

# Zollner Elektronik AG

## Sale and Delivery Conditions



Date: July 2005

### I. General / Scope

1. The Sale and Delivery Conditions shall apply to all current and future business relations with the customer.
2. Any contradictory or supplementary payment and delivery conditions or general conditions of business at variance hereto shall not be part of any contract even if knowledge of such exists unless the application of such conditions is expressly agreed to in writing.
3. Any quotations as to costs, drawings and other documentation (hereinafter called: documentation) shall remain our property and subject to our rights of ownership and copyright without any limitation. Documentation may only be made available to third parties with our prior permission and shall be returned to us immediately upon request in the event that an order is not placed. Sentences 1 and 2 shall apply as appropriate to the documentation of the customer. Such may, however, be made available to those third parties who have been duly instructed to provide any delivery.
4. The customer shall have a non-exclusive right to use any standard software with the agreed performance characteristics in an unchanged form on the agreed equipment. Without express agreement the customer may produce a backup copy.

### II. Concluding of a Contract

1. Any offers by us shall be non-binding. Any technical changes as well as changes in form, colour and/or weight shall be allowed insofar as such are reasonable.
2. Upon placing an order for goods the customer declares in a binding way that it wishes to purchase the ordered goods. We may accept the offer to enter into contractual relations contained in the order within two weeks of receipt of such by us. Acceptance may be either in written form or by delivery of the goods to the customer.
3. Any drawings, depictions, measurements, weights or other performance data shall only be binding if such is expressly agreed in writing.
4. The concluding of the contract shall be subject to correct and timely supply by our sub-suppliers. This shall only apply in the case that any non-supply is not our responsibility, and in particular in case of the concluding of a congruent hedging transaction with our sub-supplier. The customer shall be immediately notified as to the non-availability of the delivery. Any moneys paid shall immediately be reimbursed.

### III. Price; Payment Conditions

1. Unless otherwise agreed in the order confirmation all prices shall be "ex works" excluding packing. Such shall be invoiced separately.
2. The statutory value added tax is not included in the prices. Such shall be calculated separately at the statutory amount on the day of the issuing of the invoice.
3. Any discount for cash must be agreed separately, and in the event of no such agreement being made a discount for cash payment shall not be possible.
4. Part deliveries shall be invoiced at once and shall be subject to separate payment independently of the fulfilment of the complete delivery. Any down payments made upon the concluding of contracts shall, subject to any agreement to the contrary, be calculated in proportion to the individual part deliveries.
5. Transport packing materials and outer packing materials shall not be taken back by us.
6. We reserve the right to amend our prices if after the concluding of the contract there is an increase or decrease in costs, in particular resulting from collective wage agreements, changes in freight costs, shipping costs or costs related to shipping or in material prices. Such changes shall be established to the customer upon request.
7. The customer shall have a right to set-off only if any counterclaim is determined by way of a final court judgment or is acknowledged by us.
8. The customer may exercise any right of retention of moneys only if such relates to a counterclaim from the same contractual relationship.

#### **IV. Retention of Title**

1. We reserve title to the goods until complete payment of all outstanding amounts from a current business relationship.
2. The customer shall handle the goods with care. Insofar as any maintenance work or inspection work is necessary, the customer shall undertake such on a regular basis at its own expense.
3. The customer shall notify us immediately upon any access by third parties to the goods, such as in case of attachment as well as in case of damage or destruction of the goods. Any change in possession of the goods as well as any change in the seat of the company shall also be notified to us by the customer immediately.
4. We may in case of any act by the customer in breach of the contract, in particular in case of any delay in payment or in case of any breach of any duty under section 2 and 3 of these provisions, withdraw from the contract and demand that the goods be returned.
5. The customer may utilise the goods in accordance with normal business operations. However, the customer hereby assigns to us all amounts owing to it by purchasers or third parties from resale or processing to the extent of the final invoice amount (including turnover tax) and regardless of whether or not the goods are utilised without or after processing. We hereby accept such assignment. The customer shall be entitled to recover such amounts even after assignment. Our authority to recover any amounts owing shall not be affected thereby. However, we shall not recover any amounts owing insofar as the customer fulfils its duties of payment from the moneys received, is not late in payment, and in particular no application for the commencement of insolvency proceedings or the undertaking of an out-of-court settlement has been made with the creditors for the settlement of debts (§ 305 Section 1 No. 1 Insolvency Regulations (IR)), no cheque or bill of exchange proceedings or a cessation of payment exists. If, however, such is the case we may demand that the customer notifies us of the assigned claims and the respective debtors, gives all information necessary for the collection, provides the documentation thereto and notifies the debtor (third party) of the assignment. The authority to recover shall relate to the complete balance claim.
6. The processing or transformation of the goods by the customer shall always be undertaken for us. In the event that the goods are processed with other parts not belonging to us we shall acquire part-ownership in the new object in proportion to the value of the goods to the other processed objects at the time of processing. The objects resulting from the processing shall also be subject to the conditions applying to the goods delivered subject to reservation of title.
7. If the goods are inseparably mixed with other objects not belonging to us, we shall acquire part-ownership in the new object to the proportion of the value of the object to the other mixed goods at the time of the mixing. In the event that the mixing is such that the goods of the customer are to be regarded as the main component, it shall be agreed that the customer shall transfer to us the proportionate share of the ownership. The customer shall hold for us the sole or part-ownership at no expense.
8. Upon the expiry of the authority to collect in accordance with section 5 of this provision, the customer is also no longer authorised to incorporate the goods subject to reservation of title, inseparably mix such or process such.
9. The customer shall also assign to us any amounts owing by third parties resulting from the connection of the goods with any plots of land. This shall also include the right to grant a security mortgage with priority before the remainder. We hereby accept such an assignment.
10. In the event that the goods subject to reservation of title are incorporated by the customer as a substantial component of its own plot of land, the customer hereby assigns any claims resulting from the commercial sale of the plot of land or resulting from the rights to such land to the extent of the value of the goods subject to reservation of title including all related rights with priority above the remainder. We hereby accept such an assignment.
11. We undertake to release any securities available to us at the request of the customer insofar as the value of the securities that can be realised exceed the claims to be secured by more than 20 %. The value that can be realised is the purchase price of the customer or in the case of the processing of the goods subject to reservation of title the production costs of the secured goods or the share of part ownership insofar as the customer cannot establish a lower value for the goods subject to reservation of title that can be realised. The choice of the securities to be released shall be determined by us.

#### **V. Delivery, Delivery Time**

1. Compliance with deadlines for deliveries shall be subject to the timely receipt of all documents to be provided by the customer, necessary permits and releases, in particular those related to plans, as well as compliance with the agreed conditions of payments and other duties by the customer. In the event that such preconditions are not met on time, the deadlines for delivery shall be extended by a reasonable period. This shall not apply if we are responsible for the delay.
2. In the event that non-compliance with the deadlines results from force majeure, e.g. mobilisation, war, unrest, or other similar events, e.g. strike, lockout, the deadlines shall be extended by a reasonable period.

3. At our request the customer shall declare within a reasonable deadline whether the customer intends to withdraw from the contract as a result of the delay in delivery or whether it insists on the delivery.
4. In the event that the dispatch or receipt is delayed upon the request of the customer by more than one month after notification of readiness for shipment, the customer may be invoiced for storage charges to the amount of 0.5 % of the price of the subject matter of the delivery for each commenced month, but no more than 5 % in total. However, evidence of higher or lower storage costs may be provided by the contractual parties.

## **VI. Transfer of Risk**

1. Risk shall transfer to the customer also in case of freight-free delivery as follows:
  - a) in case of deliveries without erection or assembly at the time such are brought to delivery or are collected. At the request and expense of the customer deliveries shall be insured by us against the normal transportation risks.
  - b) in case of deliveries with erection or assembly on the day of acceptance in the own plant or, as agreed, after a trouble-free test run.
2. If the dispatch, receipt, commencement, carrying out of erection or assembly, the acceptance in the own plant or the test run is delayed for reasons for which the customer is responsible or the customer for other reasons is delayed in accepting, risk shall transfer to the customer.

## **VII. Receipt**

The customer shall not refuse receipt of deliveries due to unimportant defects.

## **VIII. Warranty**

1. All those parts or services which within the limitation period and without regard to the period of operation prove to have a defect, shall at our choice and at no expense to us be either repaired, replaced or performed again, insofar as the cause for the defect existed at the time of the transfer of risk.
2. Any right to claim for defects shall expire after 12 months. This does not apply insofar as the law under §§ 438 Section 1 No. 2 (Construction Work and Objects for Construction Work), 479 Section 1 (Right of Recourse) and 634a Section 1 No. 2 (Construction Defects), German Civil Code (BGB) requires longer deadlines, as well as in cases of death, personal injury, damage to health or in cases of wilful acts or gross negligence related to breaches of duty on our part and in cases of deceitful concealment of defect. The statutory provisions concerning the suspension of the limitation period, interruption and the recommencement of the deadline periods shall not be affected hereby.
3. The customer shall notify us of any defect immediately in writing.
4. In case of any complaints as to defect the customer may withhold payment to an extent which is in reasonable proportion to the apparent defect. The customer may withhold payments only if a complaint as to defects is made in relation to which no doubt exists. In the event that the complaint as to defects is incorrect, we may demand from the customer our expenses for work undertaken.
5. In the first instance we shall be given a reasonable period of time in which to rectify any defect.
6. In the event that such rectification is not successful, the customer may, notwithstanding any rights for compensation according with article IX, withdraw from the contract or reduce the price.
7. Any right to claim for defects shall not exist in the event of unimportant variations from the agreed specifications, in cases of unimportant limitation in the usability, in cases of natural wear and tear or damage which occurs after the transfer of risk as a result of defective or negligent use, excessive use, unsuitable equipment, defective construction work, unsuitable construction ground or on the basis of special external circumstances which were not foreseen in the contract as well as in cases of non-reproducible software defects. In the event that incorrect changes or maintenance work is undertaken by the customer or third parties, no claims for defects shall exist for such and the results thereof.
8. Any claims by the customer related to expenses necessary for the purpose of subsequent performance, in particular transport costs, road costs, work costs and material costs are excluded insofar as the expenses increase because the subject of the performance has to be subsequently brought to another place than the office of the customer, unless such transport is in accordance with intended use.
9. Rights of recourse of the customer against us in accordance with § 478, German Civil Code (BGB) (Recourse of the Merchant) shall only exist insofar as the customer has not made any agreement with its purchaser above the statutory

claims related to defects. The extent of any right of recourse of the customer against the supplier in accordance with § 478 Section 2, German Civil Code (BGB) shall be subject to No. 8 accordingly.

10. In all other respects any claims for compensation shall be subject to article IX (Other Rights to Compensation). Any further claims or claims other than those in article VIII by the customer against the supplier and its agents due to defects are excluded.
11. No guarantees in a legal sense are provided to the customer by us.

### **IX. Other Claims for Compensation**

1. Any other claims of the customer (hereinafter called: claims for compensation) for whatever legal reason, in particular resulting from breach of duty in the law of obligations or torts are excluded.
2. This shall not apply insofar as liability is required by law, e.g. in accordance with the Product Liability Law, in cases of wilful acts, of gross negligence, or in cases of involving death, personal injury or damage to health, or in cases involving the breach of substantial contractual duties. Damages for the breach of substantial contractual duties shall, however, be limited to foreseeable damage of the contractual type, insofar as wilful acts or gross negligence are not present or in the cases of death, personal injury or damage to health. Any change to the burden of proof to the disadvantage of the customer is not connected with the above provisions.
3. Insofar as the customer is entitled to make claims for compensation in accordance with this article IX, such shall expire after the expiry of the limitation period for claims for defects in accordance with article VIII no. 2. In the case of claims for compensation in accordance with the Product Liability Law the legal provisions related to limitation periods shall apply.

### **X. Impossibility, Amendment**

1. Insofar as delivery is impossible, the customer may demand compensation unless we are not responsible for the impossibility. Any claim for damages by the customer shall however be limited to 10 % of the value of the respective part of the delivery which cannot be taken into proper operation because of the impossibility. This limitation shall not apply in cases of wilful acts, gross negligence or in cases involving death, personal injury or damage to health. A change in the burden of proof to the disadvantage of the customer is not connected herewith. The right of the customer to withdraw from the contract shall not be affected hereby.
2. Insofar as unforeseeable events in terms of article V no. 2 considerably change the economic significance or the contents of the delivery or have a substantial effect on our operations, the contract shall be adjusted to a reasonable extent in accordance with the principles of equity. Insofar as such is not commercially reasonable we reserve the right to withdraw from the contract. In the event that we wish to exercise this right of withdrawal, we shall notify the customer immediately upon becoming aware of the extent of the event, and also if an extension of the delivery time was agreed with the customer.

### **XI. Concluding Provisions**

1. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Zandt. We shall however have the right to issue proceedings at the seat of the customer.
2. The material law of Germany shall apply for the legal relationships in relation to this contract to the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
3. In the event that individual provisions become ineffective, the remaining provisions of this contract shall continue in force. This shall not apply if compliance with the contract leads to an unreasonable burden on one of the parties.