of the agreed delivery period requires the clarification of all technical questions. The declarations of both parties in writing in terms of § 126 b German Civil Code are definitive for the scope of the supply, in as far as they comply. If an order has been given without such concurring declarations from both parties, the written order confirmation of Z.I.S. shall be definitive for the scope of the deliveries, unless the Customer contradicts this without undue delay.

3.2 Part deliveries are permissible to the extent that they are reasonable for the Customer.

3.3 Unless a definite time limit or a fixed date is accepted or agreed upon, the time limits or dates for the delivery announced by Z.I.S. only constitute an approximate specification – its actual abidance depends on the availability of the vendor parts, production conditions and transport conditions. As far as dispatch has been agreed, the delivery deadlines and the dates of delivery refer to the time of the handing over to the forwarder, freight carrier or others assigned with the transport.

3.4 The observance of agreed delivery deadlines is dependent on the timely receipt of all advance performances to be provided by the Customer (in particular: documents to be supplied) as well as the observance of the agreed payment conditions and other contractual and/or legal obligations by the Customer. If these preconditions are not fulfilled in time the delivery deadlines shall be extended by the length of the delay which has occurred. This shall not apply if Z.I.S. is responsible for the delay.

3.5 Z.I.S. is not liable for the impossibility of the delivery or for delivery delays as far as they are based on force majeure or other unforeseen occurrences at the time of the conclusion of the contract, for which Z.I.S. is not responsible. If these occurrences essentially complicate or even make the delivery or the performance impossible and this interference is not only temporary, Z.I.S. may rescind (zurücktreten) the contract. Temporary obstacles extend the delivery and performance deadlines or postpone the delivery and performance dates by the time period of the interference plus by an adequate startup term. If the delay makes the acceptance of the delivery or performance unreasonable for the Customer, he is entitled to rescind the agreement with an immediate declaration in writing in terms of § 126 b German Civil Code towards Z.I.S.

3.6 Force majeure in terms of cipher 3.5 includes all unforeseen occurrences or such occurrences that come under the influence of the contractual partner and which effects on the execution of the contract can not be avoided by reasonable efforts of the contractual parties. This especially but not exclusively includes war (declared or not), warlike situation, commotion, affray, riot, blockade, embargo, government arrangement, sabotage, strikes, go slow strike, lock out, collective action, epidemic, fire, flood, storm tide, typhoon, hurricane or other thunderstorm in the degree of a catastrophe, earthquake, land slip, flash of lightening, general deprivation of material (Werkstoffmangel), severe transportation accidents, shortages of raw material, interruptions to business of any sort and remanufacture of important system parts for reasons on which Z.I.S. has no influence, as far as this leads to an extension of delivery deadlines.

3.7 The Customer is aware that Z.I.S. purchases materials from sub-suppliers for the production and/or sale of the Products. If the subcontracted supply of these Products by sub-suppliers is delayed based on reasons for which Z.I.S. is not responsible, the time for delivery is delayed for the same period towards the Customer. The Customer will be immediately notified orally or in writing (§ 126 b German Civil Code) after the acknowledgement of such delays.

3.8 In the event of a delay in delivery or performance, the liability of Z.I.S. for compensation is limited according to ciphers 11 and 12 of these Conditions.

3.9 Reminders from the Customer must at all times be issued in writing.

#### **4. Purchase Price**

4.1 Prices shall apply to the performance and delivery amount listed by Z.I.S. in the confirmation of order or offer letter. Additional or special services will be charged separately.

4.2 Prices are, if not agreed differently, in EURO ex works in Altenbeken-Buke excluding packaging, postage costs, insurance and value added tax. The value added tax shall be itemised separately in the invoice with the tax rate prevailing at the time of delivery

4.3 Packaging requested by the Customer or considered necessary by Z.I.S. as well as delivery costs shall be calculated at the cost prices prevailing at the time of delivery.

4.4 Z.I.S. reserves the right to adjust the prices accordingly if, after closing the contract, the costs should decrease or increase, particularly when caused by collective wage agreements or by changes of commodity or raw material prices.

#### **5. Terms of Payment**

5.1 In as far as no other agreement has been reached, the invoiced amount shall be due for payment within 10 days after receipt of the invoice without discount.

5.2 The Customer shall make payments at the domicile of Z.I.S. at the cost and risk of the Customer. The Customer is only entitled to pay by cheque or bill of exchange if this has been agreed expressly with Z.I.S. The Customer is then obliged to reimburse Z.I.S. for the incurred exchange and discount charges.

5.3 In as far as the Customer pays the purchase price by cheque, bill of exchange or otherwise, the purchase price debt shall only expire when the counter value has been credited definitely and without reserve to the account of Z.I.S. The retention of title of Z.I.S. under cipher 9. shall not expire before this moment.

5.4 Diverging from Sec. 286 (3) German Civil Code the Customer shall also be in default if he does not make the payment owed within the payment period stipulated under cipher 5.1. (Sec. 286 (2) no. 2 German Civil Code).

5.5 If partial payments have been agreed on, the total remaining price shall become due for payment if the Customer is in default with an instalment in whole or in part for longer than 14 days. Z.I.S. is also entitled to demand payment of the entire purchase price, if after conclusion of the agreement deterioration in the financial position of the Customer occurs or is in evidence for the first time, the consideration appears jeopardised and Z.I.S. has previously demanded and set a deadline in vain that the

Customer pay a reasonable security for the deterioration in the financial position which has occurred.

5.6 The Customer may only set off with undisputed, recognised or final and absolute counter-claims.

5.7 The Customer may only appeal to retention rights vis-à-vis claims of Z.I.S. in as far as the counter-claims are undisputed, recognised or final and absolute.

5.8 Reminders of the Customer must be made in writing in terms of § 126 b German Civil Code.

## **6. Redemption of Products**

Should Z.I.S. deliver the goods together with transport and/or packing material, especially with transport rollers which are not owned by Z.I.S. and therefore need to be returned to the owner by Z.I.S., the Customer has to return such transport material to Z.I.S. in time. In addition, the Customer has to exempt Z.I.S. from claims by the owner and refund Z.I.S. for any additional costs and damages resulting from a delayed return. The Customer shall indemnify Z.I.S. from any legal take back requirements and connected third party claims.

## **7. Place of Performance, Transfer of Risk**

7.1 Unless otherwise agreed by the parties the place of performance and fulfilment shall be the domicile of Z.I.S.

7.2 The risk of accidental loss passes to the Customer when the ordered Products are handed to the forwarder or freight carrier. At the wish and cost of the Customer the consignment may be insured by Z.I.S. against risks named by the Customer.

7.3 If the dispatch or service of Products is delayed for reasons for which Z.I.S. is responsible, the risk shall be transferred to the Customer with effect from the day on which the Products are ready for dispatch.

## **8. Default in Acceptance**

8.1 If dispatch or service is delayed by more than one month after the Product is ready for dispatch at the request of the Customer or by reasons for which he is responsible, Z.I.S. may charge the Customer for storage costs for each month commenced in the amount of 5 % of the price of the Product to be delivered and a maximum of 0.5 %. Both parties to the agreement are at liberty to prove that higher or lower storage costs have been incurred.

8.2 If the Customer delays in accepting the Product or if he negligently breaches other duties of cooperation Z.I.S. shall also be entitled to demand the reimbursement of all other extra costs incurred hereby.

## **9. Retention of Title**

9.1 Z.I.S. shall retain full title of the delivered Products until the purchase price and all ancillary claims (e.g. costs incurred by bills of exchange, financing costs, interest) has been paid in full.

9.2 In as far as legally permitted, the retention of title of cipher 9.1. shall also apply to all claims which had already arisen at the time of the conclusion of the contract. The retention of title only expires with the complete payment of all claims of Z.I.S. from the business connection. The approved balance shall be definitive hereof.

9.3 Until performance of the particular pecuniary claim and respectively until performance of all pecuniary claims of the business connection an exploitation or transfer by way of security of the Product is prohibited. If the Customer only purchases the Product for resale, he has the revocable right to resell the Product in line with a proper course of business. The right to resale expires with the stoppage of payments or with the application of the opening of insolvency proceedings.

9.4 The Customer hereby assigns his claims from resale to Z.I.S. in the amount of the product price (including sales tax), but stays irrevocably authorised to the recovery. Z.I.S. can also recover claims and inform the third party debtor about the assignation, if the Customer does not properly fulfil his obligations to pay. The Customer is obliged to offer the information necessary for the recovery.

9.5 Z.I.S. will release the goods subject to retention of title, as well as the objects or receivables superseding them, as far as their value exceeds the amount of the secured receivables by more than 50%. The choice of the objects to be released thereafter is up to Z.I.S.

9.6 As long as Z.I.S. retains title, the Customer is obliged to treat the delivered Products with care.

9.7 If Z.I.S. rescinds the contract in the event of a breach of contract by the Customer, in particular default in payment, Z.I.S. is entitled to demand the return of the delivered Products.

9.8 Should a third party seize the goods which are subject to retention of title, particularly by garnishment, the Customer shall immediately notify the third party that the goods are owned by Z.I.S. and shall likewise notify Z.I.S. in order to facilitate the enforcement of their proprietary rights. Should the third party be unable to refund the judicial and extrajudicial costs incurred to Z.I.S. in this context, the Customer shall be liable towards Z.I.S.

## **10. Trademark Rights**

In the case of an infringement in the preceding sense, Z.I.S. will either, at its own option and expense, substitute or modify the delivered product in a way that ensures the remedy of the infringement and that the delivered product continues to fulfil its function as contractually agreed, or to procure the right of use for the Customer by closing a licencing agreement. Should Z.I.S. not succeed in doing so within an appropriate period of time, the Customer is entitled to withdraw from the contract or

to debase the purchase price in an appropriate way. Possible indemnity claims by the Customer are subject to paragraph 12 of these Conditions.

In the case of infringements caused by delivery of products from other manufacturers, Z.I.S. will, at its own option, assert its claims against the manufacturer or pre-supplier for the Customer's account or assign the claims to the Customer. In compliance with paragraph 10, claims against Z.I.S. can only be asserted if the legal enforcement of the aforementioned claims against the manufacturers and pre-suppliers has been unsuccessful or if it would be futile, e.g. due to bankruptcy.

## **11. Warranty Claims; Liability for Breaches of Contract**

11.1 If the delivered Product is defective at the time of the transfer of risk Z.I.S. is entitled to choose, derogating from Sec. 439 (1) German Civil Code, either to deliver Products free of defect or to repair the Products delivered. If the defect is remedied Z.I.S. is obliged to bear all costs for expenses required, in particular, transport, transit, work and material costs in as far as these are not increased because the Products were delivered to a place other than the domicile or the commercial branch of the Customer if this does not correspond to the intended use of the Products. Refunds are only granted by Z.I.S. for the cheapest dispatch route.

11.2 In the event of an insubstantial reduction in the value or the suitability of the delivered Product Z.I.S. is entitled – in addition to Sec. 439 (3) German Civil Code – to refuse subsequent performance pursuant to Sec. 437 (1) German Civil Code and instead of subsequent performance to refer the Customer to the rights pursuant to Sec. 437 (2) German Civil Code (reduction or rescission). This shall not apply if the Customer can prove that he has justified interest in a subsequent performance, despite the lack of importance of the defect, and the reduction or the rescission therefore does not represent any equivalent form of legal recourse; however, in this event the Customer may only demand subsequent improvement if the costs of the subsequent improvement are in reasonable proportion to the value of the delivered Product.

11.3 If the improvement or the replacement delivery is not successful (Sec. 440 p. 2 German Civil Code), the Customer may demand either reduction in the purchase price or rescind the agreement as he chooses. Further statutory claims to compensation shall remain unaffected hereby.

11.4 Liability for defects is excluded for damages which occur after the transfer of risk as a result of faulty or negligent treatment, inordinate use, unsuitable operational means and external influences which go beyond the use in compliance with the contract. Z.I.S. shall also not be held liable for the consequences of a change to the delivered Products improperly carried out by the Customer or third parties. Unless otherwise agreed, Z.I.S. shall not provide any guarantee for circumstances which lie outside the delivered Products; this shall apply in particular to the ability to use the delivered Products with other components of the Customer or third persons.

11.5 In the case of defective component parts from other manufacturers, Z.I.S. will, at its own option, assert its claims against the manufacturers and suppliers for the Customer's account or assign the claims to the customer. In the case of such defects, claims against Z.I.S. can only be asserted under the other preconditions and

in accordance with these Conditions if the legal enforcement of the aforementioned claims against the manufacturers and suppliers has been unsuccessful or if it would be futile, e.g. due to bankruptcy. For the duration of the lawsuit, the limitation period of the Customer's warranty claims in question against Z.I.S. shall be constrained.

11.6 With regard to the purchased Products Z.I.S. shall be held liable for the negligent breach of essential contractual duties and for damage caused by the purchased merchandise and arising from negligent injury to life, body or health pursuant to the statutory provisions. In the same way Z.I.S. shall be liable for damage which is based on intentional or grossly negligent conduct or corresponding conduct of its representatives or agents and under the mandatory provisions of the Product Liability Act (Produkthaftungsgesetz). In as far as the preconditions of sentences 1 and 2 are not satisfied, the liability to pay compensation in the event of contractual breach is excluded; Z.I.S. is not held liable – notwithstanding sentences 1 to 3 – in particular for damage which has been sustained by items or legal merchandise other than the Products delivered.

11.7 In the event of defects or other divergences of the purchased Products the Customer may only demand compensation in lieu of performance pursuant to Sec. 281 German Civil Code, if, when setting the deadline, he clearly stated that if the deadline expired without success he would also claim compensation instead of performance or subsequent performance.

11.8 The period of warranty is one year as of delivery or, if an approval is required, as of approval. This term does not apply for indemnity claims from the Customer for injury of life, body or health or for wilful or grossly negligent breach of duty of the vendor or of his auxiliary persons, which become time-barred according to the legal prescriptions.

## **12. Other Liability**

12.1 Liability for compensation claims other than those provided for under cipher 11. shall excluded, unless Z.I.S., his representatives or his agents can be charged with intent or gross negligence.

12.2 Compensation claims based on mandatory provisions of the Product Liability Act (Produkthaftungsgesetz) and claims owing to bodily harm caused by negligence shall remain unaffected. The same shall apply to statutory compensation claims owing to negligent impossibility or initial inability to perform.

12.3 In as far as compensation claims against Z.I.S. are excluded this shall also apply with respect to the personal liability of Z.I.S.' employees, workers, staff, representatives and agents to pay compensation.

12.4 If Z.I.S. is unable to carry out the above performance for reasons for which it is responsible the Customer is entitled to demand compensation. Compensation shall, however, be restricted to 10 % of the value of such portion of the delivery which cannot be used for its designated purpose owing to such impossibility. This shall not apply in as far as Z.I.S. is charged with intent or gross negligence.



12.5 If Z.I.S. is in default, the Customer may demand compensation for each complete week of the delay of 0.5 % of the price of the part of the delivery which could not be used expediently by the Customer owing to the default – in as far as the Customer provides prima facie evidence that it has suffered damage. Compensation shall however be restricted to a maximum 5 % of the price of such portion of the delivery which cannot be used for its designated purpose owing to such impossibility. Any further compensation claims of the Customer are excluded. Sentences 1 – 3 shall not apply in the event of intent or gross negligence.

12.6 In the event of liability for simple negligence, the liability of Z.I.S. for property damage and for financial loss resulting from it is limited to the amount of 100,000.00 EUR per case of damage and to 1 million EUR in all, according to the current limit of indemnity of its product liability insurance, even in the case of violation of essential contractual obligations.

12.7 Limitations of this paragraph do not apply to the liability of Z.I.S. for wilful action, for guaranteed structural characteristics, for injury of life, body or health or according to the law on product liability.

### **13. Final provisions**

13.1 Unless otherwise agreed, these General Terms and Conditions for the Sale of Products shall apply as a framework agreement in the version valid at the time of the Customer's purchase order, or at least in the version which was last communicated to him in writing. These also apply for similar future contracts without the necessity for Z.I.S. to refer again to the Conditions in each particular case.

13.2 As far as permitted by law, the place of jurisdiction shall be the domicile of Z.I.S. Z.I.S. may sue the Supplier at the court which has jurisdiction for the Supplier's domicile.

13.3 Unless otherwise agreed in a specific case the place of performance shall be the domicile of Z.I.S.

13.4 This contract and any claims arising therefrom shall be subject to the law of the Federal Republic of Germany excluding United Nations Conventions on Contracts for the International Sale of Goods (CISG).

13.5 Should individual provisions of these Conditions be or become invalid in whole or in part, or should these Conditions contain a lacuna, this shall have no effect on the validity of the remaining provisions. In place of the invalid provision a valid provision shall be agreed upon which reflects the meaning and purpose of the invalid provision and, in particular, its economic intention. If there is a lacuna, the parties shall agree on the provision which they would have agreed on with regard to the meaning and purpose of the contract if this point had been considered from the start.