

GENERAL TERMS AND CONDITIONS OF DELIVERY AND SERVICE

ZEPPELIN SYSTEMS GMBH

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ZEPPELIN SYSTEMS GMBH
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1. GENERAL

These General Terms and Conditions of Delivery and Service (“GTCs”) apply to all deliveries and services. Deviating general terms and conditions of the Customer will not be accepted unless Zeppelin expressly agrees to their validity in writing. This requirement for agreement applies in all cases, for example even if the Customer refers to its GTCs in the context of an order and Zeppelin does not expressly object to this.

Individual agreements (for example, framework supply agreements, quality assurance agreements) and information in Zeppelin’s order confirmation take precedence over these GTCs. In case of doubt, commercial clauses are to be interpreted in accordance with the Incoterms®, as issued by the International Chamber of Commerce in Paris (ICC), in the applicable version at the time of conclusion of the contract.

Legally relevant declarations and notices by the Customer concerning the contract (for example, setting deadlines, defect notifications, withdrawal, or reduction in the price) must be submitted to Zeppelin in writing. Written form within the meaning of these GTCs includes written and text form (for example, letter, email, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.

2. CONCLUSION OF THE CONTRACT

Zeppelin’s quotations are subject to change and non-binding.

An order for deliveries and services by the Customer is considered a binding offer to enter a contract. Unless otherwise specified in the order, Zeppelin is entitled to accept this offer within two weeks of receipt by Zeppelin.

Acceptance can be declared either in writing (for example, via an order confirmation) or by delivery of the deliveries and performance of the services for the Customer.

3. PRICES

- a. Prices are based exclusively on the design parameters specified in the quotation. Unit prices are valid only as a complete package. The foregoing shall apply unless the parties have expressly agreed otherwise. Prices do not include the legally required value added tax.
- b. Unless otherwise agreed, all payments shall be made net within 7 days of the invoice date.
- c. In the event of default in payment, Zeppelin is entitled – without prejudice to other rights – to cease the performance of the contractually owed work temporarily and to render outstanding deliveries only against advance payment or the provision of a corresponding security.
- d. If, after the conclusion of the contract, it becomes apparent (for example, as a result of an application to open insolvency proceedings) that Zeppelin’s claim to the price is jeopardized because the Customer lacks the ability to pay, Zeppelin is entitled to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to withdraw from the contract. In the case of contracts for the manufacture of individual items (custom-made goods), Zeppelin may declare its withdrawal immediately; the statutory provisions regarding the right to dispense with the setting of a deadline remain unaffected.
- e. The Customer is entitled to offset counterclaims or withhold payments only to the extent that its counterclaims
 - (i.) are undisputed or legally established, or
 - (ii.) are pending a decision, or
 - (iii.) are in a mutual relationship to Zeppelin’s claim.

4. DELIVERY, DELIVERY PERIOD, DELIVERY DELAY

- a. Unless otherwise stipulated in Incoterms®, risk passes to the Customer after the deliverable leaves the plant, even if partial deliveries are made or the deliverable is shipped by Zeppelin.
- b. Partial deliveries are permitted insofar as they are reasonable for the Customer.

- c. The delivery and service period (hereinafter “Delivery Period”) is determined by the agreements made between the contracting parties. Adherence to the Delivery Period is subject to the clarification of all commercial and technical questions between the contracting parties and the fulfillment of the Customer’s obligations, such as the provision of the required official certificates and/or permits and/or the payment of an advance payment. If this is not the case, the Delivery Period shall be extended accordingly. This does not apply if Zeppelin is responsible for the delay.
- d. Adherence to the Delivery Period is subject to correct and timely deliveries to Zeppelin by its suppliers. Zeppelin will give notice of any impending delays at the earliest possible point in time.
- e. The Delivery Period is deemed to have been met if notice of readiness for dispatch has been given for the deliveries and services by the end of the Delivery Period.
- f. If the shipment or acceptance of the deliveries and services is delayed for reasons for which the Customer is responsible, the Customer shall be invoiced for the costs incurred as a result of the delay. In the event of a delay in acceptance, the deliveries and services shall be stored at the Customer’s risk and expense. Zeppelin shall be liable only for intent and gross negligence from readiness for dispatch or notification of readiness for acceptance. The parties are at liberty to conclude a custody agreement for the deliveries and services.
- g. The statutory provisions determine whether default of delivery has occurred. In any case, however, a reminder must be sent by the Customer. If the Customer suffers damage due to a delay in deliveries and services for which Zeppelin is solely responsible, the Customer may claim liquidated damages for delay. The liquidated damages are 0.5% of the net price (value of the deliveries and services) for each full calendar week of default, but no more than 5% of the value of the delayed deliveries and services in total. Any further claims for damages due to default are expressly excluded, except as provided for under Clause 9. Zeppelin reserves the right to prove that the Customer has incurred no damages at all or only significantly less damages than the aforementioned liquidated damages for delay.
- h. The rights of the Customer under Clause 9 and Zeppelin’s statutory rights, in particular in the event of exemption from the obligation to render performance (for example, due to impossibility or the unreasonableness of rendering performance and/or the cure), remain unaffected.

5. ACCEPTANCE

If acceptance is to take place, it shall take place on the agreed acceptance date or alternatively within a reasonable period of time following notification by Zeppelin of readiness for acceptance.

Insignificant defects do not entitle the Customer to refuse acceptance.

If acceptance is delayed for reasons for which Zeppelin is not responsible, acceptance shall be deemed to have been granted two weeks after the agreed acceptance date or notification of readiness for acceptance. If the Customer or a third party has commissioned the deliveries and services, acceptance shall be deemed to have been granted five working days after commissioning. Unless otherwise agreed, acceptance shall be deemed to have been granted no later than three months after delivery. Acceptance shall not be deemed to have been granted in accordance with the foregoing provisions if the Customer has legitimately expressly refused acceptance before the expiry of the respective deadline.

6. RETENTION OF TITLE

Until all current and future claims of Zeppelin against the Customer arising from the contract have been paid in full, Zeppelin shall retain title to the deliverable, insofar as they may be the subject of an ownership relationship.

Deliverables subject to retention of title may neither be pledged to third parties or assigned by way of security until the secured claims have been settled in full. The Customer must inform Zeppelin in writing without delay if an application to open insolvency proceedings is filed or if third parties seize the deliverables belonging to Zeppelin (for example, by way of attachment).

7. INTELLECTUAL PROPERTY

Intellectual property of all deliveries and services and of their design, as well as of all associated software and documentation, belongs to Zeppelin or the respective subcontractors or sub suppliers of Zeppelin.

8. WARRANTY

- a. Zeppelin warrants that its deliveries and services are free from material and processing defects. The warranty period is 12 months from the date of delivery or – if agreed – commissioning. However, the warranty ends no later than 18 months from the date of delivery or notification of readiness for dispatch, whichever is earlier.
- b. Zeppelin shall replace or repair the defective parts at its discretion; there shall be no further claims on the grounds of any obligations to remedy defects. The latest deadline for the assertion of all warranties including replaced or repaired parts ends 24 months after the date of notification of readiness for dispatch at the latest unless the warranty period has already expired prior to this. Any claims for damages by the Customer under Clause 9a i) and ii) as well as those under the German Product Liability Act shall become statute-barred only after the statutory limitation periods expire.
- c. Zeppelin is generally not liable for defects that the Customer is aware of or is not aware of due to gross negligence at the time of the conclusion of the contract. Furthermore, any defect claims by the Customer require it to have complied with its statutory inspection and notification obligations. If a defect becomes apparent during delivery, upon inspection, or at any later time, Zeppelin must be notified in writing without delay. If the Customer fails to properly inspect and/or report defects, Zeppelin's liability for defects that have not been reported or not reported in time or properly is excluded in accordance with the statutory provisions.
- d. Liability for defects that originate from the Customer's sphere of responsibility and cannot be attributed to Zeppelin is excluded. This is presumed if the deliverable is not operated in accordance with Zeppelin's provisions and instructions, if the Customer fails to have the deliveries and services maintained by qualified and trained personnel and/or to maintain them in accordance with Zeppelin's operating and maintenance instructions, if the deliveries and services are operated with unsuitable operating equipment, or if improper repairs are performed by the Customer or a third party.

Normal wear and tear due to age, mileage, and quality level does not give rise to any liability for defects.

9. SUPPLIER'S LIABILITY, DISCLAIMER

- a. Zeppelin is liable for breaches of obligations – on whatever legal grounds – only
 - (i.) in the event of intent and gross negligence,
 - (ii.) in the event of culpable injury to life, limb, or health,
 - (iii.) in the case of defects that Zeppelin has fraudulently concealed,
 - (iv.) where a warranty has been granted,
 - (v.) in the event of defects in the deliverable insofar as liability for personal injury or material damage to privately used property exists under the German Product Liability Act.
- b. In the event of a culpable breach of material contractual obligations, Zeppelin shall also be liable for ordinary negligence, but any such liability shall be limited to reasonably foreseeable damage typical for the contract.
- c. Any further claims are excluded.

10. FORCE MAJEURE

Zeppelin shall not be liable for impossibility or delays insofar as they are due to force majeure or another event that was unforeseeable at the time of the conclusion of the contract and for which Zeppelin is not responsible. This includes, but is not limited to, measures by the authorities, such as any tightening of requirements or delays in the granting of necessary official permits, changes to legislation, strikes, lockouts, or other forms of industrial action, terrorism, wars, uprisings, unrest, epidemics, pandemics, lightening, earthquakes, fires, severe weather, forces of nature, flooding, sabotage, shortages of labor, energy, and/or raw materials, theft, explosions, and embargoes.

The incorrect and/or late delivery to Zeppelin by its suppliers also constitutes such an event if Zeppelin is not responsible for it and had concluded a congruent covering transaction with the respective supplier at the time of the conclusion of the contract with the Customer or immediately thereafter. This also applies if Zeppelin concludes the covering transaction without delay after conclusion of the contract with the Customer.

Each party shall be entitled to suspend or restrict its activities insofar as it is hindered or impaired in their performance due to an event as described in the first paragraph of Clause 10 (with the exception of the obligation to make payments), provided that the affected party has informed the other party of this delay in writing (for example, by email or fax) without culpable delay. The affected party's obligations shall then be suspended or limited for the duration of the event described in the first paragraph of Clause 10 and for the duration of time necessary to resume work. Schedules will be adjusted accordingly due to these delays. If the delay or reduction of the contractual obligations continues for a period of more than ninety (90) days, the parties shall consult each other on the further course of action and attempt to reach an agreement within thirty (30) days.

If such suspension or restriction of activities exceeds 180 consecutive days or 6 months in total within a 12-month period, both the Customer and Zeppelin are entitled to terminate the contract in writing. No claims may be brought due to breaches of obligations caused by force majeure. All claims and costs incurred before the occurrence of force majeure will remain in force and will be offset against each other.

11. LEGISLATION, INTEGRITY

If a change is made to the applicable laws, directives, ordinances, statutes, and/or technical standards after the conclusion of the contract, Zeppelin is entitled to adjust the Delivery Period and to claim the costs incurred as a result of the change.

The parties hereby undertake to take all necessary steps to prevent corruption, money laundering, and violations of competition law. Any such violations may result in Zeppelin terminating the contract prematurely for good cause.

12. EXPORT CONTROL

- a. The Customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant regulations. Zeppelin's performance of the contract is subject to the provision that there are no obstacles to performance due to national and international export and import regulations or other statutory provisions.

In particular, the customer shall comply with Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, as amended, Council Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, as amended, and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended.

- b. The Customer undertakes not to re-export to Russia, Belarus, Iran, Syria, North Korea or re-export for use in Russia, Belarus, Iran, Syria, North Korea any goods or technology pursuant to Article 12g of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, as amended.
- c. Furthermore, the customer warrants that the deliveries and/or parts thereof to be transported under this contract may not and will not be transported through the territory of Russia and/or other embargoed countries, unless the customer has obtained export licenses from the competent authorities of the respective country for the transit of the deliveries through the territory of Russia.

The Customer shall provide Zeppelin with transport documents confirming the transport route of the deliveries and the absence of Russia and other embargoed countries (for the transit of the deliveries) on this route before the delivery date of the deliveries and services or parts thereof (in the case of partial deliveries). Such documents may be the description of the transport route confirmed by the customer, the transport application, and its confirmation by the customer with details of the transport route (confirmed transport order) as well as other transport documents.

If the Customer receives a permit from the competent export control authority for the transit of the deliveries through Russia or another embargoed country (for the transit of the deliveries), the Customer shall provide Zeppelin with a copy of this permit within the same period. If a valid transit permit is presented, the provision of transport documents is not required.

The Customer shall indemnify Zeppelin and/or the manufacturer of the Supplies against all claims, fines, penalties, damages, losses, and liabilities incurred by them as a result of the Customer's failure to comply with Art. 12.

Failure to comply with any part of Art. 12 shall constitute a material breach of this Agreement.

The Customer shall be liable for any breach of any of the above representations and/or warranties. The Customer shall unconditionally indemnify Zeppelin for all losses, damages, fines, and costs incurred by Zeppelin and/or any company of the Zeppelin Group in connection with any breach resulting in whole or in part from the Customer's breach of any representation or warranty.

If Zeppelin determines, prior to the actual delivery of the Goods and Services and/or their parts to the Customer, that any of the above representations and/or warranties are not in fact true and/or the Customer has not provided acceptable written confirmation of compliance with said representations and warranties within 5 (five) business days of receipt of Zeppelin's request, Zeppelin shall have the right to unilaterally terminate this Agreement in whole or in part by written notice to the Customer. Such repudiation shall be deemed lawful and shall not give rise to any liability on the part of Zeppelin. In addition, Zeppelin shall have the right to claim damages incurred in connection with the termination of this Agreement.

13. TAXES

The Customer shall be liable for any duties, taxes (including, but not limited to, value added, sales, excise, company, transfer, or withholding taxes), assessments, or fees of any kind; these are not included in the contract price and all other amounts payable to Zeppelin. This does not apply to taxes or fees that are assessed on Zeppelin's profits or that are to be borne by Zeppelin in accordance with the Incoterms® clause applicable to the provision of the deliveries and services.

If, in connection with deliveries and services and/or with the contract itself, duties, taxes, assessments, or fees are imposed on Zeppelin by authorities in the country in which the deliveries and services are to be installed or provided, the Customer must reimburse Zeppelin for all amounts pertaining thereto upon submission of evidence.

If the Customer is obliged under applicable laws to make deductions from payments payable to Zeppelin for such duties, taxes, assessments, or fees, the Customer must increase the amount of its payment such that the net amount received by Zeppelin corresponds to the contract price without such deductions.

14. CONFIDENTIALITY

The parties shall keep secret the details of the contract and all information provided in connection with the contract, and neither party shall make public or disclose such details or information (except to the extent necessary for the purposes of the contract) without the prior written consent of the other party. This non-disclosure obligation ceases to apply only if and to the extent that the knowledge contained in the documents provided has become public knowledge without a breach of this clause. Special non-disclosure agreements and statutory regulations on confidentiality remain unaffected.

15. SEVERABILITY CLAUSE

If individual provisions of these GTCs do not, either in whole or in part, become an integral part of the contract, or are invalid, unenforceable, or void, or if a gap should emerge in these GTCs, the remaining provisions shall remain effective.

Insofar as individual provisions do not become an integral part of the contract, are invalid, unenforceable, or void, the statutory provisions shall apply. In the absence of a corresponding statutory provision, a provision that the parties would have agreed upon if they had considered this point from the outset shall replace the provision that has not become an integral part of the contract, or that is invalid, unenforceable, or void, whereby due and reasonable consideration is to be given to the economic interests of both parties.

The preceding sentence shall apply mutatis mutandis in the event of any gaps in the provisions.

16. WRITTEN FORM CLAUSE

Amendments and/or addenda to these GTCs must be made in writing. This also applies to any amendments of this written form provision.

No ancillary agreements have been concluded.

17. SPECIAL PROVISIONS

The Customer is obliged to ensure in good time that appropriate working conditions and the factual and legal requirements are in place for the performance of the deliveries and services.

Delays caused by the Customer entitle Zeppelin to adjust the Delivery Period and to claim the costs incurred as a result.

The Customer shall provide qualified specialist and support personnel at its own expense. Zeppelin is entitled to reject inappropriate personnel and/or to demand their replacement at the Customer's expense. Zeppelin assumes no liability for the improper performance of the work of the specialist and support personnel provided by the Customer.

The Customer must provide, free of charge, the production and auxiliary materials required to carry out the installation, such as gas, water, electricity, and so forth, as well as lifting and handling equipment. Materials procured by Zeppelin for the performance of the service at the location shall be invoiced based on expenditure.

18. ARBITRATION TRIBUNAL AND APPLICABLE LAW

All disputes arising from or in connection with this contract or regarding its validity shall be finally settled in accordance with the arbitration rules of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e. V. [DIS]) without recourse to the ordinary courts of law. The arbitration tribunal shall consist of three arbitrators. The place of arbitration shall be Munich. The language of the proceedings shall be German. The law applicable in the matter is the law of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).