

# ZENTRUM FUER SONNENENERGIE- UND WASSERSTOFF-FORSCHUNG BADEN-WUERTTEMBERG and ZSW-TECHNOLOGIETRANSFER UND SERVICE GMBH

## General Terms and Conditions for all Deliveries and Services Provided by ZSW

### § 1 General Provisions

1. These General Terms and Conditions (hereinafter referred to as "Terms") apply to any and all business transactions between Zentrum fuer Sonnenenergie- und Wasserstoff-Forschung Baden Wuerttemberg – *gemeinnützige Stiftung bürgerlichen Rechts* – and/or ZSW-Technologietransfer und Service GmbH - (hereinafter individually or collectively referred to as "ZSW") on the one hand and the customer (hereinafter referred to as "Customer") on the other hand even if not expressly mentioned in subsequent agreements. They shall apply accordingly to work performances and services. In case of work performance, taking of the delivered products shall be replaced by acceptance of work, and in case of services by receipt of the service.
2. These Terms of ZSW apply exclusively. Any terms and conditions of the Customer conflicting with, in addition to, or deviating from these Terms shall not form subject matter of the contract unless ZSW expressly consented to their applicability in writing. These Terms of ZSW shall also apply in case ZSW unconditionally effects delivery or otherwise renders performance to the Customer, having knowledge of its conflicting or deviating terms and conditions.
3. These General Terms and Conditions apply vis-à-vis entrepreneurs within the meaning of Sec. 14 German Civil Code (*BGB*) if the contract belongs to the operation of the enterprise, as well as vis-à-vis legal persons under public law and special public funds within the meaning of Sec. 310 Para. 1 German Civil Code (*BGB*) only.
4. All agreements made between ZSW and the Customer for purposes of performance of this contract are set forth in this contract in writing.
5. These Terms of ZSW shall also apply to all future business transactions with the Customer.
6. Rights exceeding these Terms that ZSW is entitled to pursuant to legal provisions or other agreements remain unaffected.
7. Unless expressly stated otherwise herein, the term performance shall also cover deliveries.
8. Unless performance of ZSW is made expressly contingent upon the attainment of a particular success (e.g. carrying out of measurements), ZSW shall render performance for the Customer as service only. The provisions of the law on service contracts (Sec. 611 ff. *BGB*) shall apply to the order, unless the following conditions provide for other regulations. In this respect, a particular success shall not be owed by ZSW unless ZSW and the Customer have expressly agreed the attainment of a particular success in writing.

### § 2 Offers, Offer Documents

1. ZSW's offers are subject to change and non-binding.
2. Illustrations, drawings, specifications as to weight, dimension, performance, and consumption as well as any other descriptions of the performance set forth in the documents pertaining to the offer shall only be approximate unless expressly specified as binding. They constitute neither agreement nor guarantee as to the characteristics of the performance, for instance quality or durability of the item to be manufactured and/or to be developed.
3. ZSW reserves all rights of ownership, copyrights, and any other property rights to all offer documents. Such documents must not be made available to third parties.
4. The order signed by the Customer constitutes a binding offer. ZSW is entitled to accept this offer within two weeks by sending an order confirmation or by rendering the ordered performance within this period of time.
5. Orders are not binding for ZSW until they have been confirmed by ZSW by a written order confirmation or until ZSW executes the order, in particular by rendering the agreed performance. Any order confirmation processed by use of automatic appliances and lacking signature and name is considered a written order confirmation. Silence of ZSW as to offers, orders, requests, or other declarations of the Customer is deemed consent only if there is a prior written agreement to that effect. To the extent the order confirmation contains obvious errors, misspellings, or miscalculations, ZSW shall not be bound to it.
6. Should the Customer file a request for the opening of insolvency or comparable proceedings against its assets, or should the justified request for the opening of insolvency or comparable proceedings against the Customer's assets filed by a third party be denied for lack of assets, ZSW reserves the right to withdraw from the contract in whole or in part.

### § 3 Scope of Performance

1. The written order confirmation of ZSW is authoritative for the scope of performance. Changes to the scope of performance made by the Customer require the written confirmation of ZSW to be effective. The performance is subject to modifications, in particular in construction and form of the item to be delivered or to be performed, to the extent such modifications lie within the DIN tolerances (given by the German Institute for Standardization (DIN)) or are insignificant and reasonable to the Customer.
2. ZSW will render performance at state of the art usual and known to ZSW and by using own utilizable knowledge and experience unless there are statutory or contractual restrictions of ZSW to the contrary.
3. ZSW and the Customer will, after prior consultation, give each other in due time all information required for rendering performance. Documents, objects, or aids as may be required will be placed by the Customer at the disposal of ZSW in the quality suitable for the intended purpose, or may be used by ZSW for the duration of the performance. Disadvantages caused by the client's failure to cooperate or delayed cooperation shall be borne by the client.
4. The Customer undertakes to assist ZSW in all factual and organizational respects required for rendering the agreed performance. The Customer further undertakes to completely provide ZSW with the agreed services and supplies in due time free of faults and defects.
5. The objects and documents are placed by the Customer at the disposal of ZSW on loan (*leihweise*) and shall be returned to the Customer at its expense upon termination of the contract unless otherwise agreed.
6. Should the performance comprise research works, and unless otherwise agreed between ZSW and the Customer, the agreed performance of ZSW is deemed rendered upon surrender of the final report on the research works and their results.
7. Unless otherwise agreed, any and all performances and, as may have been agreed, performance reports of ZSW will be placed at the Customer's disposal on the premises of ZSW.
8. ZSW is entitled to subcontract to affiliated enterprises within the meaning of Sec. 15 German Stock Corporation Act (*AktG*).

### § 4 Performance Periods and Dates

1. Performance periods and dates must be agreed in writing. They are non-binding unless expressly specified by ZSW as binding in advance in writing.
2. Performance periods begin when the order confirmation is sent by ZSW, however not before the Customer has provided all documents, approvals, and releases to be provided by it, all technical matters have been clarified, and an agreed down payment has been received, respectively in case of international orders not before payment has been received in full. The performance date will be deferred to a reasonable extent should the Customer fail to provide in due time all documents, approvals, and releases to be provided by it, to fully clarify in due time all technical matters, or to make the agreed down payment available to ZSW in due time, respectively in case of international orders to make the full payment available to ZSW. All performance dates and periods are subject to the due and timely fulfillment of all other obligations of the Customer.
3. The performance date respectively period relating to an item to be manufactured and/or to be developed by ZSW is deemed met if ZSW has communicated the shipping readiness or the readiness for collection to the Customer, unless ZSW and the Customer have agreed in writing the attainment of a particular success and/or the acceptance of the item to be manufactured and/or to be developed. If ZSW and the Customer have agreed in writing the attainment of a particular success (a certain quality or durability) and/or the acceptance of the item to be manufactured and/or to be developed, the performance date respectively period is deemed met if ZSW has communicated the readiness for acceptance to the Customer. In case of a service to be performed by ZSW (e.g., research contracts or carrying out of measurements), the performance date respectively period is deemed met if ZSW commences the service provision prior to the agreed performance date respectively period. All performance dates and periods are subject to due and timely self-supply of ZSW.
4. Any time schedule as may have been agreed between the Parties is non-binding. Should ZSW find that individual or all performances cannot be rendered within the agreed time schedule, the Parties will agree on a reasonable extension of the periods and dates stated in the time schedule. Sentence 2 applies accordingly for periods and dates already extended. In case the Customer is obligated to provide services or supplies and should it fail to do so or fail to do so in due time or in full, the agreed respectively

extended periods and/or dates relating to the performances to be rendered by ZSW shall be extended accordingly.

5. In case of default of performance, the Customer is entitled to rescind the contract after a reasonable grace period, which it has set ZSW upon commencement of the delay in performance, has expired at no avail.
6. In case ZSW is hindered by force majeure from the fulfillment of its contractual duties, in particular from rendering the agreed research work and/or development performance, ZSW shall, for the duration of the hindrance and a reasonable restart period, be released from its duty to perform without being obligated to pay damages to the Customer. The same shall apply if the fulfillment of the obligations of ZSW is unreasonably impeded or temporarily impossible due to unforeseeable circumstances beyond the control of ZSW, in particular due to strike, measures of public authorities, lack of energy, difficulties in supply on the part of a subcontractor, or material interruptions of operation. This also applies if such circumstances affect subcontractors or in case ZSW is in default. To the extent ZSW is released from its obligation to perform, ZSW will grant back preliminary performances of the Customer as may have been made.
7. If ZSW is in default of performance, the Customer is entitled to claim a lump-sum default compensation in the amount of 3% of the net order value for each entire week of default, however no more than an overall amount of 10% of the net order value. Further claims for damages and for reimbursement of expenses on the part of the Customer due to the default of performance shall be excluded.

This shall not apply to the extent that ZSW is compulsorily liable in cases of willful misconduct or gross negligence and/or for a violation of life, body, or health; this does not lead to a change in the burden of proof to the Customer's disadvantage.

## § 5 Prices, Conditions of Payment

1. Remuneration of ZSW will be agreed on an individual basis and is project-related. Unless otherwise agreed, remuneration for the manufacture or development of items is agreed ex works and shall be exclusive of insurance, statutory taxes, or other contributions. Any additional costs incurred in this respect will be invoiced by ZSW separately. Statutory VAT will be shown separately on the invoice in the statutory amount applicable on the invoicing date.
2. Remuneration shall become due with the respective performance by ZSW and must be paid within 30 days as of the invoice date without any deduction. Unless otherwise agreed, ZSW may demand from the Customer down payments in reasonable amount according to the progress of the project. The day of payment is considered the day ZSW is able to dispose of the remuneration.
3. In case of default in payment, the Customer shall pay default interest at nine percentage points p.a. above the respective base interest rate. The assertion of further claims of ZSW shall not be excluded hereby.
4. In case of international orders, payment shall, in derogation of Para. 2 above, be effected prior to ZSW's performance unless otherwise agreed in advance in writing.
5. The Customer shall be entitled to set off only if its counterclaims have been recognized by declaratory judgment, are uncontested, or have been recognized by ZSW. Furthermore, the Customer shall be entitled to exercise a right of retention only to the extent that its counterclaim arises from the same contractual relationship. The Customer has no right of retention because of partial performances according to Sec. 320 Para. 2 German Civil Code (*BGB*).
6. To the extent that performance not subject to VAT is possible, the Customer is obligated to furnish the evidence required and/or assist in furnishing such evidence. With regard to deliveries within the European Union (*innergemeinschaftlich*) according to Sec. 6a German Turnover Tax Act (*UStG*), the Customer must provide its VAT identification number, furnish proof of its qualification as an entrepreneur, and assist in producing vouchers and books for the purpose of providing evidence of exportation. In the event that the tax office does not recognize the exemption from VAT, the Customer shall indemnify ZSW from and against such VAT, interest, surcharges for delay, and other incidental expenses and/or pay the same to ZSW unless ZSW is responsible for the non-recognition. ZSW shall be obligated to file appeals at the Customer's request only if, additionally to the indemnification under the foregoing Para., the Customer makes a reasonable advance payment in respect of the costs of the appellate proceedings.

## § 6 Retention of Title

1. ZSW retains title to the manufactured and/or developed items until the remuneration and any and all claims against the Customer that ZSW is entitled to under their business relationship have been fully settled. For the duration of the retention of title, the Customer shall handle the items subject to retention with care. It shall in particular sufficiently insure them at its own expense at replacement value against fire, water, and theft damage. The Customer shall provide ZSW upon the latter's request with proof of the insurance policy. The Customer assigns to ZSW, with effect as from today, all claims for compensation in connection with such insurance. ZSW herewith accepts such assignment. If the insurance agreement does not allow for such assignment, the Customer herewith instructs the insurance company

to make payments to ZSW exclusively. Any exceeding claims of ZSW shall remain unaffected.

2. The Customer is permitted to sell the items subject to retention of title in the ordinary course of business only. The Customer shall not be entitled to pledge the items subject to retention, to transfer them by way of security or to otherwise dispose of them in a way endangering title of ZSW. The Customer shall promptly notify ZSW in writing of any attachment or any other intervention by a third party, provide all information required, inform the third party of the title of ZSW, and assist in all measures of ZSW in order to protect the items subject to retention. To the extent the third party is not able to reimburse ZSW the judicial and extrajudicial costs for enforcing title of ZSW, the Customer shall reimburse ZSW the loss sustained by ZSW in this connection unless the Customer is not responsible for the breach of duty.
3. The Customer assigns to ZSW, with effect as from today, all claims in connection with the resale of the items with any and all ancillary rights, irrespective of whether the items subject to retention were resold prior or after processing. ZSW accepts such assignment with effect as from today. If such assignment is not permissible, the Customer herewith instructs the third party debtor to make payments to ZSW exclusively. The Customer shall be revocably authorized to collect the claims assigned to ZSW in trust for ZSW in the Customer's own name. The amounts collected shall be transferred to ZSW immediately. ZSW may revoke the Customer's authorization for collection and resale for cause, in particular if the Customer fails to duly meet its payment obligations vis-à-vis ZSW, defaults or ceases payment, or if the Customer files a request for the opening of insolvency or comparable debt settlement proceedings against its own assets, or if the justified request for the opening of insolvency or comparable debt settlement proceedings against the Customer's assets filed by a third party is denied for lack of assets. In case of a blanket assignment by the Customer, the claims assigned to ZSW shall expressly be exempted.
4. Upon request of ZSW, the Customer shall promptly notify the third-party debtor of the assignment and provide ZSW with any information and document necessary for collection.
5. In case the Customer conducts itself contrary to the terms of the contract, in particular in case it defaults payment, ZSW shall, without prejudice to its other rights, be entitled to rescind the contract after a reasonable grace period set by ZSW. The Customer shall promptly grant ZSW or its authorized agents access to the items subject to retention and return them. After due and timely notice, ZSW may otherwise dispose of the items subject to retention in order to satisfy its matured claims against the Customer.
6. The processing or remodelling of the items subject to retention by the Customer shall always be made for ZSW. The Customer's expectancy right to the items subject to retention shall also apply to the processed or remodelled item. Should the items be processed or remodelled together with other objects not belonging to ZSW, ZSW shall gain joint title in the new item in the proportion of the value of the manufactured and/or developed item to the other, processed objects at the time of such processing or remodelling. The same shall apply in case the items are connected or mixed with other objects not belonging to ZSW in such manner that ZSW loses full ownership. The Customer shall keep the new objects for ZSW. In all other regards, the item created through processing or reconstruction as well as connection or mixing is subject to the same provisions as the items subject to retention.
7. In case the realizable value of the securities, taking into account usual valuation adjustments by the banks, exceeds the claims of ZSW arising from the business relationship with the Customer by more than 15%, ZSW shall at the Customer's request be insofar obligated to release the securities the Customer is entitled to. The valuation should be based on the invoice value of the items subject to retention and on the nominal value of the claims. The choice of the security to be released is upon ZSW in each case.

## § 7 Claims based on Defects

1. The statutory rights of the Customer to assert claims based on defects presuppose that the Customer inspects the items manufactured and/or developed by ZSW upon receipt, to the extent reasonable also by way of trial processing or trial use, and notifies ZSW of any apparent defects in writing without delay, however no later than two weeks after receipt of the item. Hidden defects must be reported to ZSW in writing promptly after their discovery. The Customer must describe the defects in writing when notifying ZSW of them. The assertion of claims based on defects by the Customer further presupposes that any and all specifications, statements and conditions of ZSW pertaining to the individual item are complied with during planning, construction, installation, connection, mounting, start-up, operation, and maintenance of the item, in particular that maintenances are duly carried out and evidenced, and that recommended components are used.
2. In case the items manufactured and/or developed by ZSW are defective, ZSW shall at its own choice render subsequent performance either by re-moving the defect or by delivering an item free of defects. When rendering subsequent performance, ZSW shall be obligated to bear all expenses required in this respect, in particular transport, shipping, personnel, and material costs, unless such expenses are increased due to the fact that the items were shipped to a place other than the delivery address. Costs for personnel and material asserted by the Customer in this context shall be invoiced at cost price. Replaced parts pass into the ownership of ZSW and shall be returned to it.
3. In case ZSW is not prepared or able to render subsequent performance, the Customer may, without prejudice to any claims for damages or reimbursement of expenses, at its own choice either rescind the contract or

reduce the price. The same shall apply in case subsequent performance fails, is unreasonable for the Customer, or is unreasonably delayed for reasons attributable to ZSW.

- The Customer's right to rescind the contract is excluded if the Customer is unable to return the performance received and (i) this is not attributable to the fact that return is impossible due to the nature of the performance received, or (ii) ZSW is responsible for it, or (iii) the defect was not revealed until the item was processed or modified. The right to rescind is also excluded if ZSW is not responsible for the defect and if the Customer must compensate the value instead of returning the performance.
- The assertion of claims based on defects is excluded if the defect results from natural wear and tear in particular of wear parts or is due to improper handling, mounting, operation, or storage, or faulty modification or repair of the items manufactured and/or developed by ZSW as performed by the Customer or third parties. The same shall apply for defects attributable to the Customer or resulting from a technical cause other than the original defect.
- Claims of the Customer for reimbursement of expenses instead of claims for damages in lieu of performance are excluded unless a reasonable third party would have incurred such expenses.
- ZSW does not assume any guarantee, in particular no guarantee of quality or durability, unless otherwise agreed in writing.
- The limitation period for claims based on defects asserted by the Customer shall amount to one year. This limitation period shall also apply for claims in tort based on a defect of the items manufactured and/or developed by ZSW. The limitation period begins when the item is delivered. The shortened limitation period shall not apply to the unlimited liability of ZSW for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health, for intent and gross negligence, and for product defects. Any comment of ZSW on a claim based on defects asserted by the Customer shall not constitute an opening of negotiations on such claim or on the facts giving rise to the claim, provided that ZSW rejects the claim based on defects to the full extent.

## **§ 8 Liability of ZSW**

- ZSW is fully liable for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health. The same applies for intent and gross negligence. ZSW is liable for slight negligence only if material duties are violated, such duties arising out of the nature of the contract and being of essential importance for the attainment of the purpose of the contract. In case of breach of such duties and in case of default and impossibility of performance, liability of ZSW shall be limited to damages that are typically expected to occur within the context of the contract. Statutory liability for product defects remains unaffected.
- To the extent that the liability of ZSW is excluded or limited, this shall likewise apply with regard to the personal liability of the employees, workers, staff members, representatives, and vicarious agents of ZSW.
- ZSW cannot guarantee that the IP made available (including commercialisable know-how) is free of third-party rights.

## **§ 9 Product Liability**

- The Customer will not modify the items manufactured and/or developed by ZSW; in particular, it will not modify or remove existing warnings about risks due to improper handling of the items. In case of breach of this undertaking, the Customer shall internally indemnify ZSW from and against any and all product liability claims asserted by third parties unless the Customer is not responsible for the defect causing liability.
- In the event ZSW is caused to a call back or send a warning notice due to a defect in the items manufactured and/or developed by it, the Customer shall use its best efforts to support ZSW and take part in all reasonable measures that ZSW deems reasonable and appropriate; in particular, the Customer will establish the necessary customer information. The Customer shall bear the costs for the recall or warning notice unless it is not responsible for the defect in the items and the loss occurred according to the principles of product liability laws. Further claims of ZSW shall remain unaffected.

## **§ 10 Right to Demand Early Payment and Right of Rescission**

- If, after accepting the order, ZSW obtains knowledge of facts that give rise to justified doubts about the Customer's ability to pay, ZSW shall be entitled to demand full payment or the provision of according security prior to performance and/or to rescind the contract after setting a reasonable grace period to no avail. Besides delays in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency (*Auskunftei*), a company maintaining business relations with the Customer, or the like shall be considered proof of a significant deterioration in the Customer's financial situation.
- If performance has already been rendered, the invoice amounts concerned shall immediately become due for payment regardless of any terms of payment that may have been agreed upon.

## **§ 11 Property Rights**

- Unless otherwise agreed between ZSW and the Customer, any and all inventions and works protected by copyright including all related rights that arise in connection with the agreed performance accrue to ZSW exclusively.
- To the extent required in the scope of the respective contractual purpose for the utilization of the contractually agreed performance by the Customer, ZSW grants the Customer a non-exclusive, non-transferable license, being limited in terms of territory and content to the purpose of the contract, and without the right to grant sub-licences, to use the inventions and works as well as commercialisable know-how in accordance with the German Law on the Protection of Trade Secrets (*GeschGehG*) protected by copyright as defined in Para. 1 above.

## **§ 12 Confidentiality/Data Protection**

- The Parties undertake to keep confidential for an unlimited period and neither to record, hand on, nor use any and all information that becomes available to them and that is indicated confidential or is in other circumstances identifiable as business secret ("Confidential Information").
- By appropriate binding agreements, the Parties will ensure that the employees and agents acting on their behalf neither record without authorization nor hand on nor exploit such Confidential Information for an unlimited period.
- The confidentiality obligation shall not apply to the extent
  - the Confidential Information is common knowledge or public domain;
  - the Confidential Information became known to the disclosing Party by way of own research and development independent from this contract;
  - the disclosing Party has obtained knowledge of the Confidential Information from a third party independent from this contract;
  - the disclosing Party is obligated to disclose Confidential Information by law or administrative or other legal act or by judgment.
- The German Data Protection Act (*BDSG*) shall apply. The Parties undertake to bind their employees involved in the execution of this contract by Sec. 5 German Data Protection Act (*BDSG*) and to refer them to the consequences of non-compliance; the Parties further undertake to notify each other in case the execution of the contract affects personal data.

## **§ 13 Delivery and Preservation of Samples**

- The Customer shall bear the costs and risks in respect of deliveries of samples and supplies by the Customer. This shall not apply if ZSW has agreed to collect them. In the event of shipment by the Customer, the Customer must properly pack the materials to be examined, also observing the statutory requirements. The Customer is liable for damages that are due to the dangerous quality of the sample material. The Customer is obligated to refer ZSW to all risks of which the Customer is aware.
- Samples shall be kept for a period of four weeks, to the extent that their quality so permits and unless they have been used or modified for test purposes. A longer preservation period must be expressly agreed upon and remunerated by the Customer. After the expiration of the preservation period, the samples will be disposed of whereas ZSW may demand from the Customer reimbursement of the costs incurred in this connection. If the Customer wishes return of the samples, ZSW will do so at the Customer's cost and upon its written request.

## **§ 14 Final Provisions**

- With regard to the performance, the place of performance shall be the production site of ZSW. With regard to payment, the place of performance shall be the registered seat of ZSW.
- The place of jurisdiction shall be the statutory seat of ZSW. ZSW shall also be entitled, however, to bring an action against the Customer at another statutory place of jurisdiction.
- The contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of its conflict-of-laws provisions, of the uniform United Nations sales law, or of other conventions governing the law of sales of goods.
- The transfer of rights and obligations of the Customer to third parties requires the prior written consent of ZSW.
- Instead of the ineffective or unenforceable provision, an effective or enforceable provision shall be deemed to be agreed which comes as close as possible to the economic purpose of the ineffective or unenforceable provision. In case of a regulatory gap, the provision shall be deemed to be agreed which corresponds to the provision that would have been agreed in terms of the object of these Terms if the Parties had considered the matter.
- The ZSW declares, in case of a legal dispute with a consumer not to take part in consumer dispute resolution procedures.