

General terms and conditions for goods and services

1. General terms and conditions

1.1 Scope: These terms and conditions apply to any kind of goods, services, and licences, which we, Zeeh Design GmbH, Boschstraße 16, 82178 Puchheim (hereinafter "Zeeh Design"), provide or grant to our customers. In so far as Zeeh Design and the customer concluded one or more individual contracts for the provision of services or of work, purchase contracts or other contracts (hereinafter jointly referred to as the contract), these terms and conditions are an integral part of the Contract and shall apply unless agreements to the contrary have been made in the contract.

1.2 These terms and conditions apply only to entrepreneurs (for dealings which are part of their commercial or freelance professional operations), legal entities under public law, and special funds under public law. Other customers can use the services offered by Zeeh Design only with the express approval of Zeeh Design.

1.3 Rejection clause: We hereby reject the terms and conditions of the customer unless express agreement was given in writing to their applicability. Such agreement applies for individual cases only not for past or future goods and services.

2. Tender, Order

2.1 Cost estimates are not binding and include only requests for the customer to submit tenders.

2.2 For the confirmation of an order, Zeeh Design reserves the right to respond within two weeks. An order may deemed accepted only if a written order was received by Zeeh Design.

2.3 Term of notice, minimum duration of contract: Contracts for maintenance work and other regular deliveries or services are concluded for the period stipulated in the contract. Unless otherwise agreed, either party is entitled to terminate such contracts subject to a three-month notice period prior to the second anniversary of the signing of the contract and thereafter prior to the end of a calendar quarter. In addition, the customer is entitled to terminate such contract provided the 3-month notice period is complied with, if he confirms to Zeeh Design that the systems or programs to be maintained are no longer used or that an update delivered by Zeeh Design has not been installed, or the customer pays compensation in the amount of the sum which the customer should have paid until the earliest possible date of notice according to the aforementioned clause 1 and 2 less any costs Zeeh Design saves on account of the early termination, unless Zeeh Design is held responsible for the early termination of the contract.

2.4 Adaptation of these terms and conditions: Zeeh Design is entitled to modify these terms and conditions by a unilateral statement with effect as of a future date provided a one-month period of prior notice is complied with. In this case, the customer is entitled to terminate the contract also complying with a one-month period of prior notice provided that Zeeh Design receives this termination notice within two weeks after Zeeh Design notified the customer of the modified terms and conditions. If the customer exercises this right, he is no longer affected by this modification.

2.5 If the customer requests a modification of goods, services, date of delivery, or other details which were agreed by contract, Zeeh Design will comply with this request as far as possible. In addition to the agreed fees, the customer will bear any costs caused by this modification.

2.6 Subcontractors: Zeeh Design is entitled to employ subcontractors for all services under the contract; the liability of Zeeh Design to the customer remains unaffected. As far as Zeeh Design notifies the customer of a third party as service provider, such third party is not deemed a subcontractor or vicarious agent of Zeeh Design.

3. Deliveries

3.1 Terms of delivery: All deliveries of goods are made ex Munich warehouse, Incoterms 2000. Prices as quoted by Zeeh Design are calculated accordingly.

3.2 Dates of delivery are not binding without express confirmation in writing. Adherence to these dates presupposes the compliance of all terms of delivery by the customer. Deliveries by a fixed date require express confirmation.

3.3 The right to a correct and on-time self-delivery is retained.

3.4 In any event, Zeeh Design reserves the right to deliver successor models in lieu of the goods ordered provided they too comply with the agreed specifications and are not more expensive than the goods ordered.

3.5 Use of rented products: If the customer rents products from Zeeh Design, the following applies: the customer undertakes to (a) use the product exclusively for his own commercial purposes, to handle and maintain it meticulously and with care; (b) refrain from modifying the product or try to repair or manipulate it in any way or have others do so; and (c) transport the product to a place other than that agreed in the contract, to sublease and/or surrender it to third parties without prior written consent of Zeeh Design. In the case that the product is distrained or third parties claim other rights to the product, the customer shall notify Zeeh Design without delay and deliver copies of all documents concerning this case to Zeeh Design.

3.6 Acceptance: Any works created by Zeeh Design shall be accepted by the customer in the presence of representatives of both parties without delay after handover. Acceptance shall be confirmed in writing by the customer if the technical details indicated in the specifications are essentially fulfilled. As long as he has not submitted his written confirmation of acceptance to Zeeh Design, the customer is not entitled to use the work. If the customer uses the work nonetheless, this is construed as acceptance.

4. Industrial property rights

4.1 Industrial property rights: The customer's right to use products and works delivered by Zeeh Design, which are protected by industrial property rights, is limited to use for internal business purposes and is defined exclusively in accordance with the contract and these terms and conditions. All other rights to such products remain unaffected. This applies mutatis mutandis to technical documents, files, cost estimates, drawings, and calculations, which were provided to the customer in the course of the negotiations and execution of the contract; in the event that the customer uses such documents without having the right to do so with regard to Zeeh Design, Zeeh Design is entitled to demand their immediate surrender.

4.2 Confidentiality: Both parties agree to treat with strictest confidentiality all confidential, business and technical information received from the other party and to use it exclusively for the purposes of this contract even after termination of the contract.

5. Retention of title

5.1 Retention of title: The objects delivered remain the property of Zeeh Design until the purchase price has been paid in full.

The customer is obliged to notify Zeeh Design without delay of any seizure by third parties of the objects subject to the retention of title clause (retention of title goods), in particular of distraints or other seizures and especially of any damage to the retention of title goods. Provided the goods are installed in a country in which the aforementioned retention of title provision is not in full effect, the customer is obliged to provide Zeeh Design with an equivalent security.

6. Prices and terms of payment

6.1 Other services: Deliveries and services, which are specified in the contract, are invoiced according to time and effort spent.

6.2 Adjustment of purchase price or rent: In the event that the date of signing the contract and the date of delivery differ by more than one month and the purchase costs incurred by Zeeh Design after signing the contract and prior to delivering the goods have increased, Zeeh Design is entitled to raise the agreed price by means of a unilateral statement by the same amount or the agreed rent on a pro rata basis. The customer is entitled to revoke a contract provided that Zeeh Design receives the revocation notice within one week after the announcement of the purchase price adjustment has been made.

6.3 Adjustment of regular fees: As regards all contracts, which specify regular fees, Zeeh Design is entitled to raise this fee provided a period of three months is complied with, if and in so far this is necessary on account of increased wage and non-wage labour costs for staff involved in performing the services and/or costs incurred for purchasing materials and services required for performing the services. If this increase exceeds 10 per cent of the remuneration in effect in the preceding year, the customer is entitled to rescind the contract irrespective of a possibly agreed minimum contract period within one month after receipt of the notice of the increase provided a period of three months is complied with; in this event, fees as last in effect remain unchanged until termination of the contract.

6.4 Setting off and claiming rights of retention - including commercial rights - is permitted only if the underlying counterclaims are uncontested or have been legally ascertained.

6.5 Term of payment: All invoices are payable net without any discount unless otherwise agreed in the contract. If he does not effect payment within thirty days after receipt of the invoice, the customer is in default even without a reminder.

7. Liability, defects

7.1 Liability: A contractual or non-contractual obligation of Zeeh Design, its staff or vicarious agents to pay damages arises only if the damage is caused by gross negligence or deliberate intention. Zeeh Design is held responsible for bodily harm and health impairment even though it is only a case of slight negligence. In the case of infringement of a substantial obligation under the contract, Zeeh Design is liable even in a case of slight negligence but in this case liability is limited to financial losses which Zee Design should have foreseen as a possible consequence of the infringement of contractual provisions when signing the contract.

Zeeh Design is not held liable for damage caused by the products under the contract provided that such damage could have been avoided on account of inspections held at regular intervals.

Possible product liability claims remain unaffected by the aforementioned limitations.

7.2 Release: The customer releases Zeeh Design from all claims of third parties lodged on the grounds that the customer has not complied with the statutory provisions applicable to his business operations, in particular provisions of laws on supervision, competition and data protection.

7.3 Limitation: If and in so far as the delivery item is used for a structure in accordance with its customary use and has caused its defectiveness, claims for deliveries made contrary to the provisions of the contract lapse after five years, in case of newly manufactured items after one year, in case of used delivery items after six months. At the time of the expiration of the agreed limitation period, any statutory right of rescission also expires. However, the statutory period of limitation applies to any claims which are based on deliberate or gross negligent breach of duty or on culpable bodily harm or health impairment. The beginning of the statutory period of limitation is subject to the statutory provisions.

7.4 Defects of material or title: In the case of possible defects of material or title of the delivery items the rights of the customer are exclusively determined by the statutory provisions.

The obligations under commercial law as regards inspection of the delivery items without delay and notification of defects remain unaffected: they apply equally to all customers irrespective of whether it is a commercial transaction for them. In case of a late notification, the delivery item is deemed approved. The rights of the customer in case of defects to material or title are excluded in so far as

(a) the delivery item deviates only insubstantially from characteristics indicated or the suitability of the delivery item for the intended use is constrained only insignificantly, or

(b) the defect derives from the fact that the customer modified the delivery item for a purpose other than that specified under the contract or without written consent by Zeeh Design.

The rights of the customer in the event of defects of title are excluded as far as they refer to rights, which are only applicable outside the European Union or as far as the customer upon request leaves the defence to Zeeh Design in full and grants all necessary powers of attorney. Zeeh Design reserves the right to choose the type of subsequent performance: the right to choose passes to the customer only when Zeeh Design falls behind in the subsequent performance.

In each case, guarantees for characteristics require an express statement by Zeeh Design.

8. Miscellaneous

8.1 Cession of rights: The customer is entitled to cede rights under this contract – with the exception of payment claims – only with prior consent of Zeeh Design. Consent may be refused on reasonable grounds only.

8.2 Severability clause: If one or more provisions of the contract or of these terms and conditions are or become invalid or unenforceable, enforceability of the remaining provisions shall not be affected thereby.

8.3 Choice of law: The contractual relationships between the parties are construed in accordance with German law except for the UN sales conventions.

8.4 Jurisdiction: The parties submit to the exclusive jurisdiction of the courts in Munich for the determination of disputes arising under this contract or in connection with this contract. Zeeh Design is also entitled to bring action against the customer at his business domicile.

8.5 Collection of data: The customer is hereby informed that Zeeh Design stores and processes personal data in the course of the business relationship.