

# Standard Terms of Contract – Online

## 1. Scope of Applicability

1.1. These Standard Terms of Contract (hereinafter also referred to as the STCs) govern all contracts concluded via the ZENTEK online portal between

Zentek GmbH & Co. KG (Amtsgericht Köln, HRA 13559), which is represented by

Zentek Verwaltungsgesellschaft mbH (Amtsgericht Köln, HRB 26553)

as the general partner, which is represented by its managing directors

Dipl.-Kaufmann Klaus Kussel

Dipl. Kaufmann Christoph Ley

Ettore-Bugatti-Str. 6-14, 51149 Cologne, Germany

T: +49 2203 8987-0, F: +49 2203 8987-999

E-mail: [info@zentek.de](mailto:info@zentek.de)

Zentek GmbH & Co. KG: VAT ID – DE 173 788 828

– hereinafter referred to as ZENTEK –

and the Customer acting as a businessperson (*Unternehmer*) or merchant (*Kaufmann*)

– hereinafter referred to as the CUSTOMER –.

1.2. Decisive are the STCs as amended at the time the contract is concluded.

1.3. Any of the CUSTOMER's standard terms of contract that deviate from, are inconsistent with, or that supplement these STCs only become an integral part of the contract if and to the extent to which ZENTEK has expressly agreed to their application. This agreement must be obtained in all cases, even in those cases where, for example, ZENTEK, knowing of the CUSTOMER's standard terms of contract, unconditionally accepts the CUSTOMER's performance.

## 2. Concluding the Contract / Term of Contract

2.1. The mere description and advertising of services by ZENTEK on the online portal does constitute a binding offer by ZENTEK to conclude a contract.

2.2. In relation to the [German] Packaging Act (VerpackG), ZENTEK will – based on

2.2.1. the end-user product packaging stated by the CUSTOMER (expected annual volume),

2.2.2. the personal data entered by the CUSTOMER,

2.2.3. the CUSTOMER's declaration in conjunction with the concluding of the contract,

2.2.4. the irrevocable receipt of money deposited in ZENTEK's bank account, and

2.2.5. the confirmation of the order by ZENTEK (Section 2.4.) – take back and provide for the recycling of the end-user product packaging in accordance with the provisions of the VerpackG.

2.3. The offer made by ZENTEK is not binding; it is the CUSTOMER who makes the binding offer through the placing of the order.

2.4. The last owner's handing over of waste electric equipment at one of the return points stipulated by ZENTEK constitutes a binding declaration of the CUSTOMER's wish to make use of ZENTEK's services.

The acceptance of any waste electric equipment is conditioned on the proper returning of it by the last owner. The CUSTOMER must be promptly informed of any improper returns made by the last owner.

2.5. ZENTEK must promptly confirm by e-mail the receipt of the order placed through the online portal. Such an e-mail is not per se a binding acceptance of the order unless it contains a declaration of acceptance along with the confirmation of receipt [of the order].

2.6. A contract only comes into existence once ZENTEK accepts the order by declaring acceptance of it or by commencing performance. ZENTEK must store the contractual text and must send the order information also by e-mail to the CUSTOMER. The order information is accessible online in a secured form.

2.7. ZENTEK can only be commissioned for services that have a minimum order value. The CUSTOMER can find the minimum order value in the price information provided on the online portal.

2.8. The right to make reasonably expectable technical modifications is reserved.

2.9. Notice of termination of the contractual relationship may only be given after six months and then with a termination notice period of another six months. After the expiry of the minimum contractual term, the termination notice period is three months prior to the end of a calendar quarter.

### **3. Prices**

All prices stated on the online portal are net prices to which German value-added tax (*Mehrwertsteuer*) must be added.

### **4. Payment Conditions and Setoff**

4.1. The services ‘packaging licensing’ must be paid in advance at the time the contract comes into existence in accordance with the payment procedures specified on the portal. Following this, Zentek GmbH & Co. KG must send the CUSTOMER an invoice via e-mail for the services rendered. An invoice in paper form sent by post is dispensed with.

4.2. The CUSTOMER can, depending on its choice of service ‘Distributor’s obligation to take returns pursuant to Paragraph 17 of the Electrical and Electronic Equipment Act (ElektroG)’, transfer the invoiced amount to the bank account indicated on the online portal.

4.3. The CUSTOMER is not entitled to offset [any of its claims] against claims of ZENTEK unless the [CUSTOMER’s] counterclaims have been judicially determined as final (non-appealable) or are undisputed.

### **5. Conditions of Performance and Reservation of Advanced Payment**

5.1. In the case of services performed by ZENTEK in relation to the dispatch or transporting of parcels, small parcels, etc., the relevant terms of transportation and the standard terms of business of the transport provider must be observed without restriction in the interests of a safe and contractually conform performance of services.

5.2. In the case of orders from CUSTOMERS whose place of residence or registered office is outside Germany, or in cases where there are justified indications of a risk of non-payment, ZENTEK reserves the right to delay its performance until receipt of the advanced payment (reservation of advanced payment). The CUSTOMER must be promptly informed by ZENTEK if ZENTEK exercises the reservation of advanced payment. In such a case, the time period for performance begins with the implemented payment.

## **6. Ceasing of the Obligation to Perform**

6.1. If, after concluding a contract with the CUSTOMER, ZENTEK is unable to perform a service ordered or is unable to perform it within the prescribed time period, then ZENTEK is entitled to release itself from the obligation to perform. In such a case, ZENTEK is obligated to promptly inform the CUSTOMER of the non-performance and to promptly reimburse any counterperformance made.

6.2. A handing over ceases to be possible or is postponed in the event of measures taken in conjunction with labour disputes, especially strikes and lockouts, and in the event of unforeseen hindrances, such as operational disruptions and delays in the receipt of certain waste electric equipment, in so far as such hindrances provably have a substantial impact on the handing over, and in the event of war or catastrophes. The same applies even if the events occur to third parties engaged to perform contractual obligations (*Erfüllungsgehilfen*). The handing over is delayed commensurate with the duration of such measures or hindrances. If such events render it impossible to execute the order, then ZENTEK is also entitled, after giving due notification, to revoke the order without engendering any claims for damages on the part of the CUSTOMER. The timely and proper fulfilment of the CUSTOMER's obligations is the precondition for ZENTEK's performance. The defence of non-performance of contract remains in effect.

## **7. Liability / Ownership**

7.1. ZENTEK is not liable for loss caused by incomplete, incorrect, or erroneous information, by input and/or transmission errors, and/or by unauthorised usage by unauthorised third parties in conjunction with the use of the online portal.

7.2. The CUSTOMER undertakes to compensate ZENTEK for all loss occasioned by the improper use of the online portal, by incomplete, incorrect, or erroneous information, by input and/or transmission errors, and/or by unauthorised usage by unauthorised third parties and to indemnify ZENTEK from all claims by third parties directly or indirectly based on this.

7.3. ZENTEK's liability in cases of intention (*Vorsatz*) and gross negligence is governed by the statutory provisions.

7.4. In all other cases, ZENTEK is only liable for breach of contractual obligations the fulfilment of which make it possible at all to properly implement the contract and the fulfilment of which the CUSTOMER is customarily entitled to rely on (so-called cardinal obligations); compensation in such cases is limited to compensation for foreseeable and typical loss. All other liability on the part of ZENTEK is excluded.

7.5. Excluded are therefore all further claims of the CUSTOMER – especially claims for loss of profits, for compensation of loss arising from impossibility of

performance, for compensation arising from a breach of a contractual duty owed, for compensation of breaches of pre-contractual obligations, and for compensation of tortious acts – against both ZENTEK and those engaged by ZENTEK to fulfil its contractual obligations (*Erfüllungsgehilfen*) or those who perform functions for ZENTEK at its direction and control or in its employ (*Verrichtungsgehilfen*), unless such claims arise from intentional or grossly negligent acts.

7.6. ZENTEK's liability for loss ensuing from a fatal injury, a bodily injury, or an injury to a person's health and for loss based on the [German] Product Liability Act (ProdHaftG) is not affected by the foregoing limitations or exclusions of liability.

7.7. If a processing takes place with objects that do not belong to ZENTEK, then ZENTEK acquires co-ownership in the new thing in a proportional amount equal to the value of the handed over waste equipment in relation to the value of the other processed objects. The same applies when goods are commingled with other objects that do not belong to ZENTEK.

7.8. If during the processing of our CUSTOMER's material it is discovered that this material is not in a customary state, then ZENTEK is entitled to charge any additional costs created by this. If the CUSTOMER refuses to assume the additional costs, then ZENTEK is entitled to refuse to carry on with the order and to invoice the activities performed up to then.

## **8. Warranty**

8.1. If the CUSTOMER is a businessperson (*Unternehmer*), then ZENTEK must warrant the curing of defects, the initial choice of which cure belongs to ZENTEK.

8.2. ZENTEK is entitled to refuse the kind of cure chosen if such cure is only possible for costs that are out of all proportion or if another kind of cure is available without any significant disadvantages for the CUSTOMER.

8.3. If the curing of the defect proves unsuccessful, the CUSTOMER has the choice of demanding the reduction of the price or the revocation of the contract (*Rücktritt*). In the case of mere trivial contractual violations, especially mere trivial defects, the CUSTOMER has no right of revocation.

8.4. Businesspersons must report obvious performance deficiencies to ZENTEK in writing within a time limit of two weeks from the time of delivery (to ZENTEK), otherwise the asserting of the warranty claim is excluded. For compliance with the time limit, the timely dispatch suffices. The burden of proof in relation to all causes of action – especially for a defect itself, for the point in time for discovering a defect, and for the timeliness of the complaint of the defect – is on the businessperson.

8.5. If, after an attempt to cure the defect proves unsuccessful, the CUSTOMER chooses to revoke the contract on account of a legal or material defect (of agreed/intended quality), then the CUSTOMER is not entitled to any additional claims for damages on account of the defect.

8.6. For businesspersons, the warranty period is one year from the time of hand over.

8.7. Guarantees (*Garantien*) within the meaning of [German] law are not obtained by the CUSTOMER from ZENTEK.

## **9. Price Modifications / STCs**

9.1. Any requisite modifications to ZENTEK's own calculations entitle ZENTEK to modify the prices offered, especially if price increases in relation to materials, wages, or other cost factors occur for reasons not attributable to ZENTEK between the making of the offer, the concluding of the contract, and delivery.

9.2. ZENTEK has the right to amend these STCs at any time and without having to state the reasons for it.

9.3. When registering on the online portal, the CUSTOMER must be notified of any amendments to the STCs. The amended STCs take effect with the CUSTOMER's confirmation of receipt of them. Without such confirmation, the CUSTOMER is forbidden from using the online portal.

## **10. Final Provisions**

10.1. If any provision of these STCs is or becomes legally invalid in whole or in part, or if there is a gap in the STCs or such a gap arises during the validity of them, this does not affect the validity of the remaining provisions. In such a case, the statutory provisions apply.

10.2. In the case of more than mere minor amendments to the law applicable to these STCs, the parties must try, within the transitional periods prescribed by law, to implement the changes that are necessary to enable a continuation of the STCs in a way that is as unchanged as possible for each party.

10.3. No ancillary agreements have been entered into. Modifications and supplementations to these STCs must be made in written form the same applies to any agreement to exclude the written-form requirement.

10.4. In addition to these Standard Terms of Contract for the use of the online portal, the respective contractual and business terms of the other legal transactions between ZENTEK and the CUSTOMER apply unrestrictedly.

10.5. The use of the online portal is governed by the laws of the Federal Republic of Germany to the exclusion of private international law.

10.6. The place of performance for ZENTEK is the registered office of ZENTEK.

10.7. If the CUSTOMER is a merchant (*Kaufmann*), a public-law entity, or a special public-law fund, the exclusive place of judicial jurisdiction (*Gerichtsstand*), including international jurisdiction, for all disputes arising directly or indirectly from the use of the online portal is the registered office of ZENTEK. The same applies if the CUSTOMER has no general jurisdiction (*allgemeiner Gerichtsstand*) in Germany or if its domicile or habitual residence is unknown at the time the suit is lodged. Contrary to the foregoing, ZENTEK is entitled to sue the CUSTOMER at the CUSTOMER's place of general jurisdiction.