

General Terms and Conditions of zub machine control AG

1. Scope

1.1. The following General Terms and Conditions ("Contract") shall govern all business transactions between zub machine control AG (referred to herein as "zub AG") and the ordering party ("Buyer"), provided that Buyer shall not have submitted a written objection immediately after receipt hereof.

1.2. Any differing conditions of purchase or conflicting General Terms and Conditions of Buyer shall be valid only if and to the extent that they have been expressly recognised in writing by zub AG in the order confirmation.

1.3. Unless otherwise agreed in writing, the General Terms and Conditions of zub AG shall also apply to all current and future business transactions, even if they are not referred to explicitly in a specific order in the context of an existing business relationship.

1.4. All agreements and legally relevant statements by the contracting parties shall be made in writing in order to be effective. This applies in particular if these agreements modify or supplement this Contract.

1.5. Deviating agreements confirmed in writing by zub AG shall only replace or supplement the relevant conditions of this Contract. All other provisions shall remain unchanged and valid.

1.6. In the event that individual provisions hereinafter should be deemed ineffective or legally inadmissible, this shall not affect the validity of the remaining provisions.

2. Quotations

2.1. Unless otherwise expressly agreed, zub AG's quotations shall always be subject to change and shall be non-binding.

2.2. zub AG shall not be obliged to execute subsequent deliveries in accordance with previous conditions.

3. Conclusion of Contract

3.1. The acceptance of an order shall only be binding for zub AG if zub AG issues a written confirmation of the order by mail, fax or email.

3.2. Acceptance of order by representatives or other agents shall only be binding for zub AG following a written confirmation by zub AG.

3.3. zub AG reserves the right to partial acceptance of orders.

3.4. Technical specifications and pin configurations are subject to change as part of ongoing product development and such changes shall not entitle Buyer to cancellation of the order or to a reduction in price.

4. Development Orders

4.1. Should it become apparent during the fulfilment of a development order that the underlying functional specifications cannot be realised with the available means and/or with regard to the technical, commercial or statutory requirements and/or the defined expenditure of time, zub AG shall be entitled to withdraw from the contract or to submit a revised offer based on the new requirements. All expenditures accrued up to that point in time shall be deemed as owed by Buyer on the basis of the agreed hourly or daily rates independent of any further decision to be taken.

4.2. Additional costs resulting from incomplete or unclear specifications or specifications extended during the development shall be additionally invoiced on hourly or daily basis independent of the type of contract (i.e. also for lump sum development contracts).

5. Industrial Property and Patent Rights, Indemnification

5.1. zub AG is not obliged to check whether she is in breach of industrial property rights or patent rights when executing orders issued. Buyer shall be responsible and liable for ensuring that these rights are not infringed, resulting in possible claims for damages.

6. Documents, Samples, Tooling

6.1. zub AG reserves the unrestricted right to ownership and copyright exploitation rights in cost estimates, design proposals, project documents, drawings, software packages and any other documents (henceforth collectively referred to as the „Documents“). The Documents may only be made accessible to third parties given the prior written approval of zub AG.

6.2. Customers of zub AG have the non-exclusive right to use all documents incl. zub AG standard software generally accessible via the company website in an unmodified form and with the agreed performance characteristics.

6.3. Unless expressly agreed otherwise, tools and means of production (i.e. drilling templates, solder-resist masks) required for the execution of orders remain the property of zub AG, even though they may have been made according to the specifications of Buyer and all or part of the costs for their production were remunerated.

7. Prices and Payment

7.1. The prices are valid ex works or ex warehouse, plus value added tax, and shall exclude packaging, assembly and commissioning.

7.2. All additional costs such as freight, insurance, export, transit, import and other permits as well as any necessary certifications shall be borne by Buyer. Likewise, Buyer shall bear the costs of all types of taxes, charges, fees, customs duties and the like that are levied in connection with the contract, or to reimburse zub AG on the basis of respective evidence if zub AG was obliged to pay them.

7.3. zub AG reserves the right to make price adjustments in case of negative exchange rate developments or steep increases in component / manufacturing prices between the date of the proposal preparation and delivery. zub AG shall inform Buyer in good time before delivery, should such an adjustment of prices become an absolute necessity.

7.4. All invoices are payable without deduction within 30 days after the date of invoice. All payments shall be made free of charge.

7.5. Buyer shall not be entitled to withhold, offset or reduce payments on account of complaints, claims or counterclaims not recognised by zub AG.

7.6. If the conditions of payment are not adhered to by Buyer or if circumstances (objections to bills of exchange and cheques, compulsory enforcement measures, suspension of payments, settlement or bankruptcy petition) become known which are suitable to reduce the credibility of Buyer from the perspective of a prudent businessman, zub AG shall be entitled to demand immediate payment of all receivables. In this case, zub AG shall be authorised to demand payment in cash, payment in advance or appropriate collateral security. In the event that Buyer fails to meet these demands, zub AG shall not be obliged to make any further deliveries, and may withdraw from the contract or claim for damages on the grounds of non-fulfilment. In the latter case, the claim for damages shall amount to at least 20% of the contract amount. The assertion of higher damages is not excluded by such action.

7.7. Any payments shall always settle the oldest invoice.

8. Default in Payment

8.1. In the event that invoices are not paid within 30 days of the date of invoice, Buyer shall be deemed in default of payment, entitling zub AG to charge interest on default in the amount of 5% above the current discount rate of the Swiss Central Bank as well as additional administrative expenses. The right to claim further damages is reserved.

9. Terms and Dates of Delivery

9.1. The compliance with the agreed terms of delivery requires the timely receipt of all the documentation to be supplied by Buyer and granting of all necessary approvals and releases as well as the compliance with the agreed terms of payments and other obligations by Buyer. If these conditions are not met in time, the date of delivery will be extended appropriately.

9.2. Terms and dates of delivery shall always be deemed approximate. zub AG reserves the right to postpone deliveries, if they are affected by subcontractor deliveries still outstanding or by exceptional circumstances not within the influence or responsibility of zub AG.

9.3. Partial deliveries may also be agreed upon at a later date, however, they require the written confirmation of zub AG. Additional shipping charges due to partial delivery shall be at the expense of Buyer, unless agreed otherwise in the order confirmation.

9.4. zub AG shall not be liable for any damages resulting from any delay in delivery. Delays in delivery do not entitle Buyer to the waiving of the performance of the services or to the total or partial waiving of the contractual quantities.

9.5. Any penalty clause for a delayed delivery requires a special written agreement and is deemed a lump-sum compensation. It can only be asserted if a delay has been proven to have been caused through the fault of zub AG and Buyer can prove that he/she suffered damage as a consequence of the delay. If Buyer is supplied with a substitute delivery, the right to a penalty shall not apply.

10. Shipment, Transport and Insurance

10.1. If not otherwise agreed, the transport shall be carried out pursuant to Incoterms 2010 DAP (Delivered at Place). A lump sum shall be charged for packaging and shipment.

10.2. Special requests regarding shipment, transport and insurance shall be communicated and agreed with zub AG at the latest when placing the order.

10.3. Any complaints relating to shipment or transport must be submitted to the final carrier by Buyer immediately upon receipt of goods or the freight documents.

10.4. zub AG shall only accept return deliveries of transport packaging if said delivery is exempt from charges and/or free domicile. zub AG shall not reimburse Buyer for returned transport packaging.

11. Receipt of the Goods

11.1. Buyer or his/her authorised consignee shall not refuse acceptance of the shipment due to minor defects or a delay in delivery.

12. Material Defects, Warranty and Liability for Defects

12.1. Buyer shall be obliged to inspect the goods received for possible defects and guaranteed quality immediately upon receipt. Buyer shall inform zub AG in writing of all obvious defects in the delivery immediately and within seven days at the latest after goods receipt. Hidden defects shall be drawn to the attention of zub AG in writing within seven days of their discovery. Otherwise, the delivery shall be deemed to have been approved.

12.2. zub AG shall be notified by telephone or email, if possible, should material defects occur during the use of the products, such as premature product failures and other defects, before such products are returned.

12.3. Repairs and error analysis shall only be carried out at Buyer's site in exceptional cases and any related expenses shall be charged to Buyer, independent of any warranties.

12.4. Allegedly defective or defective items must be returned at Buyer's expense to a service point designated by zub AG or to the company's headquarters.

12.5. Buyer shall afford zub AG the opportunity to review the complaint. For shipments that show mechanical or visual defects, these shall be documented with pictures and the documentation shall be sent in advance to zub AG.

12.6. If goods subject to complaint as well as further possibly necessary peripheral components are not placed at the disposal of zub AG for testing and verification, zub AG shall be released from her liability for defects.

12.7. If Buyer justifiably demands supplementary performance due to a defect for which zub AG carries responsibility, zub AG may at her own discretion opt to repair the defect or supply an article free of defects. Replaced goods shall be returned to zub AG.

12.8. Expenses arising in connection with unjustified notices of defect shall be borne by Buyer and will be invoiced.

12.9. zub AG shall not be liable for damage or defects occurring in the goods as a result of incorrect operation, negligent maintenance, natural wear and tear, or the repair and maintenance by third-party suppliers not authorised by zub AG and the like.

12.10. Any further claims on the part of Buyer, particularly to damages instead of performance and to any other direct or indirect damages - including incidental or consequential damages, irrespective of the legal ground - are excluded.

12.11. All claims for defect and claims for compensation shall lapse after one year following delivery of the goods to Buyer. For replacement parts and repairs, the period of limitation is six months; however, it shall continue to run at least until the expiration of the limitation period applying to the original item of delivery.

13. Retention of Title

13.1. The delivered items shall remain the property of zub AG until all claims from the current business relationship with Buyer have been fulfilled.

13.2. In the event of any processing, connecting, compounding or mixing of the reserved goods with other goods, zub AG is entitled to the co-ownership share of the new product in the ratio of the value of the reserved goods to the rest of the processed goods at the time of the processing, connecting, compounding or mixing. Buyer is entitled to resale of goods subject to retention of title only with the agreement of zub AG.

13.3. If Buyer is in default of payment, zub AG is entitled to request handover of the products delivered under reservation of title without this constituting a cancellation of the contract. In this case, Buyer irrevocably permits zub AG to collect the goods subject to retention of title immediately and to have unobstructed access to its business premises and storage facilities for this purpose. The act of enforcing the retention of title and the seizure of the goods subject to retention of title by zub AG shall not constitute a cancellation of the contract. After collection of the goods subject to retention of title, zub AG shall be authorised to appropriately dispose of these goods. The realisation proceeds less reasonable realisation costs shall be set off against Buyer's liabilities.

13.4. In the case of attachments, seizures or other orders or intervention by third parties, Buyer shall immediately notify zub AG.

14. Governing Law and Jurisdiction

14.1. Place of jurisdiction shall be the zub AG company headquarters and registered office. zub AG is entitled to take action at the court of Buyer's domicile as well.

14.2. In case of shipments to foreign countries, the parties agree that the legal relationship is subject to Swiss substantive law. The applicability of the United Nations Sales Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) is hereby explicitly excluded.

15. Severability

15.1. In the event that any provision of this contract is deemed to be legally invalid, the validity of the remaining provisions shall not in any way be affected or impaired thereby.

Note:

This English translation of the General Terms and Conditions is provided solely for the convenience of our customers. The translation is not binding on zub AG. The German text is the sole authoritative and binding version and prevails in case of any conflict.

Kastanienbaum, 29 November 2011

zub machine control AG, Kastaniensteig 7, CH - 6047 Kastanienbaum
Tel.: +41-41-3480030, Fax: +41-41-3480030
Website: www.zub.ch, email: info@zub.ch