

## **Sales Terms and Conditions of Z-Systems USA, Inc.**

### **1. General**

1.1 All our supplies, services and offers are made exclusively in adherence to the sales terms and conditions set forth herein. They also apply to future business with the purchaser. We recognize no provisions from the purchaser which are in opposition or deviate from our sales terms and conditions, unless we have expressly agreed to them in writing. Our Sales Terms and Conditions also apply if we have become aware of any contrary or deviating provisions to our Sales Terms and Conditions from the purchaser have been carried out without reservation by the purchaser.

1.2 Unless otherwise specified herein, all terms and conditions of sales are governed by the Uniform Commercial Code: Sales, as codified in Massachusetts General Laws c. 106 § 2-101 et seq.

### **2. Offers, bid documents, contract conclusion**

2.1 Our offers remain open until the final contract confirmation.

2.2 We reserve the ownership and intellectual property rights to drawings and other bid documents; they may not be made available to third parties without express approval. The instructions in these or our other documents to technical standards and other information serves only to describe performance, and contain no warranty approvals, especially no warranty of quality or durability.

2.3 Ordering with us is a binding offer from the purchaser. We can accept this offer within 2 weeks with a telephone confirmation or sending a contract confirmation, or send the goods to the purchaser within this deadline. The timely sending of the contract confirmation or ordered goods ensure that the deadline is met.

### **3. Prices, payment conditions, invoicing/retention**

3.1 The price is derived from the contract confirmation or, otherwise, from our valid price list at the time of the order.

3.2 Unless this order confirmation or our price list show another term, our prices are understood to be from the factory or warehouse exclusive of packing, transport costs, duties and the respective, valid statutory sales tax.

3.3 Unless otherwise shown in the order confirmation, the purchase price is due for payment upon delivery without any deduction. The purchaser is late in payment if it has not paid within 30 days after the due date and receipt of an invoice, or similar payment has been made. Interest for delays is calculated at eighteen (18) percent per annum. Protection of further damage claims is not excluded by this.

3.4 If we are made aware of circumstances which could put the ability of the purchaser in doubt, or a significant threat to our payment claims due to failure of the purchaser's assets, or if the purchaser is in arrears with the payment of the purchase price, we can request a pre-payment or security and, if this is not provided within the provided deadline, to withdraw from the contract.

3.5 The purchaser is only entitled to withhold payment amounts if its counterclaims have been decreed in law or are undisputed. In order to exercise a right to withhold, the purchaser is only entitled to the degree that its counterclaim is related to the same contractual arrangement.

### **4. Delivery, delivery schedule, delay in delivery, withdrawal**

4.1 The delivery time begins on the day that the order confirmation is sent. The delivery time and schedule are adhered to if, the goods have left the factory/warehouse to the end of the delivery time, or its availability for shipping has been notified.

4.2 If we do not receive from suppliers or services from our subcontractors or from suppliers which cannot be attributed to us

despite proper payment, or do not receive on a timely basis, or if circumstances of Force Majeure occur, we will inform the purchaser of this immediately. In this case, we have the right to shift the supplies and services out for the amount of the hindrance plus a suitable start-up time, or to withdraw from the not-yet fulfilled portion of the contract, or to partially withdraw, as long as we have fulfilled our existing information obligation, and have not taken over the production or purchase risks. Force Majeure includes strikes, lockouts, official interventions, energy and raw materials scarcities, non-culpable transport bottlenecks, non-culpable operating hindrances (for example, due to fire, water and machine damage) and all other hindrances to which we have been subject by objective consideration. If an agreed delivery deadline or a delivery schedule has been exceeded due to the aforementioned circumstances for more than four weeks or non-binding delivery schedules are held by the purchaser to be objectively unreasonable, the purchaser has the right to withdraw from the not-yet included portion of the contract. Further purchaser's rights, especially claims for damages, do not exist in this case.

4.3 When delivery times or deadlines are exceeded or there is a delay in delivery, when a further deadline which is set in writing by the purchaser at a reasonable period of at least 8 days, unless the order confirmation sets fixed delivery times or deadlines.

4.4 Claims for damages due to delay in performance, claims for damages instead of the services and payment of expenses can only be claimed by the purchaser due to delivery delays attributable to us as per Clause 7 below.

4.5 The purchaser can only withdraw in the cases shown in Clause 6.3 in the context of statutory provisions of the contract if we are responsible for violating our obligations.

### **5. Transfer of risk, packing**

5.1 Unless otherwise shown in the order confirmation, the purchase is agreed to be ex-factory (EXW). The risk is transferred upon transfer of the goods to the shipper or freight forwarder, but at the latest when our goods leave our factory or one of our delivery warehouses. This also applies if we assume the freight costs as per Clause 3.2. Shipping is always done for the account of the purchaser.

5.2 Improperly packed or shipped returns will not be accepted. The purchaser is obliged to dispose of the packing at its own expense.

### **6. Defects of law and title**

6.1 Purchaser's claims for defects assume that these goods were inspected immediately after the goods were received and that these were complained about in writing, the complaint must be received by us within 10 calendar days, calculated from delivery or, if there are hidden faults, when discovered.

6.2 If a fault is present in the delivered goods whose cause occurred exactly at the time of the risk handover, the purchaser must, at our election, make a claim for post-fulfillment by repair or delivery of a new, fault-free good. The expenses required to pay for post-fulfillment, such as in particular work, material, transport and travel costs, are borne by us only to the degree that these do not increase through the goods being delivered to a site other than the site of fulfillment. If damages to other items occur during the post-fulfillment phase, the purchaser can request that these damages are paid only as per the actions in this Clause 7.

6.3 If we are not ready or if we fail twice or if the post-fulfillment to the purchaser is unreasonable or one cannot set a deadline the purchaser has the right by its choice to reduce the price or to withdraw from the contract. Claims for damages or expenses can only be made by the purchaser in any case as per the actions in this

Clause 7.

### **7. Damages and expense claims**

7.1 Unless otherwise stipulated by the above, with reservation to the following Clause 7.2 damages and expense claims of the purchaser for whichever legal reason are excluded; this applies in particular for claims for damages due to fault in contractual negotiations, initiation of a contract or other business contacts due to other violations of obligations as well as for tort claims for payment of material damage as and for expenses of the purchaser instead of a claim for replacement of the damages instead of the payment.

7.2 Liability limitations as per the above Clause 7.1 do not apply

a) if the cause of the damages is due to our intent or gross negligence or our representatives or assistants in fulfillment, whereby the claim for damages for gross negligence is limited to foreseeable contract-type damages.

b) for culpable violation of significant contractual obligations, whose fulfillment of the proper implementation of the contract is first made possible, and in which fulfillment the purchaser may rely, whereby in this case on claims for damages which are limited in this case at the time of the signing of the contract to foreseeable contract-type damages,

c) in the case of obligatory liability as per the product liability law,

d) for damages due to injury to life, body and health,

e) for fraudulent concealment of a defect when taking over the purchasing or manufacturing risk or with exceptional written assumption of a quality or shelf life guarantee

7.3 Claims for purchaser's costs are limited to the amount of the interest it has in the fulfillment of this contract.

7.4 To the degree that our liability is excluded or limited, this also applies to the personal liability of our employees, staff, workers, representatives and fulfillment assistants.

### **8. Statute of limitations**

8.1 Claims for defects may be made within 12 months after risk transfer. The limitation deadline for recourse in the event of delivery recourse as remain unaffected. In the case of goodwill, the limit for the claims for defects begins with one of the fulfillment attempts made by use. For existing post-fulfillment claims, the time set for us for post-fulfillment to improve or replace the product is upon our recognition of the claim only to those faults which were the object of the post-fulfillment requests from the purchaser or were called up by a faulty post-fulfillment; in addition, the limitations deadline continues further for the originally delivered goods.

8.2 Other claims for damages which occur from the purchaser on the occasion of or in connection with the delivered goods, must be made within 12 months from the knowledge or grossly negligent lack of knowledge of the damage and the person of the damage-causer and without regards to the knowledge or grossly negligent lack of knowledge in 5 years from its occurrence.

8.3 In the cases in Clause 7.2, the claims for damages and expenses remain at the statutory limits.

### **9. Ownership reservation**

9.1 The delivered goods remain our property up to the complete payment of all claims from the business connection between us, and the purchaser has paid for our property (reserved goods) even if the payment is made for specially-designated claims. Also the cancellation of individual claims in a running invoice as well as striking a balance and its recognition doe not impact the ownership reservation.

9.2 The purchaser is obligated to treat the reserved goods in a careful

manner, and to sufficiently insure at its own costs the goods against fire, water and theft damage at the at-new value.

9.3 The processing or working on reserved goods by the purchaser is always carried out for us. The processed or worked goods are reserved goods in the sense of the above Clause 9.1. If through processing combination or mixing of reserved goods is done with other objects which do not belong to us and a new thing is created, then we hold the co-ownership in this in relation to the value of the reserved goods (billing-final amount, including sales tax) to the other objects used at the time of the processing, compounding or mixing. If the mixing is done in a way that it is primarily seen as the property of the purchaser, then it applies as agreed that the purchaser transfers the share of this good to us; the purchaser will safeguard the so-derived sole ownership or co-ownership without cost for us.

9.4 If the reserved goods from the purchaser, alone or together with goods which do not belong to us, are sold, the purchaser is then subject to pay the claim due to the further selling in the amount of the value of the reserved goods with all side rights and rank before others to us; we accept the assignment. The value of the reserved goods is the end billing amount of our claim (including sales tax) plus a security supplement of 10%, except to the extent that they are counter to the rights of third parties.

9.5 The purchaser has the right to and is empowered to carry out further sales, use or installation of the reserved goods only in proper business processes and only to the degree that the claims are paid to use as per Clause 9.4 to us in fact. The purchaser is not entitled to other uses of the reserve goods, especially for security or lien purposes. The purchaser remains empowered to carry out collection actions as per Clause 9.4 up to our recall; our ability to call out the withdrawn claims ourselves, remains unaffected. We will not use our recall rights and our own collection authority as long as the customer respects its payment obligations from the income received and is not delayed in payment. Upon our request, the purchaser can name the debtor of the withdrawn claims, give all of the information needed for collection, give the relevant documents and notify the debtor of the withdrawal; we are empowered to notify the debtor of the withdrawal as well on our own.

9.6 If there is a stop in payment or application to open an insolvency proceeding, the right to further sales, use or installation of the reserved goods and empowerment to collect from the withdrawn claims is erased.

9.7 In the case of the purchaser's behavior which conflicts with the contract, especially delay in payment, and presence of further conditions, we have the right to withdraw from the contract and to take back the reserved goods. After the reserved goods are returned, we are entitled to use them; the income from use can be deducted from the purchaser's liabilities, minus a suitable exploitation cost.

9.8 We are obligated to release the securities which have been given to us by the purchaser upon the purchaser's request if the realizable value of our security reaches over 20% of the value of our claims; the choice of the securities to be released will be made according to our best judgment.

### **10. Place of fulfillment, jurisdiction, applicable law**

10.1 The place of fulfillment and place of post-fulfillment is our business headquarters in Massachusetts.

10.2 The jurisdiction is for all disputes are the Courts of the Commonwealth of Massachusetts,

10.3 The laws of the Commonwealth of Massachusetts, and in particular, the Uniform Commercial Code, codified as Massachusetts General Laws, Chapter 106, Section 2-101 et seq. (governing



commercial sales) applies to all transactions. If the purchaser is not subject to personal jurisdiction in Massachusetts, Massachusetts law will nonetheless govern the dispute.