

Movement by Perfection



**The Royal League** in ventilation, control and drive technology

# General Terms and Conditions of Business

June 2017

Please note that this is an English translation of the original Austrian version. Both language versions shall have the same legal effect. In case of any conflict, the original Austrian version shall prevail.



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## **General Terms and Conditions of Business of ZIEHL-ABEGG Ges.m.b.H.**

### **I. Application of the Terms and Conditions**

1. Our deliveries, services, and offers are provided solely on the basis of these Terms and Conditions. Consequently, these Terms and Conditions also apply to all future business relations, even if they are not expressly agreed again.
2. These Terms and Conditions are deemed accepted upon receipt of the goods or services at the latest. Counter-confirmations by the Customer with reference to their terms of trade and/or purchasing conditions are hereby rejected. Terms and conditions deviating from these Terms and Conditions are expressly rejected. Contrary terms and conditions on the part of the Customer are not binding on us, even if they are taken as the basis for the order or if reference is made to them in forms or other documents of the Customer.
3. Any rights to which we are entitled in accordance with the statutory provisions over and above those provided for in these Terms and Conditions remain unaffected.
4. These Terms and Conditions apply exclusively with regard to commercial legal relations between entrepreneurs within the meaning of Section 1 of the Austrian Commercial Code (UGB).
4. For technical reasons, we reserve the right to supply up to 5% of the delivery volume more or less when delivering consumables or small parts. There will be no refund if a lesser quantity is delivered.
5. Protective devices will also be supplied in this respect if this is expressly agreed upon.
6. We reserve without restriction all rights of ownership and copyright utilisation in respect of our cost estimates, drawings, and other documents; these items are not permitted to be made accessible to third parties. Drawings and other documents accompanying our offers must be returned to us without undue delay if the order is not placed with us.
7. If a Party invokes a subsidiary agreement, that same Party will bear the burden of proof relating to the conclusion of said agreement

### **II. Offers, scope of performance**

1. For the scope of our deliveries and services, our written confirmation of the order is authoritative or, if we submit an offer with a period of validity and the offer is accepted within the time stipulated, the offer is authoritative if no order confirmation has been issued in due time
2. Illustrations, drawings, information as to weights, dimensions, performance, and consumption, and other descriptions of the goods in the documentation accompanying our offer are approximations only, unless they are expressly designated as binding. They constitute no agreement on or warranty of a corresponding quality or characteristic of the goods.
3. For technical reasons linked to production, we reserve the right to make excess or short deliveries of up to 5% of the scope of supply when supplying consumables or small parts. No refunds will be made in the event of short deliveries within the above-mentioned scale.

### **III. Particularities in Case of Correspondence by Electronic Communication and Fax**

1. If a message (declaration of intent) is sent electronically (electronic communication), such message is deemed received by the recipient when it has been delivered to the recipient's communication device.
2. A message is deemed received by the recipient by means of message retrieval when it has been made available for retrieval in the relevant part of the sender's communication device and has been retrieved from such part by the recipient.
3. The contracting parties recognize the legal validity of messages transmitted according to nos. 1 and 2 above.
4. If correspondence between the contracting parties is exchanged by fax, the transmission report shall be deemed sufficient evidence of the receipt of our declarations.

### **IV. Price**

1. In the absence of a special agreement, our prices are ex works including loading at our works, but excluding packaging. Value-added tax will be added to the prices at the statutory rate applicable.

2. If the delivery or service is to be made or provided more than four months after the conclusion of the contract, we reserve the right to increase our fee by a reasonable amount, provided that the circumstances prevailing at the time of the contract's conclusion and playing a decisive role in determining our fee have changed substantially – in particular, if material costs, wages, and public charges have substantially increased.

## V. Retention of Title

1. Until all receivables (including all outstanding balances and current accounts), owed to us by the Customer for any legal reason now or in the future have been honoured, the following securities will be granted to us, which we will release on request at our discretion if their value exceeds the receivables by more than 20% on a long-term basis. The key factor when valuing the securities is: i) the nominal value in the case of receivables; ii) the net purchase price excluding VAT as stated in the invoice in the case of reserved goods; and iii) the portion of the real value of the main item in the case of co-ownership. Third-party security interests with a higher ranking will be deducted from this value, such deduction to be limited to the amount of said third parties' receivables secured in this manner at the time of the release request.
2. The delivered goods will remain our property until our counter-claim has been satisfied. This also applies in the event that a confirmation of balance is issued. In this case, the reservation of title serves as security for the receivable resulting from the balance. The Customer is obliged to handle the goods under reservation of title with care for the duration of the reservation of title. In particular, the Customer is obliged to insure the goods adequately at their replacement value against fire or water damage and theft, such insurance to be at the Customer's own expense. The Customer hereby assigns to us all compensations claims arising from this insurance. We hereby accept this assignment. Should an assignment not be permissible, the Customer hereby irrevocably instructs its insurer to make any payments solely to us. Further claims on our part remain unaffected. At our request, the Customer must provide evidence that insurance cover has been taken out.
3. The Customer is entitled to resell or process the delivered goods in the ordinary course of its business. In the event of a resale, the delivered goods will be replaced by the Customer's claim against the purchaser, which the Customer hereby assigns to us with all ancillary rights up to the amount of our total receivables. We hereby accept this assignment. Should an assignment not be permissible, the Customer hereby irrevocably instructs the purchaser to make any payments solely to us. The Customer is entitled to collect the receivable until further notice. The amounts collected should be deposited together and paid over to us by the Customer until our receivables have been settled in full. If the purchaser pays the Customer by bank transfer, the Customer hereby assigns to us its resulting claim against the financial institution concerned. We hereby accept this assignment. At our request, the Customer must provide us with all information in this regard and allow us to inspect the records.
4. If the Customer processes goods that remain our property, the Contracting Parties agree that this processing will be on our behalf, meaning that we will become the owners of the new items. The Customer's expectant right to the goods under reservation of title will devolve, in the corresponding amount, to the processed or transformed item. Should the processing costs significantly exceed the value of our goods, the Contracting Parties agree that the processing is also on our behalf and that we will acquire co-ownership of the new item in proportion to the ratio of the invoice value of our goods to the value of the new item at the time of processing. If the Customer combines goods that remain our property with another item, so that the goods become an essential part of another item which is to be regarded as the main item, the Customer hereby assigns to us proportional co-ownership of the new item. The Customer will hold the new item for us in safekeeping free of charge. In the event of resale, the above provisions apply *mutatis mutandis*.
5. If, upon conclusion of the contract, we become aware of circumstances which give rise to justified doubts regarding the Customer's creditworthiness, or if the Customer defaults in the settlement of a liability in relation to us, we are entitled to rescind the contract without setting a grace period and to demand by way of security that any goods owned or co-owned by us be surrendered to us until all our receivables have been settled in full.
6. If third parties access goods that are owned or co-owned by us or receivables to which we are entitled, particularly in the event of seizures, the Customer must promptly provide the third party or enforcement officer with evidence of our ownership of, or title to, the item; moreover, the Customer must notify us of these measures without undue delay and assist us in whatever manner in protecting our rights. Any seizure of the goods by us shall not be construed as a waiver of our reservation of title or a rescission of the contract.
7. The goods owned or co-owned by us may not be transferred, pledged, or the like to third parties by way of security.
8. If the event of deliveries to other jurisdictions, in which the provisions in Nos. 1 to 6 above regarding the reservation of title have less effect in providing security than in the



country where our company has its registered office, the Customer hereby grants us a security interest that is customary in that location and equivalent, in economic terms, to the retention of title in the country in which our company has its registered office. If further declarations or actions are necessary to this end, the Customer will provide these declarations and take these actions. The Customer will assist with all measures that are necessary and conducive to the validity and enforceability of security rights of this type.

9. The Customer is obliged to operate an inventory control system in its business which allows it to determine at any time where goods supplied by us are located and whether these are paid for or not. We are entitled at any time to perform an audit at the Customer's by prior arrangement, the aim of which is to determine whether the Customer is complying with this obligation. If this is not the case, we are entitled to immediately collect all the goods belonging us and shall no longer be obliged to make further deliveries.

## VI. Terms of payment

1. Unless otherwise agreed, our invoices are payable without deduction ten days after they are issued. Payment in cash or by bill of exchange is accepted only on the basis of a special agreement. Despite provisions of the Customer to the contrary, we are entitled to offset payments first against the Customer's older debts, in which case we will inform the Customer of the type of offset effected. If costs and interest have already been incurred, we are entitled to first credit the payment to the costs, then to the interest, and finally to the principal service.
2. Payment will be deemed to have been made only when we can dispose of the amount. In the case of payment by cheque, the payment will only be deemed to have been made when the cheque is honoured.
3. If the Customer falls into arrears, we are entitled to claim interest at a rate of 9.2% above the relevant basic interest rate p.a. from the time in question. We reserve the right to assert further damages.
4. If we become aware of circumstances, which give cast doubt on the Customer's creditworthiness, in particular if the Customer fails to honour a cheque or ceases its payments, or if we become aware of other circumstances, which cast doubt on the Customer's creditworthiness, we will be entitled to declare all of the remaining debt due for payment, even if we have accepted checks. In this event, we are also entitled to demand advance payments or the provision of security.

5. Counter-claims on the part of the Customer entitle the Customer to a set-off only if they have become res judicata or are beyond dispute. The Customer may assert a right of retention only if the Customer's counter-claim is based on the same contractual relationship.

## VII. Delivery and Service Periods

1. Delivery dates or periods that can be agreed as binding or non-binding must be set down in writing.
2. We are not responsible for delays in delivery or performance – even if periods or deadlines have been agreed with binding effect – if such delays occur due to force majeure or because of events that significantly hamper our delivery or make delivery impossible. Events of this type include but are not limited to strikes, lock-outs, official decrees, etc., including at our suppliers or their sub-suppliers. Such events entitle us to postpone the delivery or performance for the duration of the impediment plus a reasonable start-up period. If these events considerably change the economic importance or content of the delivery or performance, or if they have a significant impact upon our business, we can additionally request that the contract be appropriately adjusted. If the impediment lasts for more than a month, we will be entitled to wholly or partially rescind the contract due to the part of the contract remaining unfulfilled. If we wish to make use of this right of rescission, we must inform the Customer of this as soon as we become aware of the implications of the event. If the delivery period is extended or we are freed from our obligation due to an event of this type, no claims for damages can be derived from this by the Customer. However, we can only appeal to the above-mentioned circumstances if we have informed the Customer of these.
3. If we are responsible for failing to adhere to periods or deadlines agreed with binding effect or if we are behind schedule, the Customer's claim will be limited to compensation in the amount of 0.5% for each entire week of delay, subject to an overall cap of 5% of the invoice value of the deliveries or performance affected by the delay, although we are free to furnish proof that the Customer suffered a lower amount of damage or loss. Any additional claims are excluded unless the delay is due at least to gross negligence.
4. We are entitled to make partial deliveries and render partial services unless this is unreasonable for the Customer.
5. A pre-requisite for complying with our undertakings regarding delivery and performance is the timely and proper fulfilment of the Customer's obligations.

6. The delivery period will be deemed to have been met if the goods have left the works or if we have provided notification of their readiness for dispatch before the expiration of this period. Delivery is subject to the proviso that we are properly supplied in good time by our own suppliers.
7. In the event of a delay in delivery, the Customer is entitled to rescind the contract if, when the delay arose, the Customer set us a reasonable grace period including the threat to refuse performance and this period has now expired to no avail.
8. If the Customer is late in accepting delivery, we are entitled to claim compensation for the damage or loss incurred by us; the risk of accidental deterioration or accidental destruction will pass to the Customer upon the commencement of this delay.
2. If shipment is delayed as a result of circumstances, for which the Customer is responsible, risk passes to the Customer from the date of the goods' readiness for dispatch.
3. The Customer must take delivery of delivered items even if they exhibit minor defects.

## X. Claims for defects

1. The Customer may not refuse to accept deliveries due to minor defects. The Customer's obligations to examine the goods and give notice of any defects and their consequences arise from the provisions of Section 377 of the Austrian Commercial Code (UGB). This applies subject to the proviso that written notification of obvious defects or defects that are identifiable upon proper inspection should be provided no later than eight days after the goods have been handed over to the Customer. Other (concealed) defects should be notified to us in writing no later than eight days after their discovery. Written notifications of defects should be sent to our company headquarters. Complaints made to field staff, transport companies or other third parties will not be deemed to have been made in due form or time.
2. We accept liability for a particular purpose or a particular suitability only if this has been expressly agreed in writing. Otherwise, the risk of fitness for use and application is borne by the Customer.

If we have informed the Customer of technical framework conditions or other specifications regarding the use of the goods, the Customer is responsible for complying with these, and must also inform its purchasers of these and oblige its purchasers to comply with them. Our warranty obligation does not cover defects that result from the use of the goods in a way that does not conform to the specifications.

Warranty claims for defects are excluded in particular if and insofar as any damage to the delivered item or to other assets of the Customer is attributable to the following causes:

- a. incorrect processing, assembly, or handling;
- b. incorrect installation of the delivery item by the Customer or third parties, unless the incorrect installation is due to our instructions, although our field staff are not authorised to issue instructions;
- c. failure to heed the instructions in the delivery item's documentation, operating instructions, or other specifications provided by us on the commissioning, possible uses, and operation of the delivery item;
- d. natural wear and tear that cannot be attributed to manufacturing or material defects;

## VIII. Supply of software

1. If software is supplied, the Customer is granted a non-exclusive and non-transferable right to use the software and the associated documentation for the operation of the goods for which the software is supplied. The Customer is not permitted to make reproductions, apart from a single backup copy. Copyright notices, serial numbers, and other features serving to identify the software may not be removed or changed.
2. The Customer is obliged to take suitable precautions to prevent third parties from accessing the software or the documentation without authorisation, and must store the original data storage media provided, together with the backup copy, at a place which is secured against unauthorized access by third parties. The Customer must emphatically point out to its employees their duty to comply with these terms of delivery and with the provisions of copyright law.
3. Our liability for the loss or modification of data is limited to the typical recovery expense that would be incurred if backup copies are made at regular intervals in accordance with the risk involved.

## IX. Transfer of risk and taking delivery

1. Risk passes to the Customer upon dispatch of the parts to be delivered at the latest, even if partial deliveries are made or if we have agreed to undertake additional services, e.g. bear the shipping costs or provide delivery and installation. If, through no fault of our own, shipment becomes impossible, risk passes to the Customer upon notification of the goods' readiness for dispatch



- e. inappropriate handling, or changes or repairs to the goods that were improperly performed by the Customer or a third party, particularly in the event of interventions by non-experts or the use of non-original spare parts or resources.
3. Goods with a defect necessitating their return may be sent back to us only with our prior consent. We are not obliged to accept items that have been returned to us without our prior consent. In this event, the Customer will bear the cost of returning the goods.
  4. If the goods are repaired or a replaced due to a justified defect notification, the provisions in Clause VII concerning delivery periods apply *mutatis mutandis*.
  5. The existence of a defect established as such and communicated by an effective complaint confers the following rights on the Customer:
    - a. In the event of defective goods, the Customer first has the right to demand supplementary performance. We will choose at our own discretion whether to render this supplementary performance by replacing the item or remedying the defect. We will not have this option if the provision pursuant to Clause X. 5 c (below) applies. If the complaint proves to be justified and the defect is remedied, we are obliged to bear any costs incurred directly by us for the purposes of remedying the defect – specifically transportation and travel expenses and the cost of our own labour and materials – unless these expenses have been increased by bringing the goods to a place other than the delivery address. This is limited to the costs that arise or would arise in relation to the delivery address of the goods. If the goods are brought to an address other than the delivery address, the Customer must bear any extra costs arising from this if this transfer was not part of the delivery contract between the Customer and us.
    - b. We are entitled, at our discretion, to use third parties to carry out repair works or a replacement delivery (supplementary performance). This does not establish a contractual relationship between the Customer and third parties. In this case, our warranty does not go further than if we had carried out the works or the delivery ourselves. If an attempt at supplementary performance fails, we additionally have the right, subject to Clause X. 5 c, to render further supplementary performance, again at our discretion. Only if this repeated attempt at supplementary performance fails does the Customer have the right to rescind the contract or reduce the purchase price.
    - c. Insofar as these Terms and Conditions contain provisions in connection with supplementary performance, for example pursuant to Clause X. 5 a or b, these should not be applied if they would cause an unreasonable burden to the Customer, for example if the supplementary performance were to be refused by us without justification or unreasonably delayed.
    - d. If a notification of a defect by the Customer proves to be unfounded, the Customer must reimburse us for all costs and expenses incurred due to the notification.
  6. The period of limitation for claims for defects by the Customer is one year, unless the defective item has been used, in accordance with its customary use, for a building and has caused a defect in the building. The period of limitation also applies to claims arising from liability in tort, which are based on a defect in the goods. The period of limitation begins with delivery of the goods. The statutory periods of limitation apply in respect of damage or loss due to the breach of a warranty, loss of life, bodily injury, or damage to health, as a result of wilful intent or gross negligence, and in respect of product defects. Any statement by us in respect of a claim for defects asserted by the Customer should not be regarded as a commencement of negotiations concerning the claim or the circumstances giving rise to the claim if we fully reject the defect claim in question. The Customer must prove, in each case, that the defect already existed when the item was delivered.

## XI. Liability

1. We are liable without limitation for damage or loss due to breach of warranty or loss of life, bodily injury, or damage to health. The same applies if we, our senior employees, or agents are guilty of wilful intent or fraudulent misrepresentation.
2. With the exception of personal injury, we are liable for slight negligence only in the event of a violation of material obligations arising from the nature of the contract that are of particular importance for achieving the purpose of the contract and upon whose observance the Customer relies and may rely. If a material contractual obligation is breached, or our performance is delayed and/or rendered impossible, the Customer's claim is limited to compensation and reimbursement of expenses for the foreseeable damage that is typical of a contract of this type.
3. Our liability for gross negligence is limited to direct damage. We do not accept liability for consequential damage or lost profits. Furthermore, our liability for gross negligence is limited to compensation for the foreseeable

damage that is typical of a contract of this type and consequently to cases, in which we or agents accountable to us knew of the likelihood of the damage occurring in addition to the gross negligence.

4. Our mandatory statutory liability for product defects remains unaffected by the above provisions.
  5. Claims for reimbursement of expenses by the Customer are excluded unless a reasonable third party would also have incurred these expenses. In addition, claims for compensation or reimbursement of expenses – regardless of the legal reason – which go beyond the provisions of Clause XI. 1 to 3 are excluded.
  6. Our liability for essential third-party products is limited to assignment of the claims for defects against the supplier of the third-party products. This does not apply if these claims against the supplier are not legally enforceable or if this is unacceptable for the Customer.
  7. If the goods supplied by us are sold by the Customer or by one of its customers to an end user, the statutory provisions pursuant to Section 933b of the Austrian Civil Code (ABGB) apply in respect of the Customer's rights with regard to warranties for defects. In the above-mentioned case, claims against us will be admitted only to the extent that the Customer did not conclude any agreements with its purchaser that go beyond the legally mandatory defect claims and the Customer has met its obligations to examine the goods and give notice of defects.
  8. No rectification of material defects or payment of damages may be regarded as recognition of a legal obligation unless we expressly confirm otherwise in an individual case.
3. The Customer will inform us without undue delay of any risks in using the contractual goods or possible product defects of which it becomes aware.
  4. The supply of goods (products, software, technology) in the performance of this contract may be subject to export control restrictions or export bans. The Customer undertakes to comply with all applicable export control provisions or restrictions existing in this connection. This particularly concerns European, Austrian, and – if applicable – US provisions relating to (re)exports. In the event that the goods are resold/forwarded, the Customer undertakes to draw the purchaser's/recipient's attention to the provisions of export control law and to the obligations resulting from these.
  5. The Customer specifically undertakes to ensure that the goods are not directly or indirectly put to a use that is connected in any way with chemical, biological, or nuclear weapons or their carrying systems. The Customer additionally undertakes to ensure that the goods are not directly or indirectly put to a military end-use in a country subject to a weapons embargo. The Customer undertakes to refrain from selling, exporting, re-exporting, supplying, or forwarding the supplied goods, or otherwise making them available either directly or indirectly, to persons, companies, facilities, organisations, or in countries, if this would violate European, Austrian, or otherwise applicable export control laws, such as US provisions relating to (re) exports.
  6. The Customer will provide end-use documents on request, so that the end-use and intended use of goods can be proved with regard to an export licence application.
  7. The Customer is fully liable to us for any damage or losses incurred by us as a result of the Customer's culpable failure to comply with applicable export control provisions, including US (re)export provisions.
  8. The performance of the contract and corresponding obligations are subject to the issuing of the export licences or transfer permits required in each case, or any other authorizations stipulated by foreign trade law or the competent authorities, and that this is not opposed by any other legal restrictions that must be observed under export control law.
  9. All taxes, charges, and duties in connection with services outside the Republic of Austria will be borne by the Customer and reimbursed to us if necessary.

## **XII. Other duties on the part of the Customer, export control**

1. The Customer will not alter the goods in any respect that is relevant for safety; in particular, the Customer will not alter or remove existing warnings of dangers in case of improper use of the contractual goods. If this duty is violated, the Customer will indemnify us internally against third-party product liability claims if the Customer is responsible for the error giving rise to liability.
2. If we must issue a product recall or a product warning due to a product defect in the goods, the Customer will assist us and take all reasonable actions prescribed by us. The Customer is obliged to bear the cost of the product recall or product warning if it is liable under the principles of product liability law for the product defect and the damage sustained. Further claims on our part remain unaffected.

## **XIII. Non-disclosure**

The Contracting Parties are obliged to refrain from disclosing, for an indefinite period, any and all information





that becomes available to them or is identifiable under other circumstances as a trade or business secret, nor may they record, pass on or exploit any such information. The Contracting Parties will ensure, through suitable contractual agreements with their employees and agents, that these persons also refrain from any exploitation, forwarding, or unauthorised recording of such trade and business secrets for an indefinite period.

#### **XIV. Final provisions**

1. Rights and duties of the Customer may be assigned to third parties only with our written consent.
2. The legal relations between the Contracting Parties are subject to the laws of the country in which our company has its registered office, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. The sole place of jurisdiction for all disputes arising out of the business relationship between the Contracting Parties is the place where our company has its registered office. We are also entitled to institute legal proceedings at the location of the Customer's registered office, and at any other permissible place of jurisdiction. The provisions of Clause XIV. 3 apply only among merchants.
4. The place of performance for all services rendered by the Contracting Parties is the place where our company has its registered office.
5. Should a provision within this contract be or become wholly or partially invalid or unenforceable, or should this contract prove to have a loophole, this will not affect the validity of the remaining provisions. The statutory provisions will apply in place of any invalid provision. If a provision proves to be unenforceable or a loophole emerges, and the statutory provisions constitute an unreasonable solution for one of the Contracting Parties, whichever provision corresponds with what would have been agreed according to the purpose of this contract if the Contracting Parties had considered the matter from the start will be deemed agreed.

# The Royal League

