

## **General Terms & Conditions of Janz Tec AG**

### **§ 1 Scope of application**

(1) The Seller's deliveries, services and offers are made or provided subject to these General Terms & Conditions only. These General Terms & Conditions govern all future business relations even if they are not specifically agreed to again, and they are deemed to have been accepted upon the acceptance of goods or services, at the latest.

(2) Insofar as the Buyer's confirmation references its own terms of business or purchasing, such terms are hereby disclaimed.

(3) In the absence of the Seller's express acceptance, the Buyer's deviating terms, if any, are non-binding in nature even if and to the extent that the Seller does not expressly disclaim them.

(4) The incorporation and interpretation of these General Terms & Conditions, much like the execution and interpretation of any legal transaction with the Buyer, are subject exclusively to the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(5) In the event that individual provisions of these General Terms & Conditions are or become ineffective, the remaining provisions hereof continue in full force and effect, and the contractual partners undertake in good faith to use their best efforts to replace any ineffective provision with one approximating its economic success, taking care not to bring about a material change of the contents hereof. The same applies in the event of a loophole herein.

(6) The place of performance for all obligations arising from or in connection with this agreement, including any payment obligation hereunder, is the jurisdiction of the Seller's principal place of business.

(7) The courts with jurisdiction over the Seller's corporate headquarters adjudicate all disputes arising from or in connection with this agreement, whether directly or indirectly, provided that the Buyer is a "Kaufmann" (entrepreneur). The Seller may further sue the Buyer in a court with jurisdiction over the Buyer's principal place of business, or any of its permanent establishments.

(8) The data provided by the Buyer will be stored and processed in accordance with the applicable data protection regulations.

### **§ 2 Offer and closing**

(1) Unless specifically agreed otherwise, the Seller's offers are non-binding in nature.

(2) To be legally effective, declarations of acceptance as well as all orders must be confirmed by the Seller in writing. The same is true for amendments, changes or subsidiary agreements.

(3) Only the Seller's order confirmation determines the scope of contractual performance owed. The documents underlying the offer or offer confirmation, such as illustrations, drawings, statements of dimension and weight, are deemed estimates unless specifically designated as binding in nature.

(4) The Seller expressly reserves the right to change the design, choice of materials and the construction method even after it has confirmed an order, provided that such changes do not contradict neither the order confirmation nor the Buyer's specifications. In addition, the Buyer will agree to any further changes proposed by the Seller so long as they do not place an unreasonable burden on the Buyer.

### **§ 3 Delivery**

(1) The dates the Seller sets for delivery and performance are non-binding in nature unless they were specifically agreed in writing on a case-by-case basis, in which case the Seller must give advance written notice of any expected delays in performance.

(2) In the event that a delivery date scheduled with the Seller is delayed or places an unreasonable burden on the Buyer, the Buyer may withdraw from the agreement, or any part thereof, after a reasonable grace period of no less than four weeks lapsed to no avail.

(3) Delivery and performance dates are set on the basis of the Seller's best judgment and are delayed if and to the extent that the Buyer fails to provide timely assistance as required and agreed. The same is true for disruptions caused by force majeure, measures related to labor disputes as well as the occurrence of unforeseen events beyond the Seller's control, such as delays affecting supplies, disruptions to traffic or operations as well as material, personnel or energy shortages, etc. Changes to supplied goods effected by the Buyer, too, trigger an adequate adjustment of the delivery period, and any such disruption delaying the Seller's performance or rendering it impossible must not be attributed to the Seller even insofar as binding deadlines and dates were agreed.

(4) Disruptions of this nature entitle the Seller to postpone delivery or performance by the duration thereof, in addition to adequate lead time. Alternatively, the Seller may withdraw from the agreement, or any part thereof, with respect to any outstanding portion.

(5) The Seller may effect partial delivery or performance at all times.

#### **§ 4 Rights to property and copyright**

(1) The Seller retains any and all rights in relation to estimates, drawings, system configurations, specifications and other records, none of which must be disclosed to third parties without the Seller's prior written consent. If it does not place an order, the Buyer must return promptly upon request all documents forming part of bids, along with copies thereof; this provision applies accordingly to the Buyer's documents.

(2) The Seller reserves the right – and, alternatively, is obligated vis-à-vis its suppliers – to provide the Buyer with certain products and related services subject to separate license terms. Unless specifically agreed otherwise, the provision of such third-party products and services is governed by such third party's license terms with regard to the underlying rights of use. Upon request, the Seller will communicate such license terms to the Buyer at closing; this will not give rise to an agreement between the Buyer and the third party.

#### **§ 5 Rates**

(1) Rates are quoted ex stock and exclusive of packaging, shipping and handling. Packaging is charged at cost.

(2) The Buyer bears the cost of the Seller's delivery and installation of devices, along with any operator training provided.

(3) In the event that more than three months lapse between the closing and delivery, and the Seller is not responsible for a delay in delivery, the Seller may adjust the rate to reasonably account for added material, staff and other expenses incurred. In the event that the purchase price goes up by more than 40% the Buyer may withdraw from the agreement.

(4) Insofar as the Seller takes into account the Buyer's change requests, it will bill the Buyer for any resulting added costs.

#### **§ 6 Terms of payment**

(1) Unless specifically agreed otherwise, the Buyer must pay the Seller's invoices within 14 days of the invoice date. Irrespective of the Buyer's instructions, the Seller is entitled to apply payments received from the Buyer according to the following order: 1. legal fees and costs of default; 2. Buyer's past due accounts; 3. interest; 4. Buyer's most recent principal payment obligation.

(2) Whenever a due date is missed through the Buyer's fault, default interest accrues at a rate of 8% above the applicable prime rate, and the Seller reserves the right to assert additional claims, if applicable.

(3) In the event that the Buyer fails to meet its

payment obligations, and particularly if it does not redeem a check or if it suspends payments altogether, or in the event that the Seller learns of other circumstances that raise questions about the Buyer's credit from the start or after the fact, the Seller may demand payment of the entire outstanding debt even if it accepted checks. In this case, the Seller may further insist on advance or security payments, withdraw from the agreement, or any part thereof, and demand the return of previously supplied (reserved) goods without prejudice to additional claims for damages and/or the assignment of the Buyer's claims for returns against third parties.

(4) Checks are accepted subject to special arrangement, only in lieu of payment and to the exclusion of any costs or fees on the Seller's part.

(5) With respect to payments made as part of foreign trade, the Buyer bears all related costs and expenses.

(6) The Buyer bears all costs resulting from a check or other payment transaction that is returned or reversed for lack of funds, or for other reasons attributable to it.

#### **§ 7 Set-off, retention and assignment**

Rights of set-off and retention are excluded unless the underlying claim is undisputed or has been effectively established. The Buyer must not assign claims against the Seller, including but not limited to warranty claims, without express consent.

#### **§ 8 Retention of title**

(1) Goods remain the Seller's property until all of the claims it holds against the Buyer under the terms of business have been satisfied. Such retention of title is further in effect until the satisfaction of any and all future and conditional claims under the business relationship between the Buyer and the Seller. Prior thereto, the Buyer must not assign or pledge goods as security or otherwise.

(2) The Seller sees to any processing, combining or reshaping without incurring any obligation as a result, and the retention of title extends to the entirety of any goods so processed, combined or reshaped. The Buyer acquires an ownership interest reflecting the proportion of the value of its goods to that of the goods supplied by the Seller. The Seller is entitled to assert its rights as to retention of title without withdrawing from the agreement.

(3) The products' resale, which is permitted only in the course of regular business, must be transacted subject to retention of title, which remains intact until payment is made by the end consumer, and the Buyer hereby already assigns to the Seller by way of security its full claim to the payment of the purchase price; upon the Seller's request, the Buyer must confirm the assignment in writing. The Buyer is entitled to collect but must not otherwise dispose of the claim assigned to the Seller, and such authorization

may be revoked at any time in the event of payment default.

(4) In the event of third-party access to reserved goods, the Buyer must note the Seller's property right thereto and promptly notify the Seller. The Buyer bears any cost of intervention.

(5) In the event that the value of all security existing for the Seller's benefit exceeds existing claims by more than 20%, the Seller is obligated, upon the Buyer's demand, to return a portion of the security interests that corresponds with the difference.

### **§ 9 Transfer of risk**

(1) The risk passes to the Buyer when the goods are handed over to the shipping agent. In the event that the Seller itself effects delivery, the risk's passage coincides with the unloading of products from the delivery vehicle. Special arrangements – e.g., regarding transport means and routes – do not affect the time at which the risk passes to the Buyer. The Seller undertakes to take out transit insurance for the goods up until the place of delivery determined by the Buyer in an amount that matches the purchase price unless the Buyer expressly waives the need for such coverage. The Buyer bears the cost of transit insurance, if any.

(2) In the event that shipment, delivery, the start or completion of installation is delayed at the Buyer's request or for reasons attributable to the Buyer, the risk passes to the Buyer for the duration of such delay.

### **§ 10 Withdrawal and termination**

(1) Unless specifically agreed otherwise, the Buyer may terminate the purchase agreement entered into with the Seller at any time. If it is terminated for reasons outside of the Seller's sphere of responsibility, the Buyer must pay the full purchase price for any deliverable goods that have already been made by the time notice of termination is received. As for deliverable goods not yet made, the Buyer owes the Seller flat compensation at a rate of 70% of the purchase price in the event that termination is effected within 30 days of scheduled delivery. In all other cases, the Buyer owes flat compensation at a rate of 50% of the purchase price – or less if and to the extent that the Buyer furnishes evidence of lesser damages. The Seller is entitled to demand payment of actual, demonstrable damages instead of flat compensation.

(2) In the event that the Buyer falls behind with its payment or the fulfillment of other obligations under the agreement with the Seller, if it suspends payments altogether, it suffers a material deterioration of its assets, raising doubts about its insolvency, or its assets become subject to a petition for the institution of insolvency proceedings, the Seller is entitled to terminate the agreement with immediate effect and demand damages. In

addition, the Seller may suspend its supplies and services and set a reasonable deadline for the Buyer to make advance or security payments.

### **§ 11 Warranty**

(1) The warranty period begins upon the delivery of goods and, as a general rule, ends twelve months thereafter, for batteries and storage media, it ends six months thereafter. The warranty period of twelve months can be prolonged by a fee-based warranty extension to be executed between Seller and Buyer according to the details as stipulated in the respective order documents.

(2) Immediately following receipt or performance, the Buyer must examine goods or services received if and to the extent feasible in the regular course of business, and, if a defect is found, notify the Seller in writing without undue delay but in any case within one week of delivery. If the Buyer fails to provide such notification, the goods in question are deemed to have been accepted and any related warranty right to have lapsed save for defects that were not discernible on the occasion of the examination. Defects that remain undiscernible within such period even upon thorough examination must be reported to the Seller immediately upon discovery in writing. §§ 377 et seqq. of the Commercial Code applies otherwise.

(3) The Seller provides no warranty for regular wear and tear, defects caused by incorrect, improper or negligent handling or operation or extraordinary operating conditions. No warranty is available in cases in which the Seller's operating instruction or service manuals are not observed, the products are modified, parts are exchanged or added or materials are used that do not meet original specifications, and the same is true whenever corrective action is taken without the Seller's express authorization or in the presence of electrical influences not anticipated at the time of closing.

(4) Claims based on defects are restricted to remedial action. The Seller may repair or replace defective parts, with replaced parts becoming the Seller's property in the process. Services rendered at the Buyer's request, which are not covered by a warranty, are billed in accordance with the customer-service rates then in effect. Not until remedial action has failed twice does the Buyer have the right to demand, at its option, that the rate be abated or the agreement rescinded, and the same is true if the Seller fails to take remedial action within a reasonable amount of time.

(5) At the Seller's option, recognized defects are removed on the Seller's premises or on site at the Buyer's, and the Buyer bears any and all expenses related to remedial action or replacement, such as transit insurance as well as packaging and shipping.

(6) The warranty period for repaired or replaced parts equals three months from the completion of the necessary work; at a minimum, it runs until the expiration of the initial

warranty period for the goods in question of twelve months or six months for batteries and storage media, respectively, upon the delivery of goods. To the extent a prolonged warranty period subject to a fee-based warranty extension is already running, such prolonged warranty period shall not be further extended by repairing or placing parts.

(7) In the event that a defect is asserted, the Buyer may withhold payment in an amount commensurate with the defect only if there is no doubt as to the merit of such claim.

(8) The indemnity obligations set forth in § 11 do not apply if and to the extent that applicable law prescribes longer periods, as is the case for the purchase of consumer goods.

(9) When providing software services, the Seller uses the requisite degree of diligence. According to the current state of the art, however, software errors cannot be ruled out.

## **§ 12 Liability**

(1) Subject to applicable law, the Seller is liable to the Buyer for damages on account of intentional misconduct and gross negligence in all cases of contractual or non-contractual liability. Unless specifically agreed otherwise below, the Buyer holds no other non-warranty-related claims.

(2) In the absence of both intentional misconduct and gross negligence, the Seller's liability is limited to violations of contractual obligations the fulfillment of which is indispensable for the proper implementation hereof and is routinely and reasonably presumed by the Buyer ("cardinal obligations") – in each instance, as limited to foreseeable and typical damages, to the exclusion of indirect damages that do not afflict deliverable goods themselves.

(3) The Seller's liability for damages arising from such injuries to life, body and health as may result from fraudulently concealed defects, as well as under the Product Liability Act, is not affected thereby.

## **§ 13 Export and re-export**

The Buyer undertakes to procure that any export or re-export of goods supplied by the Seller complies with the applicable EU provisions of the German foreign trade regulations.

## **§ 14 Disposal**

(1) At the end of a supplied product's useful life, the Buyer undertakes to dispose of it at its own expense and in accordance with applicable law. To such extent, it releases the Seller from the duty to take back any product pursuant to § 19 para. 1 of the Electrical and Electronic Equipment Act and indemnifies and holds the Seller harmless from and

against any related third-party claims.

(2) It is agreed that claims related to the transfer of the disposal obligation as well as to the indemnification against third-party claims do not expire until twelve months after the devices in question were decommissioned, such period not to commence until the Seller has received written notice of decommissioning.

(3) In the event that products are passed on to commercial third parties, the Buyer undertakes to impose upon such third party the obligation to properly dispose of such products at the end of their useful life at its own expense and, in the event of yet another transfer, to pass such obligation on to the next buyer accordingly. Violations result in the Buyer's duty to take back, dispose of and bear costs related to the goods in question.

## **§ 15 No private copies**

The Buyer undertakes not to use any goods supplied for the purpose of copying works protected under copyright law for its own private or other use according to § 53 of the Copyright Act.

## **§ 16 Industrial or intellectual property rights**

(1) The Seller is aware of no third-party rights that oppose the intended purpose of the products to be supplied. In the event that a third party asserts claims against the Buyer on account of the violation of industrial or intellectual property rights pertaining to goods supplied hereunder, the Buyer must immediately give notice thereof to the Seller.

(2) The Buyer is obligated to abstain from recognizing any alleged instance of infringement and to coordinate with the Seller any negotiation or dispute with third parties (whether in or out of court).

(3) Moreover, the Buyer is obligated to support the Seller in its disputes with third parties to the best of its abilities, including but not limited to the prompt sharing with the Seller of any information that may be relevant to the proceedings.

(4) Insofar as a third party's industrial or intellectual property rights have been violated, the Seller will, at its option, either modify the goods supplied to procure that such third party's rights are no longer infringed upon while the goods' utility is essentially unchanged, or enter into such license agreement with such third party as may be needed to put an end to such infringement of industrial or intellectual property rights. If neither option is available to the Seller on reasonable terms, the Seller must inform the Buyer, which will then be entitled to withdraw from the agreement.

(5) The Seller's liability vis-à-vis the Buyer for violations of third-party industrial or intellectual property

rights in consideration of the provisions of § 12 requires that it knew or must have known of such third-party rights. No liability exists if and to the extent that the violation is attributable to the Buyer, or if the Buyer fails to fulfill the obligations set forth above.

(6) If the goods supplied were constructed based on the Buyer's designs or instructions, the Buyer will indemnify and hold the Seller harmless from and against all claims, liabilities, encumbrances and costs asserted or claimed by third parties on account of violations of industrial or intellectual property rights, and the Seller must be given a reasonable advance on expected legal fees.

**Janz Tec AG Paderborn (May 2019)**