

## GENERAL TERMS FOR SUPPLIES AND SERVICES

### 1. GENERAL PROVISIONS

**1.1. Scope.** These Conditions shall apply to all supplies, services and licenses of any kind provided by Zeeh Design GmbH, Karlsruhe („Zeeh Design“) to its customers (“**Customer(s)**“).

If Zeeh Design and the Customer have entered into a contract of sale or a service, license or other agreement (hereafter collectively referred to as „**Contract**“), these Conditions shall become incorporated therein and apply except if and to the extent that the Contract provides otherwise.

These Conditions pre-suppose that the Customer is a corporation, fund or trust under public law or a business (i.e. a natural person, corporation or partnership entering into the Contract for a purpose within the scope of its trade, business or independent profession). Zeeh Design provides services and “**Deliverables**” i.e. goods, rights, licenses, or tangible or intangible works which are the subject matter of the Contract only to such Customers.

**1.2. No Other Terms and Conditions.** Zeeh Design does not accept any terms and conditions which deviate from these Conditions, except if such terms and conditions have been expressly accepted by Zeeh Design. Any such acceptance shall not apply to past or future transactions.

### 2. QUOTATIONS, ORDERS, SCOPE

**2.1. Quotations.** Any quotations which Zeeh Design may provide shall not be binding on Zeeh Design and considered an invitation to submit an order only.

**2.2.** Orders to Zeeh Design must be submitted in writing. Zeeh Design reserves two weeks to **confirm orders**.

**2.3.** If Customer requests a **change to** the scope or timelines or other details agreed in **the Contract**, Zeeh Design will reasonably attempt to accommodate this request provided that the Customer will bear all extra cost and effort caused by the change. Any change to the scope requires mutual agreement. Neither § 650b par. 2 of the German Civil Code (Customer Right to Enact Changes) nor § 648a par. 2 of the German Civil Code (Termination of Parts of Agreement) shall apply.

**2.4. Subcontractors.** Zeeh Design may make use of subcontractors to perform any of its obligations under the Contract or these Conditions, provided that the use of any such subcontractors shall not limit or restrict Zeeh Design’s obligations towards the Customer. Where Zeeh Design recommends a third party service provider to the Customer such provider shall not be considered a subcontractor or agent of Zeeh Design.

### 3. DELIVERIES

**3.1. Terms of Delivery.** All Deliverables shall be delivered ex works Karlsruhe, Incoterms 2010. In that case, the prices quoted by Zeeh Design shall be deemed agreed on the same basis.

**3.2. Time shall not be regarded to be of the essence** except if expressly agreed.

**3.3.** The obligation to deliver any Deliverables shall be **subject to the condition precedent** that Zeeh Design shall have been **supplied correctly and in due time by its suppliers**.

**3.4. Lent or Leased Deliverables.** Deliverables provided to the Customer for a limited term, including, without limitation, lent or leased Deliverables or Deliverables provided for testing, shall be diligently maintained, not used for purposes other than the agreed purposes or in an excessive manner, and returned at the end of the agreed term free of defects which may exceed normal wear and tear. All uses must be documented and the Customer shall account to Zeeh Design for all uses upon request. Such Deliverables may not be subleased or made available to third parties, whether for consideration or not, without Zeeh Design’s prior consent. The Customer may assert a right of retention vis-à-vis Zeeh Design’s claim for return of the Deliverable only with respect to counterclaims which have been acknowledged or awarded by final judgment. Zeeh Design may inspect the Deliverables at the Customer’s premises at any time.

Zeeh Design does not guarantee that Deliverables are free of non-conformities (i.e. § 536a of the German Civil Code shall not apply). The foregoing shall not limit or exclude liability for negligence within the scope of Sec. 7.2.

The Customer shall be liable to Zeeh Design for any damage to the Deliverable exceeding normal wear and tear which arises from Customer’s sphere of responsibility. The Customer’s liability under the preceding sentence shall in particular, without limitation, extend to damage culpably caused by agents or representatives or other persons to whom Customer grants access to the Deliverables such as visitors, suppliers or workers. The burden of proof for the absence of negligence shall be on the Customer. The Customer may not raise the defence of having diligently selected personnel under Sec. 831 of the Civil Code.

If the Deliverable is not returned on the agreed date, the agreed rent will continue to accrue until it is actually returned. Customer may make deductions from rent only within the limits of Sec. 6.4.

In the event that the Deliverables are provided without consideration (lending) Zeeh Design shall not be liable in damages except in the event of willful misconduct, gross negligence or fraudulent concealment of defects. In addition, § 598 et seq. of the German Civil Code shall apply.

In the event that a Deliverable provided for a limited term is later acquired by the Customer (with or without offsetting the rent against the purchase price), the commencement of the lease or lending term shall be deemed the delivery date for the purposes of the Customer’s Warranty Claims.

Except as modified above, all other provisions of these Conditions, in particular the provisions on warranty and liability, shall also apply to Deliverables provided for a limited term and Defects arising during such term. Similarly, the provisions on Reserved Deliverables shall apply mutatis mutandis.

**3.5. Acceptance.** Any Deliverables which require acceptance under the Contract or statutory law, shall be accepted by the Customer in the presence of representatives of Zeeh Design. The Customer shall confirm the acceptance in writing if the Deliverable materially conforms to specifications and is free of material non-conformities. Prior to delivery of the acceptance certificate to Zeeh Design, the Customer shall refrain from using the Deliverable. In the event that the Customer uses the Deliverable prior to delivery of the acceptance certificate to Zeeh Design, such use shall be regarded as acceptance.

Deliverables shall also be regarded as accepted where Zeeh Design, after the Deliverable has been completed, requests the Customer to confirm acceptance within a reasonable period set by Zeeh Design, and the Customer fails to expressly refuse to accept the Deliverable stating all non-conformities which it alleges of which at least one material non-conformity must actually be present.

## 4. INTELLECTUAL PROPERTY

**4.1. Property Rights.** The Customer's right to use any Deliverables which are protected by intellectual property rights, shall be strictly limited to internal business purposes and otherwise as provided in the Contract and in these Conditions. All rights in Deliverables are expressly reserved. The foregoing shall in particular apply to technical documentation, files, quotations, drawings, and calculations which the Customer may receive from Zeeh Design, in particular in connection with the negotiation or the performance of the Contract. In the event that the Customer violates the foregoing obligation, Zeeh Design shall be entitled to request immediate release and delivery of such materials.

**4.2. Confidentiality.** The parties mutually agree to keep all confidential technical and commercial information received from the respective other party strictly confidential and to refrain from using any such confidential information except as strictly required to consummate the Contract for as long as the information is and remains reasonably confidential.

## 5. RETENTION OF TITLE

**5.1.** Until payment in full of the purchase price by the Customer, Zeeh Design shall retain title to the Deliverables („**Reserved Deliverables**“). The Customer shall advise Zeeh Design without any delay of any attachments of any such Reserved Deliverables, in particular of any judicial execution measures or any other seizures, as well as of any damage suffered by such Reserved Deliverables. In the event that any Reserved Deliverable is shipped to or used in a country where this Retention of Title Clause is not fully valid and enforceable, the Customer shall provide Zeeh Design with equivalent security. The Customer shall bear all risk of damage, wear or destruction of the Reserved Deliverables.

## 6. PRICES AND PAYMENT TERMS

**6.1. Other Supplies or Services.** Supplies and services not covered by the Contract shall be billed on a time and materials basis. Zeeh Design may request advance or milestone payments in accordance with statutory law.

**6.2. Adjustment of the Purchase Price or Rent.** In the event that Zeeh Design has agreed to deliver the Deliverables

more than four months after the date of the signing of the Contract and its provision costs increase after the said date and prior to Zeeh Design identifying the specific Deliverables for delivery to the Customer, Zeeh Design shall have the right to increase the agreed price by an amount equivalent to such increase or the agreed rent by a proportionate amount by giving notice of such increase to the Customer. In such case the Customer shall have the right to withdraw from the Contract, provided that Zeeh Design receives the Customer's notice to that effect within one week from the date on which the Customer has received the notice of the price increase.

**6.3. Adjustment of Recurrent Payments.** Zeeh Design shall also have the right to modify any recurrent fees agreed upon three months' notice with effect to the end of any calendar month, if and to the extent that the cost of Zeeh Design's staff in charge of providing such services and/or the costs of materials and services reflected in such fee increase. Such modification is only admissible once per calendar year. If the increase should be higher than 5% within one calendar year, the Customer shall be entitled to give notice of termination of the Contract providing for such recurrent fee, irrespective of any minimum term which may have been agreed, observing one month notice with effect to the effective date of the proposed amendment. Where Customer does not exercise this right, the amendment shall become effective.

**6.4.** The Customer shall not be entitled to **set off** any of its claims against claims of Zeeh Design, except where the Customer's claims are undisputed or have been confirmed by a final court judgment. The foregoing shall also apply to any **right of retention** under civil or commercial law. The foregoing exclusions shall not apply where claim and counterclaim are legally connected in such way that each obligation must only be fulfilled in consideration of fulfillment of the other.

The Customer may not make any deductions from recurrent service, rent or lease payments based on supposed defects. This shall, however, not limit Customer's claim for repayment of any amounts paid but not owed to Zeeh Design after such payment to Zeeh Design.

A right or retention may, in any even, only be exercised with respect to counterclaims arising from the same Contract.

**6.5. Terms of Payment.** All invoices shall be paid upon receipt without any deduction, unless otherwise agreed. Customer, unless it is a Consumer, will be deemed in default with a payment at the latest after expiry of two weeks from the due date and receipt of Zeeh Design's invoice.

## 7. LIABILITY, WARRANTY, STATUTE OF LIMITATIONS

**7.1. Limited Remedies for Defects (Warranty).** In the event of any defect of a Deliverable, including any deviation from agreed specifications and/or any violation of rights of third parties (collectively "**Defects**") the Customer may exercise its statutory remedies for repair or replacement of the Deliverable, and, only where that fails or in other exceptional cases as provided for in statutory law, withdraw from the Contract or demand a reduction in the agreed price ("**Warranty Claims**") only subject to the following limitations:

Any Warranty Claims shall be excluded unless the Defect in question materially deviates from specifications and substantially limits the suitability of the Deliverable for the agreed purpose.

The Customer shall inspect any Deliverables and notify Zeeh Design of any defects or deviations thereof immediately after delivery. In the absence of such immediate notice, the Customer shall be deemed to have consented to any deviations of the Deliverables that could have been detected, in particular, without limitation, defects, or delivery of a quantity or a product other than agreed. The notice shall in particular not be deemed immediate if it is received more than 14 days after delivery.

Zeeh Design reserves the right to decide whether to repair or to replace any Deliverable which should prove to be defective. If Zeeh Design fails to exercise such right within a reasonable time limit set by Customer, such right shall pass to Customer. Zeeh Design reserves – also in work contracts – at least two attempts at such repair or replacement, except where this should unduly prejudice Customer in individual cases.

The Deliverables are not intended to be distributed to Consumers as defined in statutory law. Where Deliverables are sold or distributed to third parties, Zeeh Design shall be liable for third party claims against the Customer and/or Customer's cost or efforts for providing warranty services to its own customers in the event of a non-conformity only if and to the extent that Zeeh Design cannot establish that such non-conformity was not due to negligence imputable to Zeeh Design and only within the limits of Sec.

**7.2.** The foregoing shall not limit Zeeh Design's obligation to repair or replace the Deliverable in accordance with the warranty provisions. All of the foregoing claims shall be subject to the limitation periods agreed in Sec. 7.3. More extensive claims under §§ 439, 478 or 635 of the German Civil Code are disclaimed.

Zeeh Design shall not be deemed to have guaranteed certain properties of the Deliverables except if it has expressly confirmed such guarantee.

**7.2. Limitation of Liability.** Zeeh Design shall be liable in damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to Zeeh Design. In the event of death of a natural person or personal injury to the latter, Zeeh Design shall be liable also for slight negligence in accordance with statutory law. In addition, Zeeh Design shall also be liable in accordance with statutory law for a slightly negligent violation of a fundamental duty under the Contract, but such liability shall be limited to such damage as Zeeh Design could have reasonably foreseen at the time of signing of the contract.

Fundamental duties as used herein comprises all duties which must be fulfilled by Zeeh Design in order to enable consummation of the Contract and the achievement of its purposes and fulfillment of which the Customer may reasonably expect in view of the content and purposes of the Contract such as the duty to provide the agreed performance under the Contract in a timely manner.

Limitations on Zeeh Design's liability agreed in the Contract or these Conditions shall apply also to the personal liability of Zeeh Design's officers, employees or agents.

This Section shall not be construed to shift the statutory burden of proof in any way.

Any mandatory liability under the Product Liability Act and/or arising from a guarantee of properties shall remain unaffected.

**7.3. Limitation Period.** Customer's remedies for Defects, including but not limited to the right to withdraw from the Contract, shall be subject to a limitation period of twelve months for

newly manufactured Deliverables and six months for used Deliverables. The foregoing limitation period shall also apply to claims for indemnification or damages, in particular incidental or consequential damages, based on Defect.

However, all remedies based on fraudulent concealment of defects or Deliverables designed to be incorporated into a building, so incorporated and having caused such building to be defective or gross negligence, willful misconduct or the death of a natural person or personal injury to the latter, caused by negligence or willful misconduct based on guarantees of properties and/or the statutory recourse and the right to withdraw from the Contract based on a breach imputable to Zeeh Design other than a Defect shall be subject to the applicable statutory limitation periods. Such limitation periods shall commence and be calculated in accordance with statutory law.

Where Zeeh Design repairs or replaces a Deliverable or attempts to do so, and the Customer is not a Consumer, such repair or replacement shall not effect a renewal of the limitation period for the Customer's Warranty Claims with respect to the repaired Deliverable (including spare parts or units used for the repair) or a replacement product. Notwithstanding the repair or replacement, such Warranty Claims shall be subject to a limitation period equivalent to the remaining limitation period applicable to the original Deliverable, except that such limitation period shall not expire earlier than three months after the conclusion of the repair or replacement or Zeeh Design's refusal to undertake further attempts at such repair or replacement.

## 8. OTHER PROVISIONS

**8.1. No Assignment.** The Customer shall not be entitled to assign its rights under the Contract – except for claims for payment – to any third party without Zeeh Design's prior written consent, which consent shall not be unreasonably withheld.

**8.2. Severability.** Should one or more of the provisions of the Contract or these Conditions be or become invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected.

**8.3. Governing Law.** The Contract and these Conditions shall be subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**8.4. Jurisdiction.** All disputes arising under or in connection with Contract and/or these Conditions shall be submitted exclusively to the courts of Karlsruhe, Germany to the extent that the Customer is a commercial entity or a public law corporation, or a public law fund or trust. Zeeh Design shall in any event be entitled, at its discretion, alternatively to take legal action against the Customer in the courts having general personal jurisdiction over the Customer.

Karlsruhe, January 2018