

# ZENTRUM FÜR SONNENERGIE- UND WASSERSTOFF-FORSCHUNG BADEN-WÜRTTEMBERG

as well as

## ZSW TECHNOLOGIETRANSFER UND SERVICE GMBH

General Terms and Conditions of Business for any and all Supplies to ZSW companies

(Business Terms)

### § 1

#### Scope

1. These Business Terms shall apply to any and all business transactions between Zentrum für Sonnenenergie- und Wasserstoff-Forschung Baden Württemberg – *gemeinnützige Stiftung bürgerlichen Rechts* (charitable foundation under civil law) – and/or ZSW-Technologietransfer und Service GmbH (hereinafter individually or collectively referred to as "ZSW") on the one part and the supplier on the other part even if not expressly mentioned in subsequent agreements. They apply accordingly for work and service performances. The acceptance of work or service performances supersedes the receipt of delivered products.
2. Any terms and conditions of the supplier conflicting with, in addition to, or deviating from these Business Terms shall not form subject matter of the contract unless ZSW expressly consented to their applicability in writing. These Business Terms shall also apply in case ZSW unconditionally places an order with or unconditionally takes delivery from the supplier, having knowledge of its conflicting or deviating terms and conditions.
3. These Business Terms shall apply only for entrepreneurs within the meaning of Sec. 14 BGB (*German Civil Code*) if the contract is part of the business of the enterprise, for legal persons under public law, and special funds under public law within the meaning of Sec. 310 para. 1 BGB (*German Civil Code*).
4. Any agreements entered into between ZSW and the supplier in addition to or deviating from these Business Terms for the purpose of executing a contract shall be made in writing in such contract. This shall apply accordingly for the waiver of this written form requirement.
5. Rights that ZSW is, beyond these Business Terms, entitled to pursuant to legal provisions remain unaffected.
6. In any other respects, EVB-IT (*Supplementary Terms and Conditions of Contract for the Procurement of Services*) shall apply for the procurement of IT services and VOL/B (*Contracting Rules for Award of Public Works Contracts B*), each as amended, shall apply for all contracts.

### § 2

#### Conclusion of Contract, Offers

1. Any and all inquiries, orders (including samples), or drafts are free of charge and non-binding for ZSW. In the offer, the supplier shall strictly observe the inquiries of ZSW as to quantity and quality and shall expressly refer ZSW to any and all deviations of its offer from the inquiry of ZSW in writing.
2. An order placed by ZSW is binding only if placed in writing.
3. The supplier shall confirm each order in writing. The order confirmation shall contain all details of the order placed. Deviations from the orders are deemed agreed only if expressly confirmed by ZSW in writing.
4. In case the supplier fails to issue the order confirmation within five working days, the order is deemed accepted to its full extent, provided that the supplier and ZSW had a business relationship before and/or ZSW was free to trust on the supplier accepting the order.
5. ZSW may request the supplier to make technical changes to the goods or to change the delivery times or periods to the extent reasonably for the supplier. Consequences arising out of those changes, in particular additional or reduced costs or differing delivery times or periods, will be agreed by ZSW and the supplier by common and reasonable consent.

### § 3

#### Completeness of Deliveries

1. Deliveries shall be complete.
2. Partial or excess deliveries of the supplier require the express consent of ZSW in writing to be permissible.

### § 4

#### Delivery Times and Periods

1. The stated delivery times and periods are binding. The delivery periods start from the order date. The delivery date or period is met if the goods have arrived at ZSW or at the agreed delivery address within the delivery period or on the agreed delivery date. In case of transportation other than "free ZSW", the supplier shall provide the goods in due time, taking into account usual loading and shipping times.
2. The Buyer defaults delivery upon expiration of the delivery period or date, whereas no warning notice is required.

3. In case of default in delivery, ZSW may claim liquidated damages in the amount of 1% of the delivery value for each complete week of said default, however not exceeding 5% of the net delivery value. Further claims, in particular claims for rescission and damages in lieu of performance, shall remain unaffected. The supplier may provide ZSW with evidence that the default in delivery has not lead to any loss or has lead to a materially lower loss.

4. Without prejudice to ZSW's statutory rights or rights agreed above, the supplier shall immediately inform ZSW in case it becomes clear to the supplier that the delivery date or period cannot be met.

5. Delivery prior to the agreed delivery date shall be permissible with the prior consent of ZSW only.

### § 5

#### Delivery, Bill of Delivery, Invoice

1. Unless otherwise agreed in writing, shipment takes place at the expense and risk of the supplier in each case.
2. Bills of delivery and invoices shall have the same form and contents. They shall contain the following information: consignee respectively ordering party (ZSW), consignor, date, complete specification including order number pursuant to order number definition of ZSW and item number of supplier if item number deviates from order number of ZSW, and position number if applicable. Each order shall be handled separately in the entire documentation and correspondence, stating the above information.
3. Should ZSW receive the bill of delivery separate from the goods or should the bill of delivery or the designation of the goods deviate from the above provisions, the supplier is obligated to send the bill of delivery without delay respectively furnish the required information. The supplier shall be liable for all consequences arising out of the non-compliance with those obligations. This shall also apply for wrong deliveries and wrong quantities.
4. Invoices shall be sent separately from the goods and must not be sent before the goods are in transit. Invoices shall contain information as to the mode of dispatch and do not constitute advice of dispatch.
5. Standardized delivery notes according to DIN 4991 must be used for all deliveries.

### § 6

#### Passing of Risk

The risk shall pass to ZSW upon acceptance of the delivered products by ZSW or its agents at the place of delivery as agreed in the order. This shall also apply if ZSW has assumed the transport costs in individual cases.

### § 7

#### Prices

1. The agreed prices shall be regarded as fixed prices. They include in particular packaging and transport costs, insurance, statutory taxes, custom duties, and other charges. Price increases after the conclusion of the contract, regardless of the reason, shall be excluded unless ZSW expressly agreed thereto.
2. In case orders are required to be placed without prior price agreement, the prices applicable for the previous order shall be deemed to apply, provided that ZSW and the supplier maintain an ongoing business relation. In any other case, the list price of the supplier valid at the time of order shall apply unless the list price of the supplier valid at the time of performance is more favorable to ZSW.
3. Should the Parties exceptionally agree on prices "ex works" or "ex stock" supplier, ZSW shall assume only the most favorable freight costs in each individual case. All costs incurred until the handing over to the forwarder - including and in particular loading charges and carriage - shall be borne by the supplier. Should the Parties exceptionally agree on "ex station" supplier, the supplier shall bear all costs up to the station of dispatch. The costs for transport insurance shall also be borne by the supplier unless ZWS has expressly requested to take out transport insurance in writing.
4. The supplier is obligated to constantly improve the cost structure regarding the manufacture of the products for the term of the contract. The supplier shall notify ZSW without delay in writing of each improvement in the cost structure and shall adjust the agreed prices accordingly. ZSW may request the supplier to explain its cost structure. ZSW is entitled to inspect documents suitable for such purpose.
5. The prices shall be agreed on the basis of VO PR 30/53 (*Pricing Regulation for Government Contracts*) in the currently valid version in connection with LSP (*Guidelines for Pricing on the Basis of Cost*). In case of breach of the principle of maximum prices pursuant to VO PR 30/53 to the detriment of ZSW, the agreed prices shall be adjusted to the permissible level.

**§ 8**  
**Terms of Payment**

1. Payments become due after receipt of the goods and of the complete invoice and upon occurrence of the agreed delivery date.
2. Unless otherwise agreed, payments shall be effected within 14 days from the receipt of invoice less 3% discount or within 30 days without any discount.
3. ZSW reserves the right to assert claims based on defects for each and any payment. ZSW may withhold payments in whole or in part until defects are remedied or counterclaims based on the entire business relationship are met. Payment or receipt of delivery does neither constitute acknowledgement of performance nor waiver of claims based on defects.
4. The due date for early deliveries is subject to the agreed delivery date.
5. In case of faulty delivery, ZSW may withhold payment until due performance in proportion to the value of the faulty delivery.
6. In case one party ceases payment without authorization, or insolvency or extrajudicial composition proceedings over the assets of the party are filed for, the respective other party may rescind the contract with respect to the non-performed part.

**§ 9**  
**Manufacturing Inspection, Technical Acceptance, Notification of Defects**

1. ZSW is entitled, but not obligated, to inspect, on the supplier's site during manufacture and prior to delivery, the quality of the used material, accuracy as to dimension and quantity, and other quality features of the used parts, as well as observance of the other specifications contained in the order. In case ZSW has reserved the right to carry out a technical acceptance of the finished delivered item on the supplier's or sub-supplier's site, readiness for acceptance shall be communicated in writing 14 days prior to the readiness for shipment. To the extent ZSW has appointed a third party to carry out the technical acceptance, the supplier shall initiate the acceptance and provide ZSW with the acceptance certificate without delay, however at the latest together with the shipping documents. The costs for the acceptance shall be borne by the supplier. Manufacturing inspections and technical acceptances will not release the supplier from its obligations to perform.
2. Notifications of defects by ZSW are deemed timely if received by the supplier within 5 working days following the receipt of the goods or, in case of hidden defects, following their discovery. Random samples are sufficient as inspection of large deliveries by ZSW; defects not discovered during this random inspection are considered hidden defects. In this regard, Sec. 377 HGB (*German Commercial Code*) is modified. Insofar, the supplier waives any objection to a delayed notification of defects.

**§ 10**  
**Claims based on Defects, Representations and Warranties, Liability**

1. The legal stipulations regarding defects in title and quality shall apply unless other provisions are provided below.
2. The choice of the kind of subsequent performance is upon ZSW in principle. The supplier is entitled to refuse to provide the kind of subsequent performance chosen by ZSW subject to Sec. 439 para. 3 BGB (*German Civil Code*).
3. In case the supplier fails to commence remedial of the defect within a reasonable period set by ZSW, ZSW is entitled in urgent cases, in particular in order to ward off imminent risks or to prevent major damage, to take such remedial itself or have it taken by third parties at the expense of the supplier.
4. Claims based on defects in quality are time-barred after two years following the delivery of the delivered item (passing of risk).
5. In case of defects in title, the supplier further indemnifies and holds ZSW harmless from and against any alleged third party claims, provided that the supplier is responsible for the defect in title.
6. The supplier shall assume the costs if, as a result of the defective delivered items, ZSW incurs costs, in particular transportation, labour, material costs or costs for singling out the defecting goods or for incoming inspection in excess of the customary extent.
7. If, as a result of defectiveness of the delivered item supplied by the supplier, ZSW takes back products built and/or sold by it, or ZSW's respective business partner reduces the purchase price, or claims of whatever nature are asserted against ZSW in this connection, ZSW reserves the right to have recourse against the supplier, whereby no notice that would otherwise be mandatory is required to assert such claims.
8. ZSW may have recourse against the supplier to reimburse the expense incurred by ZSW due to the fact that the customers of ZSW have asserted claims against ZSW for compensation of expenses incurred in connection with the subsequent performance, in particular transportation, labour, and material costs.
9. Notwithstanding para. 4, paras. 7 and 8 are subject to a limitation period of at least two months after ZSW has met the claims asserted by the customer against ZSW, however no later than 5 years after the delivery of the delivered item by the supplier.
10. The supplier will, within the first six months following passing of risk, refrain from challenging that the delivered items are free from defects in quality unless the defect obviously occurred after the risk has passed.
11. In case the supplier has offered or agreed to a warranty or faultlessness of the delivered items in excess of the above, this shall prevail.

12. The supplier shall be liable for any fault of its own and for the choice and any fault of the carriers similarly.

**§ 11**  
**Product Liability**

1. In case third parties make claims based on product liability against ZSW, the supplier shall be obligated to indemnify and hold ZSW harmless from and against such claims if and to the extent the damage was caused by the defective items delivered by the supplier. In cases of liability subject to fault, this shall only apply if and to the extent the supplier is responsible for the fault.
2. In such cases, the supplier shall bear any and all costs and expenses including prosecution costs and costs for recalls. In any other respects, the legal provisions on product liability shall apply.

**§ 12**  
**Quality Management**

The supplier shall conduct a quality assurance suitable in its extent and manner and provide ZSW with evidence upon request. Details are subject to a quality assurance agreement to be concluded. Already now, the supplier undertakes to enter into such agreement.

**§ 13**  
**Force Majeure**

1. In case ZSW is hindered by force majeure from the fulfillment of its contractual duties, in particular from taking delivery of the products, ZSW shall, for the duration of the hindrance and a reasonable restart time, be released from its duty to perform without being obligated to pay damages to the supplier. The same shall apply if the fulfillment of the obligations of ZSW is unreasonably impeded or temporarily impossible due to circumstances beyond the control of ZSW, in particular due to strike, measures of public authorities, lack of energy, or material interruptions of operation. ZSW may refuse to take delivery of the products if such circumstances constrain the sale of the products due to a decrease in demand.
2. ZSW shall be entitled to terminate the contract without notice if such hindrance continues for more than four months and the performance of the contract is, due to such hindrance, no longer of interest to ZSW. Upon request of the supplier, ZSW will declare after expiration of the period whether it will exercise its termination right or take delivery of the goods within a reasonable period.

**§ 14**  
**Drawings, Models, and other Objects**

1. ZSW retains, respectively acquires at the time of make, title to drawings, specifications, documents, models, form tools, and specialty tools placed by it at the supplier's disposal for the execution of an order or custom-made for ZSW. In case ZSW bears only a part of the costs, it shall acquire co-ownership in proportion to the costs assumed. The supplier shall be revocably entitled and obligated to care-fully keep these objects free of charge in safe custody for ZSW. ZSW exclusively holds all copyright exploitation rights to these objects. The supplier must not use these objects beyond the order without ZSW's consent. The supplier shall mark these objects in a manner suitable to document title vis-à-vis third parties. The supplier must not retain such objects.
2. The supplier shall unrequestedly provide ZSW with an inventory list by January 31 of the following year at the latest, containing any and all drawings, models, documents, form tools, and specialty tools belonging to ZSW as of December 31 of each year. These documents must be returned to ZSW after execution of each order; in such case, the supplier shall unrequestedly provide ZSW with an inventory list within one month containing any and all such documents as of the respective execution date.
3. Any and all such documents and models must be kept strictly confidential.

**§ 15**  
**Provision of Materials**

1. Material provided by ZSW to the supplier, if any, lie in the sole responsibility of the supplier, *i.e.*, the supplier is solely responsible for the timely order, stock management, *etc.*
2. ZSW retains title to material provided by it for the execution of an order. This shall also apply in case of, and at any level of, processing or working carried out by the supplier on behalf of ZSW exclusively.
3. Provided materials will be processed or worked by the supplier on behalf of ZSW. If the provided materials are processed or worked with other objects not belonging to ZSW, ZSW acquires co-ownership in the new item in the ratio of the value of the provided materials to the value of all materials used for the new item including all expenses of the supplier for processing or working. Insofar, the supplier shall keep in safe custody and free of charge the item passing into co-ownership of ZSW. This shall apply accordingly in cases of combining and blending.
4. The supplier shall be liable for loss of or damage to the materials belonging to ZSW and is obligated to insure them with adequate coverage, keep them in due and safe custody, and return them to ZSW upon termination of the contract. Upon request, the supplier shall provide ZSW with an inventory list containing any and all materials belonging to ZSW.
5. ZSW shall be notified without delay of any damage to the materials belonging to ZSW. This shall apply accordingly in case of enforcement measures of whatever nature.

**§ 16**  
**Confidentiality**

1. The parties shall treat as business secret all non-public business and technical information they obtain knowledge of during their business relationship.
2. Drawings, models, templates, samples, and other objects and documents must be kept strictly confidential and will not be disclosed to third parties without the express consent of ZSW. This confidentiality obligation shall remain in full force and effect after the termination of this contract and shall expire if and to the extent the knowledge contained in the drawings, illustrations, calculations, and other documents that were made available became public domain. The supplier warrants that this confidentiality obligation will be observed by its employees and consultants as well.
3. Reproductions of the above objects shall be permissible only in line with business requirements and copyright laws.
4. Subcontractors shall be bound accordingly if and to the extent they obtain or will likely obtain knowledge of the documents stated in para. 2.
5. The supplier may advertise this business relationship only with the prior written consent of ZSW.
6. Place of fulfillment of all payments of ZSW and all performances of the supplier shall be the statutory seat of the respective ZSW company.
7. Exclusive venue for any and all disputes arising out of the business relationship between ZSW and the supplier shall be Stuttgart. ZSW shall also be entitled to bring action at the supplier's statutory seat and at any other permissible venue.

**§ 17**  
**Property Rights of Third Parties**

1. The supplier warrants that no patents, licenses, or other property rights or copyrights of third parties are infringed by the delivery and use of the products.
2. To the extent a third party makes a claim on ZSW due to an infringement of its rights by the goods or pre-products delivered by the supplier, the supplier is obligated to indemnify and hold ZSW harmless from and against such claims upon first written request to the extent the supplier is responsible for the infringement; ZSW must not enter into any agreements whatsoever with such third party, in particular into a settlement agreement, without the supplier's consent. The duty to indemnify shall also cover any and all expenses necessarily incurred by ZSW out of or in connection with the third party's claim.
3. Para. 2 shall not apply to the extent the supplier has manufactured the products according to the drawings, models, or comparable descriptions provided by ZSW and the supplier is not aware or did not have to be aware when manufacturing the products that this leads to an infringement of third parties' property rights. In such case, ZSW indemnifies and holds the supplier harmless from and against any and all claims of third parties to the extent those claims refer to supplies to ZSW.
4. The parties undertake to inform each other without delay of any risks of infringement and alleged infringements which they obtain knowledge of and shall give the respective other party an opportunity to avert such claims by common consent.
5. The supplier will notify ZSW upon request of any use of published and undisclosed own and licensed property rights and applications for property rights in the delivered products.

**§ 18**  
**Liability of ZSW**

ZSW shall be fully liable for damages resulting from a breach of a warranty or from harm to life, physical injury, or harm to health. The same shall apply in case of intent and gross negligence. For slight negligence, ZSW shall be liable only to the extent material duties are breached, such duties resulting from 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 product liability shall remain unaffected. In any other respects, liability of ZSW shall be excluded.

**§ 19**  
**Assignment of Claims, Retention of Title, Set-Off, Venue**

1. The claims against ZSW of whatever nature must not be assigned without written consent.
2. The supplier must not retain any title whatsoever in the objects delivered by it. Title in any and all objects shall pass into the ownership of ZSW upon surrender. Liens of whatever nature, in particular contractor's liens, will not arise.
3. The supplier shall be entitled to set off counterclaims against claims of ZSW or exercise a right of retention only if the respective counterclaim has been acknowledged by ZSW in writing, is unchallenged, or has been determined in a legally final manner.
4. ZSW may set off all claims of whatever nature that are subject to set-off against all claims of the supplier against ZSW, even if these claims have different due dates.
5. The legal relationship in connection with this contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the UN-Convention on Contracts for the International Sale of Goods (CISG) and the conflicts of laws rules.