

Contract

Sample Customer

and - hereinafter referred to as the CUSTOMER -

Zentek GmbH & Co. KG (AG Köln, HRA 13559),
Ettore-Bugatti-Straße 6–14, 51149 Cologne, Germany,

VAT ID No.: DE 173 788 828

- hereinafter referred to as ZENTEK -,
- both also collectively referred to below as the Parties -

enter into the following contract with the contract number: [...]

1. Definitions

The following terms used in this contract have the following specific definitions.

- 1.1 VerpackG ([German] Packaging Act): Act regarding the continual development of the residential separate collection of waste containing valuable (recyclable) substances of 5 July 2017 (BGBl. 2017 Teil I Nr. 45, S. 2234, published in Bonn on 12 July 2017).
- 1.2 Packaging: Packaging as defined by Paragraph 3 VerpackG.
- 1.3 Duales System Zentek: A system within the meaning of Paragraph 3(16) VerpackG for fulfilling the product responsibilities of the participating manufacturers and that collects as waste all of the attendant, content-free packaging of private end-consumers in its statutorily defined territory (*Einzugsgebiet*) and that brings it to the respective recycling facilities.
- 1.4 Estimated volume: Total volume of packaging per material category that the manufacturer (Paragraph 3(14) VerpackG) expects to put on the market in the respective year in the territory of the Federal Republic of Germany.
- 1.5 Reported actual volume (year-end report): CUSTOMER's annual report of the total packaging actually put on the market during the preceding calendar year in the territory of the Federal Republic of Germany. (See Section 3.3)
- 1.6 Increased volume: Positive difference between the estimated volume and the total volume of packaging actually put on the market in a calendar year as per the reported actual volume (year-end report).
- 1.7 Reduced volume: Negative difference between the estimated volume and the total volume of packaging actually put on the market in a calendar year as per the reported actual volume (year-end report).
- 1.8 Minimum invoice amount: If the automatically calculated cumulative net turnover (volume x price) is below **€ XX.00**, then the minimum amount is invoiced.

- 1.9 Delayed Contracted Volumes: Volumes pursuant to a contract concluded with the CUSTOMER after 15 January for the current calendar year (Delayed Contract). The charging of surcharges for delays is contractually agreed in the so-called Volume Clearing Contract, which every Dual System is bound by.
- 1.10 Zentrale Stelle: The German packaging register known as the 'Stiftung Zentrale Stelle Verpackungsregister' (ZSVR) is a private-law foundation, which pursuant to Paragraph 26 VerpackG operates starting 1 January 2019 as, inter alia, a private authority performing the state functions specified therein.
- 1.11 Customer Portal (zmart): At the time the contract is concluded, ZENTEK must provide the CUSTOMER with the login credentials for the ZENTEK customer portal (zmart) for easy payment and reporting purposes. All volume reports of the CUSTOMER's must be made exclusively via the customer portal.

2. Objects of the Contract

- 2.1 As a packaging manufacturer, the CUSTOMER participates—with 100% of the packaging placed by it on the market—in the Duales System ZENTEK, i.e. a system operated by a waste management company, and commissions ZENTEK with the taking back and recycling of this packaging.
- 2.2 ZENTEK ensures the proper fulfilment of the CUSTOMER's obligations under packaging law in accordance with the provisions of the VerpackG through the direct participation of packaging in the Duales System ZENTEK and is authorised to do so by the CUSTOMER pursuant to Paragraph 33 VerpackG (Authorising Third Parties).
- 2.3 ZENTEK is entitled to engage subcontractors to fulfil its contractual obligations.

3. Volume Report, Registration Number

- 3.1 The CUSTOMER must report to ZENTEK at the time the contract is concluded, but no later than 31 December, the estimated volume that it expects to put on the market during the next calendar year. It is not possible during a year to adjust the estimated volume after 31 December.
- 3.2 The CUSTOMER must report to ZENTEK on or before 31 January of the following year the volumes actually put on the market (actual volumes). The report must be made via the customer portal provided by ZENTEK. The prerequisite for submitting the reported actual volume is the prior confirmation or the adjustment of the estimated volume on or before 31 December for the following year, if the contract has been renewed for a further year.
- 3.3 If the CUSTOMER fails to submit a separate report or an adjustment via the customer portal on or before 31 December, then the annual volume last invoiced is deemed the new estimated volume for the following year.
- 3.4 If the CUSTOMER is obligated by law to provide a declaration of completeness pursuant to Paragraph 11 VerpackG, the actual volume (year-end report) for the previous year with respect to the reported packaging must, no later than 15 February of the respective calendar year, be confirmed as towards ZENTEK by a registered appraiser or by a German certified public accountant, tax advisor, or certified accountant who is registered in accordance with Paragraph 27(2) VerpackG.
- 3.5 The CUSTOMER undertakes to register with the ZSVR (www.verpackungsregister.org) and to provide ZENTEK via e-mail at registrierungsnummer@zentek.de with the registration number immediately upon receipt of it.

- 3.6 The CUSTOMER must inform ZENTEK of the data reported to the ZSVR (Paragraph 10 VerpackG) promptly after it has reported it. The CUSTOMER undertakes to report the same amounts to ZENTEK that it reports to the ZSVR.

4. Remuneration, Invoicing

- 4.1 Payment must be made through PayPal Plus (credit card, SEPA direct debit mandate, or a debiting of the payer's own PayPal account). The annual remuneration is calculated by multiplying the estimated volume per material category by the prices stipulated in the price list (Schedule 1), in observance of any applicable minimum invoice amounts.
- 4.2 On or before 31 December of an ongoing year, the CUSTOMER must license the estimated volumes for the following year pursuant to Section 3.3 via the customer portal and effect payment via PayPal Plus on the basis of the acknowledged conditions.
- 4.3 If, on or before 31 December of an ongoing year, the CUSTOMER fails to fulfil its contractual obligation to report the estimated volume for the following year pursuant to Section 3.3, ZENTEK is entitled to issue an invoice based on the last volume reported by the CUSTOMER to ZENTEK.
- 4.4 The invoice is issued electronically in adherence to the provisions of Paragraph 14 (3) of the [German] Turnover Tax Act (UStG). The CUSTOMER must ensure receipt of the message. The CUSTOMER's e-mail address for receipt of the electronic invoice is:

samplecustomer@sample.de.

5. Invoicing Based On the Reported Actual Volume (Year-End Report)

- 5.1 ZENTEK is obligated pursuant to Paragraph 19 VerpackG to participate in the so-called 'Gemeinsame Stelle' (clearing house). No later than 15 May of each year, the Gemeinsame Stelle must determine the volume of packaging actually put on the market in the previous year. It then must carry out a financial equalization among all of the participants. According to the equalization rules, additional fees must be paid to the Gemeinsame Stelle for increased volumes. For reduced volumes, no reimbursement is made. In light of the foregoing, the Parties agree as follows:
- 5.2 If the mandatory reported actual volume (year-end report), in relation to the individual material categories, shows an increased volume, the additional licensing of and payment for this must be effected using the customer portal via PayPal Plus on the basis of the acknowledged conditions.
- 5.3 If the reported estimated volume or the reported actual volume (year-end report), in relation to the individual material categories, shows a reduced volume, then ZENTEK, for the reasons set out in Section 5.1, has no obligation to reimburse the fees already paid by the CUSTOMER for the reduced volume.
- 5.4 If the actual volume (year-end report) pursuant to Section 3.2 is not reported or not reported on or before the deadline of 31 January of the ongoing year, then ZENTEK is released from its performance obligations under Section 2.2. in relation to any such increased or reduced volumes.

6. Price Adjustments

ZENTEK is entitled to make price adjustments in so far as the adjustments are due to changes to waste-disposal costs and/or such costs arising from amendments made to statutory/public-administration provisions and/or compulsory rules, especially in relation to the structuring and operating of a system within the meaning of Paragraph 3(16) VerpackG.

ZENTEK must give written notice of a price adjustment at least six weeks in advance. If the CUSTOMER objects to the price adjustment within two weeks subsequent to receipt [of the notification], the CUSTOMER has the right to prematurely terminate the contract effective as per the point in time at which the price adjustment takes effect. The price adjustment otherwise takes effect at the notified time.

7. Setoff, Retention of Title

The CUSTOMER is only entitled to rights of setoff and to retentions of title to the extent to which its counterclaims are undisputed, expressly acknowledged by ZENTEK, or judicially determined as final and absolute.

8. Liability

8.1 Subject to the following contractual provisions, the contracting parties are liable in accordance with the statutory provisions.

8.2 In the case of ordinary negligence, ZENTEK's liability is limited to a) loss arising from a fatal injury, a bodily injury, or an injury to a person's health, and b) loss arising from a breach of a fundamental contractual obligation (a contractual obligation the fulfilment of which makes it possible at all to properly implement the contract and the fulfilment of which the CUSTOMER customarily relies on or is entitled to rely on). In the case of a breach of a fundamental contractual obligation, liability is limited to compensation of foreseeable loss that typically occurs; liability for indirect loss, especially loss of profits, is excluded.

9. Term of the Contract

9.1 The contract begins on [...].

9.2 Each party may terminate the contract by way of ordinary termination by giving notice of termination three months

9.2.1. prior to the end of the calendar year agreed as the last contractual year, or

9.2.2. prior to the end of a calendar year after the agreed minimum term of contract has expired.

9.3 The right to terminate the contract by way of extraordinary termination [termination without notice] remains in effect.

9.4 Each party is entitled to terminate the contract by way of extraordinary termination [termination without notice] especially if the respective other party grossly breaches one of its main contractual obligations, or if insolvency proceedings are opened in relation to the assets of the other respective party or if the opening of such proceedings is denied due to an insufficiency of assets.

10. Final Provisions

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

10.2 In the case of more than mere minor amendments to the law applicable to this contract, especially to the VerpackG, the parties must try, within the transitional periods prescribed by law, to implement the changes that are necessary to enable a continuation of the contract under commercial parameters that are as unchanged as possible for each party.

10.3 No ancillary agreements have been entered into. Modifications and supplementations to this contract must be made in written form (Schriftform). The same applies to any agreement to exclude the written-form requirement.

10.4 German law applies to the exclusion of private international law.

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

10.6 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 this contractual relationship 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.
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10.7 The schedules listed below and attached to this contract form an integral part of this contract:

Schedule 1 (Price List and Estimated Volume)

Schedule 2 (Price List for Delayed Contracted Volumes)

Schedule 1
Price List and Estimated Volume

Material Category	Price € / kg	Volume kg / p.a.
Glass		
Paper/paperboard/cardboard		
Iron metals		
Aluminium		
Plastics		
Liquid packaging boards		
Other composite packaging		
Other materials		

The **net minimum invoice amount** is € _____ **per calendar year**, plus any surcharges for delays.

The prices set out above apply per volume-unit (kilogram) put on the market. German statutory VAT must be added to all prices.

Schedule 2**Price List for Delayed Contracted Volumes:**

Depending on the time the Delayed Contract was concluded, the additional euro amounts owing for Delayed Contracted Volumes for the individual material categories are, in addition to the contractually agreed standard prices, per kilogram:

Material Category	1st Quarter Price € / kg	2nd Quarter Price € / kg	3rd Quarter Price € / kg	4th Quarter Price € / kg
Glass				
Paper/paperboard/cardboard				
Iron metals				
Aluminium				
Plastics				
Liquid packaging boards				
Other composite packaging				
Other materials				

If, for the ongoing calendar year, a contract is concluded with the CUSTOMER after 15 January (Delayed Contract), the following applies:

If on the basis of a Delayed Contract ZENTEK includes volumes in the ZENTEK Duales System after 15 January, 2 March, 5 June, or 11 September (hereinafter referred to as 'key delay dates') that relate to time periods from 1 January

- a) to and including 31 March (where the contract is concluded in the period from 16 January to and including 2 March)
- b) to and including 30 June (where the contract is concluded in the period from 3 March to and including 5 June)
- c) to and including 30 September (where the contract is concluded in the period from 6 June to and including 11 September)
- d) to and including 31 December (where the contract is concluded in the period from 12 September to and including 15 May of the following year),

(these volumes referred to as Delayed Contracted Volumes; the time periods set out in a) to d) are referred to as the Delay Reference Periods), then these Delayed Contracted Volumes, broken down in the material categories glass, LVP (lightweight packaging), and PPK (paper, paperboard, cardboard), must be identified separately as Delayed Contracted Volumes in the next possible quarterly report or actual volume report and must be audited by the system auditor. In conjunction with the auditing of the Q2, Q3, Q4, and the actual volume reports, the system auditor must review the accuracy and completeness of the information reported by ZENTEK regarding the Delayed Contracted Volumes.