

**General Conditions of Sale of Atlantic Zeiser GmbH**

Update on 1.1.2002

**1. General provisions, scope of application**

- (1) Our conditions of sale shall apply exclusively; we shall not accept conditions of the customer which are contrary to or deviate from our conditions of sale unless we have expressly approved their validity in writing. Our conditions of sale shall apply also if we perform delivery to the customer without reservation although we know that his conditions are contrary to or deviate from our conditions of sale.
- (2) All agreements concluded between us and the customer in order to perform this contract must be entered into in writing.

**2. Offer, offer documents, catalogues**

- (1) If the customer's order must be regarded as an offer according to §145 BGB [German Civil Code], we can accept it within 4 weeks. Our offers are always non-binding.
- (2) We reserve the right of ownership and copyright to illustrations, drawings, calculations and other documents; third parties may not be allowed to have access to them. The customer may provide them to third parties only with our express written approval.
- (3) Our product descriptions are only quality descriptions and may by no means be regarded as a guarantee for the quality of goods.
- (4) We may make technical modifications in our products which increase or maintain their value at any time and without prior notification.

**3. Tools, devices etc.**

- (1) Tools, devices and similar equipment which are manufactured or purchased according to the customer's documents for the purpose of production shall continue to be our property even if the customer totally or partially pays for them.
- (2) Our scope of service does not include assembly and commissioning of the delivery at the customer's site as no special agreement has been concluded.

**4. Prices, payment conditions, default**

- (1) Unless otherwise stated in the order confirmation, our prices are quoted "ex works" excluding packaging; the cost of packaging shall be charged separately.
- (2) The legally valid value added tax (VAT) is not included in our prices; the legally valid amount of VAT on the date of invoice is indicated separately in the invoice.
- (3) The deduction of cash discount requires a special written agreement.
- (4) Invoicing is effected in EURO. Payment has to take place within 10 days strictly net, or as stated on the offer/invoice. The customer will be in default if he does not pay due invoices at the latest thirty days after receipt of invoice or equivalent demand for payment. We reserve the right to give notice of default at an earlier time by sending a demand for payment after the payment has become due. Contrary to sub clauses 1 and 2, the customer shall be in default if it is agreed that the purchase price should be paid at a time which has been or can be fixed using a calendar and the customer does not make the payment at the latest by this time.
- (5) If the customer defaults on payment, we shall be entitled to demand interest of 9% above the valid base interest rate p.a. on defaulted payment. If we can furnish proof of a higher damage caused due to default in payment, we shall be entitled to assert it.
- (6) The customer shall have the right of offset only if his counterclaims are legally enforceable, undisputed or have been acknowledged by us. Furthermore, he shall be authorized to exercise a right of retention in so far as his counterclaim is based on the same contractual relationship.

**5. Delivery period**

- (1) The delivery period specified by us shall begin only if all technical questions have been clarified. Unless otherwise agreed, the delivery period specified by us shall be non-binding.
- (2) If we delay the delivery due to reasons for which we are responsible, the liability for damages caused directly as a result of delayed delivery is limited to the amount of foreseeable damage.
- (3) If, after we have already delayed delivery, the customer grants us a reasonable additional period for the performance of delivery, he shall be entitled to cancel the contract if this period expires without the performance of delivery. If a reasonable additional period expires without the performance of delivery, the customer must state within two weeks after expiration of the additional period whether he wishes to cancel the contract or continues to demand performance.
- (4) In so far as we are additionally liable for damages instead of performance, the claims shall be limited to the amount of foreseeable damage in case of ordinary negligence.
- (5) In case of ordinary negligence, we shall never be liable for consequential damage caused due to delayed performance or non-performance, in particular if the customer suffers a loss of profit or incurs other costs due to loss of production.
- (6) The prerequisite for the performance of our delivery obligation is that the customer fulfils his obligations punctually and in due form.
- (7) If we prove that our suppliers do not supply us punctually although we chose them carefully and concluded contracts with appropriate conditions, the delivery period shall be extended by the period of delay caused due to unpunctual supply by our suppliers. If it is impossible for our supplier to supply, we shall be entitled to cancel this contract.
- (8) If the customer delays in taking delivery or violates other obligations to cooperate, we shall be entitled to demand the damage suffered by us including possible additional expenses. In such a case, the risk of an accidental loss or an accidental deterioration of the object of sale shall also pass to the customer at the time when he delays the acceptance of delivery.

**6. Passage of risk**

- (1) Unless otherwise stated in our order confirmation, delivery "ex works" shall be considered agreed upon. The risk shall pass to the customer when the delivery item leaves our factory, also
- (2) if partial deliveries are performed or if we have also undertaken to pay for other expenses or perform other services such as shipping expenses or delivery and installation. If an acceptance must be performed, it shall be decisive for the passage of risk. It must be carried out punctually on the acceptance date, alternatively immediately after our notification that the goods are ready for acceptance. The customer may not refuse to accept delivery if there is an insignificant defect.

- (3) If shipment or acceptance is delayed or not performed due to circumstances for which we are not responsible, the risk shall pass to the customer on the day when he is informed that the goods are ready for shipment or acceptance.
- (4) We may perform partial deliveries in so far as this is reasonable for the customer.
- (5) If requested by the customer, we will take out a transport insurance for the delivery; the customer shall bear the related expenses.

**7. Warranty for defects, warranty period**

- (1) The customer shall have warranty rights only if he has duly performed his duty to examine and give notice of defects according to §377 HGB [German Commercial Code].
- (2) If the object of sale has a defect for which we are accountable, we shall, at our option, have the right to remove the defect or deliver goods which do not have any defects.
- (3) If we are not ready or not in a position to remove the defect or perform substitute delivery, in particular if this is delayed beyond reasonable periods due to reasons for which we are responsible, or if the removal of defect or the substitute delivery fails in any other way, the customer may, at his option, cancel the contract or demand a reduction in the purchase price. If a reasonable additional period granted by the customer expires without any success, the customer must state within two weeks after expiration of the additional period whether he wishes to cancel the contract or continues to demand performance.
- (4) Unless otherwise stated in the following, the customer shall have no further claims – irrespective of the legal basis. Therefore, we shall not be liable for damage which is not caused to the delivery item itself; in particular we shall not be liable for the loss of profit of the customer or other damage to his assets. In so far as we are liable for such damages, the claims for damages are limited to the amount of foreseeable damage.
- (5) The above liability disclaimer shall not be valid if the damage is caused due to intent or gross negligence. Furthermore, it shall not be valid if we have guaranteed a specific quality of the object of sale and the object of sale does not have this quality.
- (6) If we negligently breach a fundamental contractual obligation, our liability shall be limited to the foreseeable damage. In so far as claims for damages are asserted which are covered by our employer's liability insurance or product liability insurance, our liability to pay damages is limited to the indemnity paid by this insurance.
- (7) The warranty period shall be one year, beginning as of the delivery of goods. This is a period of limitation and shall also apply to claims for consequential damage caused by defects in so far as the claims are not based on unlawful acts.

**8. Retention of title**

- (1) We retain the title to the object of sale until receipt of all payments arising from our business relations with the customer. If there is any breach of contract on the part of the customer, especially if there is delay in payment, we shall be entitled to exercise our legal rights and take back the object of sale. We shall be authorized to use the object of sale after taking it back; the utilization proceeds must be set off against the accounts payable of the customer – after deducting reasonable utilization expenses.
- (2) If the object of sale is attached or if third parties assert any other claims to it, the customer must notify us immediately in writing so that we can file a suit according to §771 ZPO [German Code of Civil Procedure]. In so far as the third party cannot reimburse us for the judicial and extrajudicial costs of such a suit, the customer shall be liable for them.
- (3) The customer may resell the object of sale within the ordinary course of business; however, he hereby assigns to us all claims – in the total amount of invoice (including VAT) – against his buyers or third parties which are based on such resale, irrespective of whether the object of sale is resold without being processed or after processing. The customer shall be authorized to collect these claims even after they have been assigned. Our authority to collect these claims shall not be affected thereby. However, we undertake not to collect the claims as long as the customer meets his payment obligations with the collected amounts, does not default on payment, and, in particular, no application has been filed to open insolvency proceedings or there is no cessation of payments. But if this happens, we can demand that the customer disclose the assigned claims and the debtors thereof to us, provide all information required for collecting the claims and submit the relevant documents to us.
- (4) Any processing or transformation of the object of sale carried out by the customer shall be considered performed on our behalf. If the object of sale is processed with other objects which do not belong to us, we shall acquire co-ownership to the new object in the ratio of the value of the object of sale to that of the other processed objects at the time of processing. For the rest, the same shall apply to the object produced as a result of processing as to the object of sale delivered under retention of title.
- (5) We undertake to release the securities to which we are entitled upon the customer's request in so far as the value of our securities exceeds the value of the accounts receivable to be secured by more than 20%; the choice of the securities to be released shall lie with us.

**9. Place of jurisdiction, place of performance**

- (1) If the customer is a businessman, the court having jurisdiction over Emmingen shall be the place of jurisdiction. However, we may also sue the customer at the court having jurisdiction over his place of residence.
- (2) Unless stated otherwise in the order confirmation, Emmingen-Liptingen shall be the place of performance.
- (3) This contract is governed exclusively by the laws of the Federal Republic of Germany.