

# General Standard Terms and Conditions of Sale and Delivery of Zeppelin Rental GmbH

Graf-Zeppelin-Platz 1, 85748 Garching near Munich, Germany

## 1. Scope; customer's terms and conditions; changes

- 11 The following General Standard Terms and Conditions of Sale and Delivery shall apply to all offers and services of ZRD. The General Standard Terms and Conditions of Sale and Delivery shall apply in particular to contracts on the sale and delivery of movable objects ("goods") by ZRD. This shall apply irrespective of whether ZRD itself purchases the goods from suppliers or makes or processes them itself or adapts them to the needs of the customer.
- 12 Unless specified otherwise in the following, the General Standard Terms and Conditions of Sale and Delivery shall apply to consumers [Section 13 of the German Civil Code (BGB)] and entrepreneurs (Section 14 BGB).
- 13 Upon conclusion of the first contract in conjunction with the General Standard Terms and Conditions of Sale and Delivery, the customer acknowledges their effectiveness for all future contracts it concludes with ZRD (including orally or by e-mail). The applicable version of the General Standard Terms and Conditions of Sale and Delivery shall thereby apply as a master agreement to the sale and delivery of movable goods. The latest version of the General Standard Terms and Conditions of Sale and Delivery can be downloaded from the homepage of ZRD ([www.zeppelin-rental.de](http://www.zeppelin-rental.de)) and will be sent to the customer upon request.
- 14 The General Standard Terms and Conditions of Sale and Delivery shall apply exclusively to the business relationship between ZRD and the customer. Differing, conflicting or supplementary terms and conditions of the customer shall not become part of the contract. This shall also apply if ZRD is aware of these terms and conditions and provides the customer with the service without reservation.
- 15 Employees at the branch offices of ZRD shall not be authorised to change the content of the General Standard Terms and Conditions of Sale and Delivery (in writing or orally). Written confirmation of any changes is required from the head office of ZRD (Graf-Zeppelin-Platz 1, Garching near Munich, Germany).
- 16 References to the applicability of statutory provisions are only of significance for the purpose of clarification. Even without such clarification, the statutory provisions therefore apply, unless they are modified or expressly excluded in the contract or these General Standard Terms and Conditions of Sale and Delivery.

## 2. Offer; acceptance period; quantities; warranty; used and new goods; procurement risk

- 21 Offers from ZRD shall be without obligation; they are merely a request to the customer itself to issue a binding offer. An order by the customer represents a binding offer to ZRD.
- 22 ZRD can accept the customer's offer within 4 weeks of the offer being issued (acceptance period). A contract shall only be concluded when ZRD declares its acceptance in writing or by providing the service or delivering the goods to the customer. A failure to respond to an offer of the customer does not constitute acceptance of it.
- 23 A written declaration of ZRD shall be required as proof of the content of an agreement relating to the quantities or condition of the goods. The same shall apply to the assumption of a warranty by ZRD relating to the quantities or service life of the goods.
- 24 Details of the goods in brochures, advertising and other offer documents or on the Internet, as well as pictures or drawings of them, are only approximate descriptions and not always accurate in every point. They shall be binding only if expressly designated as binding by ZRD. Otherwise, the quantities of the goods shall be as defined in the contract.
- 25 Unless otherwise agreed, used goods shall be sold in the condition and with the qualities they have when they are handed over to the customer. The contractual qualities of used goods shall include in particular typical damage due to the goods' age, wear and tear to date and previous use of the goods ("**damage from wear and tear**").
- 26 Replacement parts shall also be used goods within the meaning of these General Standard Terms and Conditions of Sale and Delivery. They are used spare parts that have been reconditioned and regenerated by the manufacturer or ZRD, but have a reduced remaining service life.
- 27 Goods that have not yet been put into operation (apart from for testing or demonstration purposes or as part of implementation or transportation) shall be new. The year in which the object was made is not material as to whether it qualifies as new.
- 28 Unless expressly agreed in the contract, ZRD shall not be obliged to procure goods. ZRD shall therefore not assume any procurement risk. This shall also apply if goods of a specific kind only are owed. A written declaration by ZRD shall be required as proof that ZRD has assumed a procurement risk.

## 3. Performance periods and handover deadlines; delay in performance; customer's right to withdraw from contract; non-availability of the service; premature performance; partial services

- 31 If performance periods or handover deadlines are stated in the contract, they shall be non-binding details based on the anticipated duration of performance or customary delivery times for similar goods. Transactions where time is of the essence shall not be concluded. A written declaration by ZRD shall be required as proof that a binding delivery or handover deadline has been agreed.
- 32 If ZRD is temporarily impeded in effecting the service it owes for reasons for which it is not responsible, the due date for the service shall be postponed until the impediment to performance is removed. ZRD shall inform the customer of the impediment to performance and its anticipated duration immediately.
- 33 If ZRD is in delay in effecting a service owed by it, the customer shall be authorised to withdraw from the contract only if it has set ZRD a reasonable period of time to effect the service and this has elapsed without success. Section 4.1 shall also apply. Section 10 shall apply to the customer's claims for damages and reimbursement of expenses due to a delay in performance or non-performance on the part of ZRD.
- 34 If the service owed by ZRD is not available, ZRD shall be authorised to withdraw from the contract if the non-availability is not just temporary and ZRD is not responsible for it. Non-availability exists in particular if ZRD is not supplied by its supplier, or is not supplied properly, under a congruent covering transaction it concluded for the purpose of fulfilling its obligation to perform. The same applies if the owed service cannot or can no longer be performed from ZRD's stock. ZRD shall be obliged to inform the customer of the non-availability of the service immediately and to restitute any consideration it has already received from the customer immediately.
- 35 ZRD shall be authorised to perform services prematurely and partially. ZRD shall be authorised to invoice premature and partial services immediately. The provisions in this Section 3.5 shall not apply if the customer is a consumer.

## 4. Further rights of withdrawal and termination of the customer; restrictions

- 4.1 The customer can withdraw from or terminate the contract due to a breach of duty by ZRD not consisting of the supply of defective goods only if ZRD is responsible for the breach of duty. A free right of the customer to terminate the contract (in particular in accordance with Sections 651 and 649 BGB) shall be excluded.
- 4.2 The customer shall not have the right to cancel the contract for economic reasons lying in its risk environment. In particular, the customer shall not be authorised to withdraw from or terminate the contract because its financial circumstances have deteriorated or its order situation or the possibility of using the goods have changed.
- 4.3 In addition, the statutory requirements and legal consequences of the customer's rights to withdraw from and terminate the contract shall remain unaffected, unless expressly specified otherwise in the contract or these General Standard Terms and Conditions of Sale and Delivery.
- 4.4 If the contract is not implemented for reasons for which the customer is responsible or at its instigation, ZRD shall be entitled to damages in accordance with the statutory provisions. In this regard, Section 5.5 below shall apply analogously.

## 5. Acceptance; sale to destination according to the buyer's instructions; transportation costs; delay in taking delivery; failure to take delivery; damages; annual increment and change in model series

- 5.1 The taking delivery of goods shall be effected at the location agreed in the contract or, if no arrangement has been concluded in this regard, at the ZRD branch office that has concluded the contract; the respective location shall be the place of performance. If the customer wishes to have the goods delivered to a different place (sale to destination according to the buyer's instructions), it shall bear the costs of consignment. That shall also include paying customs duties, taxes, fees and other public charges.
- 5.2 Unless otherwise agreed, ZRD shall define the carrier and manner of consignment in the case of a sale to destination according to the buyer's instructions. ZRD shall not be liable for selection and monitoring of the carrier. ZRD shall also not be obliged to choose the cheapest or fastest means of shipment. ZRD shall take out transport insurance only if instructed by the customer. A written declaration of the customer shall be required as proof of

such an instruction. The customer shall bear the costs of the transport insurance.

- 5.3 If the customer is an entrepreneur and a sale to destination according to the buyer's instructions is involved, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delayed delivery, shall pass to the customer when the goods are handed over to the carrier. That shall also apply if partial services are provided or ZRD has instigated transportation or has assumed the costs of transportation.
- 5.4 If the customer is in delay in accepting the service of ZRD or the service is delayed for reasons for which the customer is responsible, ZRD can demand reimbursement for the resultant damage it has incurred (e.g. storage and transportation costs). In particular, ZRD shall be authorised to store the goods itself and to demand a lump sum of € 4.50 per calendar day as of the agreed handover date or, if a handover date has not been agreed, as of notification that the goods are ready for shipment until they have been accepted. Value-added tax shall be payable on top of the lump sum. The lump sum and the value-added tax owed on it shall not exceed a total maximum amount of 5% of the gross purchase price of the goods. The customer has the right to prove that ZRD has incurred no or only far less damage as a result of storage. ZRD shall be authorised to assert further claims and prove higher damage in connection with storage of the goods; however, the lump sum shall not be offset against that.
- 5.5 If the customer does not fulfil its obligation to accept the service, ZRD shall be entitled to claim damages in accordance with the statutory provisions. As part of the damages, ZRD shall in particular be compensated for the impairment to the value of a machine occurring, regardless of its actual use, at the end of the calendar year (annual increment) or as a result of a change in model series or a change within the model series, if ZRD incurs damage as a result. The right of ZRD in accordance with Section 5.4 shall remain unaffected. In calculating the lump sum in accordance with Section 5.4 Sentence 2, acceptance by the customer shall be replaced in this case by delivery or handover of the machine as part of its utilisation elsewhere by ZRD.

## 6. Prices; payments by the customer: SEPA direct debit scheme; default in payment

- 6.1 Unless otherwise agreed, the final price to be paid by the customer shall be calculated on the basis of ZRD's net prices applicable at the time the contract was concluded plus value-added tax at the applicable statutory rate.
- 6.2 Payments of the customer shall always be credited in accordance with Section 366 (2) BGB. This shall also apply if the customer has specified a different form of settlement.
- 6.3 Unless otherwise agreed in the contract, ZRD shall be authorised to collect payments owed by the customer by means of direct debiting from the customer's account when the payments are due. Payments shall be collected by the SEPA core direct debiting scheme. The customer shall be obliged for this purpose to issue ZRD at its request with a written SEPA direct debit mandate or a written debit authorization in the form of a SEPA direct debit mandate and to provide ZRD with the details required for that.
- 6.4 ZRD shall ensure that the customer has a reasonable period of time (at least 5 business days) between the agreed due date or, if a specific due date has not been agreed, receipt of the invoice and debiting of the owed amount in order to examine the claim and to ensure that there are sufficient funds in the account for payment of it. Further requirements (e.g. relating to notice of collection of due payments envisaged in the SEPA direct debit scheme) shall remain unaffected.
- 6.5 If the company is an entrepreneur, payment by the SEPA business-to-business direct debit scheme can be agreed contrary to Section 6.3. Section 6.4 shall apply analogously.
- 6.6 If the customer is in delay in paying a claim of ZRD in full or in part, ZRD shall be authorised to
- (1) terminate any existing financing and/or payment extension agreement with immediate effect and to demand immediate payment of all claims therefrom;
  - (2) withhold services from contracts that have not yet been fulfilled;
  - (3) assert the rights from the agreed retention of ownership (Section 11);
  - (4) withdraw from the contract in accordance with Section 7.
- 6.7 If the customer is in default in payment, ZRD shall be entitled to interest on arrears of 12% of the overdue amount. ZRD reserves the right to assert further lawful claims. The customer shall have the right to prove that ZRD has incurred no or only far less damage.

## 7. Withdrawal of the contract by ZRD; claims to compensation for use and damages

- 7.1 ZRD shall be authorised to withdraw from the contract in accordance with statutory provisions. This shall apply in particular if the customer is in delay in settling a claim of ZRD in full or in part, or, despite being set a period of respite or issued with a warning, violates cardinal provisions of the contract or the General Standard Terms and Conditions of Sale and Delivery.
- 7.2 ZRD shall be authorised to withdraw from the contract if it has not yet provided the service it owes and it becomes apparent after the contract has been concluded that the claim for payment of ZRD is at risk because the customer lacks the ability to pay. This shall be the case in particular if the customer (before or after the contract has been concluded) issues a statutory declaration regarding its financial circumstances or execution measures are instigated against it. In this case, the withdrawal from the contract is only approvable if ZRD has set the customer a reasonable period of time to effect payment concurrently upon the provision of the service by ZRD or to provide security therefor and this period of time has elapsed without payment or security being rendered. There shall be no requirement to set a period of time if this would be superfluous as a prerequisite for withdrawing from the contract in accordance with the law.
- 7.3 ZRD shall be authorised to withdraw from the contract if the customer ceases its payments or its financial circumstances deteriorate significantly. The same shall apply if an application for the commencement of insolvency proceedings on the assets of the customer is filed or rejected or the insolvency proceedings are discontinued.
- 7.4 In the event of withdrawal from the contract, ZRD shall be entitled to payment of compensation for use. The amount of compensation shall correspond to the customary rent the customer would have had to pay if it had leased the goods or a similar object for the period of time up to when they were returned to ZRD. If the purchase price is financed by ZRD, however, the compensation for use shall be at least as high as the sum total of all down-payments and purchase price or financing instalments that were owed under the arrangements in the purchase or financing agreement up to the time the goods are returned to ZRD. The customer has the right to prove that ZRD has incurred no or only far less damage.
- 7.5 ZRD reserves the right to assert claims for damages or compensation for use above and beyond this. However, payments by the customer in accordance with Section 7.4 shall be offset against further claims for compensation for use.

## 8. Setoff; rights to refuse performance and rights of retention; prohibition on assignment of claims

- 8.1 The customer can only offset a claim against claims of ZRD if its claim is undisputed or legally binding. If the customer is an entrepreneur, it can also withhold performance or assert rights of retention only if its claim is undisputed or legally binding. This shall also apply to the commercial right of retention in accordance with Sections 369 to 372 of the German Commercial Code (HGB).
- 8.2 In addition, rights of retention can be asserted only if the claim of ZRD and the counterclaim of the customer relate to the same contractual relationship. This shall apply to entrepreneurs and consumers alike.
- 8.3 In the cases stated in Sections 8.1 and 8.2, the right of the customer to offset justified counterclaims to which it is entitled for the costs of rectifying defects or completion costs against the claim for payment by ZRD for a defective or incomplete service of ZRD or to assert for this reason the plea of non-performance shall remain unaffected. However, the customer can only retain part of the payment proportionate to the defect or the degree of incompleteness.
- 8.4 Any assignment of claims against ZRD shall be possible only with the consent of ZRD. A written declaration by ZRD is required as proof of consent. In particular, the customer's right to delivery or performance of the service shall not be assigned without the consent of ZRD.

## 9. Warranty claims of the customer; limitation of action for warranty claims

- 9.1 ZRD's liability for defects and legal imperfections in title shall be as defined by the statutory regulations, unless otherwise specified in the provisions of this Section 9. The provisions in Section 10 shall apply to warranty claims by the customer relating to claims for damages or reimbursement of futile expenses.

- 9.2 If the qualities of the goods were not agreed, the existence of a defect shall be assessed in accordance with the statutory regulations. Section 2.5 shall apply as regards the qualities of used goods. Damage due to wear and tear or damage due to previous wear and tear shall not constitute a defect. Damage shall also not constitute a defect if it is causally connected to the fact that
- (1) the goods were put into operation incorrectly or were installed incorrectly (in particular not in compliance with the operating instructions) by the customer or a third party; or
  - (2) the goods were used incorrectly, contrary to their purpose or excessively; or
  - (3) the goods were not adequately maintained or cared for; or
  - (4) the goods were previously modified or repaired improperly by the customer or a third party without the consent of ZRD; or
  - (5) incorrect spare parts (in particular ones that were incompatible or not intended by the manufacturer) were installed or attachment parts were added; or
  - (6) unsuitable operating supplies were used or the goods were subjected to harmful (e.g. physical, chemical or electrical) influences; or
  - (7) earlier defects or damages were not reported to ZRD on time.
- 9.3 If the customer is an entrepreneur, warranty claims against ZRD shall also be subject to the following restrictions in this Section 9.3. However, these restrictions shall not apply if claims for damages or reimbursement of expenses in accordance with Section 10 or rights of recourse pursuant to Sections 478 and 479 BGB are asserted.
- 9.3.1 If the manufacturer has assumed a guarantee for specific features or qualities of the goods, the customer shall in principle be entitled to the rights from the guarantee alongside and independently of its warranty claims for defects against ZRD. If the defects or legal imperfections in title are covered by the guarantee, however, the customer shall be obliged to assert its claims from the guarantee initially against the manufacturer. For as long as this has not been done, ZRD can refuse to fulfil the customer's warranty claims. However, the customer shall not be obliged to take court action against the manufacturer. ZRD is instead obligated to fulfil the customer's warranty claims if and insofar as the manufacturer does not voluntarily fulfil the claims from the guarantee asserted against it or the customer's claims are not fully settled as a result.
- 9.3.2 ZRD shall not assume any liability for public comments (e.g. advertising or promotional statements) by third parties. A third party within this meaning shall also include the respective manufacturer of the goods, if ZRD has not manufactured the goods itself.
- 9.3.3 Warranty claims shall exist only if the customer has met its responsibilities to examine the goods and report any defects in accordance with Sections 377 and 381 HGB. Irrespective thereof, obvious defects must be reported to ZRD within 2 weeks of accepting delivery. The defects shall be reported in writing. This deadline shall be regarded as having been met if the notice of defects is sent off on time.
- 9.3.4 Warranty claims of the customer for used goods shall be excluded.
- 9.3.5 If a defect or legal imperfection in title exists, ZRD shall first of all be authorised to either remedy the defect (rectification) or to supply an object that is free from defects (delivery of substitute goods) at its own discretion. The customer shall not have the right to choose the means of remedy. ZRD can make cure contingent on payment of the purchase price. However, the customer shall be authorised to retain part of the purchase price proportionate to the defect or imperfection.
- 9.3.6 The right of ZRD to refuse cure in accordance with statutory regulations shall remain unaffected. That shall apply in particular if cure is possible only at disproportionate cost.
- 9.3.7 If ZRD is not obliged to install the goods under the contract, it shall not be obliged to dismantle the defective goods or install goods free of defects or to assume the related costs if substitute goods are delivered.
- 9.3.8 The customer shall be authorised to reduce the purchase price or, at its own discretion, to withdraw from the contract and demand damages or reimbursement of expenses in accordance with Section 10 if cure fails or if the customer cannot be reasonably expected to accept it or the customer has unsuccessfully set ZRD a reasonable period of time for cure or if cure is superfluous under the law. The same shall apply if ZRD justifiably refuses cure or it is impossible for it to perform cure. However, there shall be no right to withdraw from the contract due to an insignificant defect.
- 9.3.9 If the customer demands that ZRD remedies a defect and it transpires that there was actually no defect, the customer shall be obliged to reimburse ZRD for the costs and expenses it has incurred as a result.
- 9.3.10 Any further liability on the part of ZRD for defects or legal imperfections in title shall be excluded. That shall not apply if ZRD has not disclosed a defect or legal imperfection in title with intent to deceive or has assumed a guarantee of quality of the object.
- 9.4 The customer shall not have the right to remedy any defects itself and demand that ZRD reimburse it for the expenses required to do so.
- 9.5 The statutory regulations shall apply to the limitation of actions for warranty claims by the customer, unless otherwise specified in this Section 9.5.
- 9.5.1 If the customer is an entrepreneur, its warranty claims shall become statute-barred one year upon delivery of the goods. If a new object is sold, claims shall become statute-barred before the end of the one-year period as soon as the object has been in operation for a total of 2,000 hours or more.
- 9.5.2 If the customer is a consumer, its warranty claims shall become statute-barred in one year upon delivery if a used object is sold.
- 9.5.3 Warranty claims for parts installed as part of rectification shall become statute-barred upon expiry of the period of limitation for warranty claims relating to the goods.
- 9.5.4 The provisions in Sections 9.5.1 to 9.5.3 shall not apply if and insofar as ZRD has not disclosed a defect with intent to deceive. They shall also not apply if claims for damages or reimbursement of expenses in accordance with Section 10 or rights of recourse pursuant to Sections 478 and 479 BGB are asserted. The statutory period of limitation for warranty claims relating to buildings (Section 438 (1) No. 2 BGB) or third-party claims for surrender in rem (Section 438 (1) No. 1 a BGB) shall also remain unaffected.
- 10. Claims for damages and reimbursement of expenses by the customer**
- 10.1 ZRD's liability to pay damages and reimburse expenses shall be governed by this Section 10. This shall apply to contractual liability on the part of ZRD and its liability due to tort or on other legal grounds.
- 10.2 ZRD shall be liable in accordance with the statutory regulations for damage that is caused by a breach of duty through intent or gross negligence by ZRD, its legal representatives or vicarious agents.
- 10.3 ZRD shall be liable for damage that is caused by a breach of duty through negligence by ZRD, its legal representatives or vicarious agents only if
- Cardinal contractual obligations are violated. They are obligations whose observance is necessary to the proper fulfilment of the contract or upon whose observance the customer regularly relies or may rely. Cardinal obligations are also duties that result from the nature of the contract and whose violation jeopardises achievement of the contract's purpose.
  - Obligations to respect the rights, objects of legal protection and interests of the customer are violated and the customer can no longer be reasonably expected to use the service of ZRD.
- Apart from that, liability on the part of ZRD for ordinary negligence shall be excluded.
- 10.4 If ZRD is liable in accordance with Section 10.3 on the merits of the matter, the amount of liability shall be limited to foreseeable damage typical of the contract. If the customer is an entrepreneur, this limitation of liability shall also apply to cases in which ZRD is liable in accordance with Section 10.2 for breaches of duty by ordinary vicarious agents (who are not legal representatives or executive employees of ZRD). Any reimbursement of consequential damage, such as loss of prospective profits, shall be excluded.
- 10.5 If ZRD is liable without being to blame, liability shall likewise be limited to foreseeable damage typical of the contract. Section 10.4 Sentence 3 shall also apply in this case.
- 10.6 The above exclusions and limitations of liability in Sections 10.3 to 10.5 shall not apply to the following damage and claims:
- Damage resulting from injury to life, body or health;
  - Claims by the customer under the German Product Liability law (Produkthaftungsgesetz);
  - Claims due to defects that were not disclosed with intent to deceive or from a guarantee of quality assumed by ZRD;
  - All other cases where statutory liability regulations are mandatory.
- 10.7 The provisions in this Section 10 shall also apply to any personal liability on the part of the management bodies, representatives and vicarious agents of ZRD.
- 11. Retention of title by ZRD**
- 11.1 ZRD retains title until payment of the whole purchase price. Transfer of title to the goods shall also be subject to the conditions in Sections 11.1 and 11.2 (extended retention of title).
- 11.1.1 If the customer is an entrepreneur, title to the goods shall pass to the customer only once all claims by ZRD that

- exist upon conclusion of the contract and arise in future from the business relationship with the customer have been paid.
- 11.1.2 If the customer is a consumer, passage of title to the goods shall likewise be contingent on all claims of ZRD against the customer that existed upon conclusion of the contract being paid. In addition, all claims from subsequent transactions relating to the goods (e.g. payments for spare parts deliveries or repairs relating to the goods) must have been paid in full.
- 11.1.3 As soon as all claims secured by the (extended) retention of title have been paid for in full, title to the goods shall be transferred; the retention of title shall not be revived for subsequent claims that arise.
- 11.2 The customer shall be obliged to treat the goods ("**goods subject to retention of title**") with care and to maintain them for the duration of the retention of title. The customer shall have the maintenance and inspection work specified by the manufacturer and any necessary repairs carried out at its own expense. ZRD or a business establishment recognized by ZRD or the manufacturer shall be tasked with carrying out this work.
- 11.3 The customer shall be obliged to take out and maintain at its own expense a machinery insurance policy that also covers in particular the risk of fire and theft for the goods subject to retention of title. The customer shall furnish ZRD with proof that said insurance has been taken out and maintained at any time at the request of ZRD. The customer hereby assigns to ZRD all claims to which the customer is entitled now and in the future in relation to the goods subject to retention of title against the insurance company or other third parties; ZRD hereby accepts this assignment.
- 11.4 The customer shall be authorised to resell the goods subject to retention of title, pledge them, assign them as security or otherwise dispose of them only with the consent of ZRD. Any leasing of the goods subject to retention of title shall also require the consent of ZRD. The same shall apply to export of the goods subject to retention of title or their use outside the Federal Republic of Germany. A written declaration by ZRD shall be required as proof of consent.
- 11.5 The customer shall inform ZRD about the current location of the goods subject to retention of title upon request. Any change of possession or location of the goods subject to retention of title shall be reported immediately to ZRD without the need for it to request so. The same shall apply to any change in the residential or business address of the customer.
- 11.6 If the goods subject to retention of title are pledged or seized by a third party, the customer shall point out to the third party that they are the property of ZRD and shall notify ZRD immediately. If the third party is not able to reimburse ZRD for the court and out-of-court expenses of successful legal action [e.g. a third-party action against execution in accordance with Section 771 of the German Code of Civil Procedure (ZPO)], the customer shall reimburse ZRD for these costs.
- 11.7 If the customer processes the goods subject to retention of title, reforms them, links them with other objects or sells them, the following provisions shall additionally apply:
- 11.7.1 If a new object is created as a result of processing or reforming of the goods subject to retention of title, this shall be done on behalf of ZRD as the manufacturer. ZRD shall acquire co-ownership of the new object to the ratio of the value of the goods subject to retention of title to the value of the new object.
- 11.7.2 If the goods subject to retention of title are linked inseparably to other movable objects that do not belong to ZRD to create a new object, ZRD shall acquire co-ownership of the new object to the ratio of the value of the goods subject to retention of title to the other objects. If the goods subject to retention of title are linked to an object of the customer such that the object of the customer is to be regarded as the main object, the customer shall assign co-ownership of the new object to ZRD in accordance with the above ratio.
- 11.7.3 The customer shall safeguard any ownership or co-ownership created in accordance with the above provisions on behalf of ZRD. The customer shall be obliged to provide ZRD with all information it requires to prosecute its ownership rights.
- 11.7.4 The legal circumstances that existed in relation to the goods subject to retention of title shall continue in relation to the new object. This shall apply in particular to the customer's expectant right. The provisions in this Section 11 shall apply accordingly to the new object.
- 11.7.5 The customer hereby assigns to ZRD the claims arising from reselling of the goods subject to retention of title or of the new object to the amount of the value of the goods subject to retention of title as security; ZRD hereby accepts the assignment. This shall apply regardless of whether they were resold with or (which is in breach of contract) without the consent of ZRD. The customer shall be obliged upon request to provide ZRD with all the information ZRD requires to assert the assigned claims.
- 11.7.6 If the customer links the goods subject to retention of title with an item of real estate, it hereby assigns to ZRD as security all claims accruing to it from third parties due to such linkage to the value of the goods subject to retention of title; ZRD hereby accepts the assignment. Section 11.7.5 Sentence 3 shall apply accordingly.
- 11.8 If the value that can be realised from the security to which ZRD is entitled to exceeds the secured claims of ZRD against the customer by more than 10 %, ZRD shall be obliged at the request of the customer to release security to the relevant extent at its own discretion. However, this shall apply only if the security is divisible.
- 11.9 If the customer acts in violation of the contract, ZRD shall be authorised in accordance with statutory regulations to withdraw from the contract and demand surrender of the goods subject to retention of title. This shall apply in particular if the customer, despite being set a reasonable period of respite, does not pay the claims that are secured by the retention of title or, despite being set a period of respite or being issued with a warning, violates its obligations under this Section 11. There shall be no need to set a period of respite or issue a warning if this is superfluous according to statutory regulations.
- 11.10 If the customer is an entrepreneur, ZRD can demand surrender of the goods subject to retention of title even without withdrawal of the contract if ZRD were authorised to withdraw from the contract under the law or the contract. In such a case, ZRD shall purchase the goods subject to retention of title from the customer subject to prior notice on the basis of the estimated value of an expert (e.g. from DEKRA Automobil GmbH). The costs of this estimate shall be borne by the customer. ZRD shall be authorised to demand a lumpsum of 15% of the net purchase price; however, the customer shall have the right to prove that ZRD has incurred no or only far lower costs for the estimate. The purchase price (minus costs for the estimate) shall be offset against the outstanding claims of ZRD against the customer. ZRD shall be authorised to issue a credit note to the customer for the purchase price.
- 12. Written form; severability clause; choice of law; place of jurisdiction; final provisions**
- 12.1 A written agreement shall be required as proof of the content of amendments, modifications or collateral agreements to the contract. The same shall apply as proof of an agreement to the effect that sentence 1 does not apply.
- 12.2 If individual provisions of the contract or the General Standard Terms and Conditions of Sale and Delivery are or become invalid or unworkable in full or in part, this shall not affect the remaining provisions. The parties shall replace the invalid or unworkable provision with a stipulation which corresponds most closely - where legally possible - to the economic and legally intended purpose of the provision. The same shall also apply if it transpires that there is a loophole.
- 12.3 The law of the Federal Republic of Germany shall apply to the legal relationships between the customer and ZRD. Application of uniform international law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall be excluded.
- 12.4 The national and international place of jurisdiction for all disputes arising from or in connection with the contract shall be Munich (Regional Court District Munich I), if the customer is a merchant within the meaning of the German Commercial Code (HGB), a legal person under public law or a special fund under public law. This place of jurisdiction shall have sole jurisdiction and venue for legal actions brought by the customer against ZRD. ZRD shall also be authorised to file legal action against the customer at its place of general jurisdiction.
- 12.5 The German version shall be decisive in the event of any contradictions between the English and the German version.