

Zund America Terms & Conditions of Sale

August 4th, 2022

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

2. Definitions

Affiliate	means an organisation which is directly or indirectly controlled by, in Control of, or under common control with Zund.
Business Day	a day other than a Saturday, Sunday or federal holiday in The United States or Canada.
Commencement Date	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 16.8.
Contract	the contract between Zund and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Customer	the person or firm who purchases the Goods and/or Services from Zund.
Deliverables	the deliverables set out in the Order Confirmation produced by Zund for the Customer.
Delivery Location	Means the customer's premises or other location as specified in the Order.
Force Majeure Event	has the meaning given to it in clause 15.
FCA	shall have the meaning described in Incoterms 2020 except as modified by these Terms. Where there is any inconsistency or conflict between Incoterms 2020 and these Terms, these Terms shall prevail.
Goods	the goods (or any part of them) set out in the Order.
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Zund.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of Zund's quotation or the Customer's purchase order form, or the Customer's written acceptance of Zund's quotation, as the case may be.
Order Confirmation	pursuant to clause 2.2, Zund's confirmation of the Order and detail on the Goods and/or Services, as the case may be.
Person	includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors and permitted assigns. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Services	the services, including the Deliverables, supplied by Zund to the Customer as set out in the Service Specification.
Service Specification	the description or specification for the Services provided in writing by Zund to the Customer.
Supplier Materials	has the meaning given in clause 8.1.8.
Third-Party Additional Terms	the additional terms and conditions relating to Third-Party Software, such terms and conditions are available upon request and subject to the relevant Third Party Software.
Third Party Software	the potential third party software required as part of the Goods and/or Services and as identified within the Order Confirmation.
Warranty Schedule	the warranty schedule annexed to these Conditions which details the warranty periods for different aspects of the Goods (or any part of them).
Written Reference	will include written letter or email.
Zünd America, Inc. or Zund	a corporation registered in The United States and Canada and whose principal place of business is located at 8142 South 6th Street, Oak Creek, WI 53146.

Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. Basis of contract

- 3.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when Zund issues written acceptance of the Order via an email order confirmation (or other means) (Order Confirmation) at which point and on which date the Contract shall come into existence (Commencement Date).
- 3.3 An **online contract** is concluded by written order confirmation from Zund. The customer is obliged to provide complete and correct information required during the order process.
- 3.4 An **online contract** is concluded by written order confirmation from Zund. The customer is obliged to provide complete and correct information required during the order process.
- 3.5 Any samples, drawings, descriptive matter or advertising issued by Zund and any descriptions of the Goods or illustrations or descriptions of the Services contained in Zund's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The parties further acknowledge and agree that the Contract is made up of the following:
 - 3.6.1 The Order Confirmation;
 - 3.6.2 The Conditions; and
 - 3.6.3 The Warranty Schedule.

If there is any conflict or ambiguity between the terms of the documents listed in this clause 2.4, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.
- 3.7 Any quotation given by Zund shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.
- 3.8 All these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4. Goods

- 4.1 The Goods are described in Zund's catalogue as modified by any applicable Goods Specification.
- 4.2 The Customer shall indemnify Zund against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Zund arising out of or in connection with any claim made against Zund for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Zund's use of any element of the Goods Specification supplied by the Customer.
- 4.3 This clause 3.2 shall survive termination of the Contract.
- 4.4 Zund reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Zund shall notify the Customer in any such event in writing.

5. Delivery of goods

- 5.1 Zund shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by installments, the outstanding balance of Goods remaining to be delivered.
- 5.2 Zund shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after Zund notifies the Customer that the Goods are ready.
- 5.3 Delivery of the Goods shall be completed on arrival at the Delivery Location. The completion of unloading of the Goods at the Delivery Location shall be the responsibility and risk of the Customer and the Customer shall ensure that all suitable equipment (including the provision of forklift trucks) and clear access to the installation site is made available.
- 5.4 For offline contracts, the delivery periods and delivery conditions listed in the written order confirmation shall apply in each case. The customer undertakes to accept the products within the delivery period. All consignments travel for the account and at the risk of the customer or the third party. To the extent permitted by law, Zund excludes all liability for damage arising in connection with the transport of the goods, even if the damage is caused by auxiliary persons. Zund accepts no liability for accidents that occur during the loading or unloading of Zund products or in connection with auxiliary equipment such as belts, ropes, binding wires, etc. Zund accepts no liability for accidents that occur during the loading or unloading of Zund products.
- 5.5 Delivery of online contracts shall be made based on "Carriage and Insurance Paid to (CIP) / Freight Paid Insured", except other terms have been agreed to, in accordance with the INCOTERMS in force at the time of the formation of the contract, to the agreed destination in accordance with the information provided by the customer.
- 5.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Zund shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Zund with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Delivery shall be effected during Zund's usual business hours. Should the Customer require delivery to take place outside of these hours or on a federal holiday, additional charges will be payable by the Customer prior to delivery.
- 5.7 If Zund fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Zund shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Zund with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.8 If the Customer fails to take delivery of the Goods within three Business Days of Zund notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Zund's failure to comply with its obligations under the Contract in respect of the Goods:
 - 5.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Zund notified the Customer that the Goods were ready; and
 - 5.8.2 Zund shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.9 If ten Business Days after Zund notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Zund may resell or otherwise dispose of part or all the Goods and, after deducting reasonable and actual storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 5.10 If Zund delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Zund shall make a pro rata adjustment to the invoice for the Goods.
- 5.11 Zund may deliver the Goods by instalments, which (subject to the terms contained within the Order Confirmation) shall be invoiced and paid for separately. Each installment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.12 In the event that Zund, as part of the Services is to collect equipment or other items (Equipment) at the Customers property or other designated locations the Equipment shall be loaded onto the Zund collection vehicle and shall be the responsibility and risk of the Customer and the Customer shall ensure that all suitable equipment (including the provision of forklift trucks) and clear access to the collection site is made available. Risk in the Equipment shall pass to Zund on the completion of the loading pursuant to this clause 4.12.

6. Quality of goods

- 6.1 Zund warrants that on delivery, and for the relevant periods within the Warranty Schedule from the date of delivery (**warranty period**), that the Goods (or certain parts of them) shall:
 - 6.1.1 conform in all material respects with their description and any applicable Goods Specification;
 - 6.1.2 be free from material defects in design, material and workmanship.
- 6.2 Subject to *clause 5.3*, Zund shall, at its option, repair or replace the defective Goods if:
 - 6.2.1 the Customer gives notice in writing during the relevant warranty period within a reasonable time of discovery that some or all of the Goods (or, where relevant, part of them) do not comply with the warranty set out in *clause 5.1*;
 - 6.2.2 Zund is given a reasonable opportunity of examining such Goods; and
 - 6.2.3 the Customer (if asked to do so by Zund) returns such Goods to Zund's place of business at the Customer's cost.
- 6.3 Zund shall not be liable for the Goods' failure to comply with the warranty in *clause 5.1* if:
 - 6.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with *clause 5.2*;
 - 6.3.2 the defect arises because the Customer failed to follow Zund's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 6.3.3 the defect arises as a result of Zund following any drawing, design or alteration to the Goods Specification supplied by the Customer;
 - 6.3.4 the Customer alters or repairs such Goods without the written consent of Zund;
 - 6.3.5 the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
 - 6.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this *clause 5*, Zund shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in *clause 5.1*.
- 6.5 The terms of these Conditions shall continue to apply to any repaired or replacement Goods supplied by Zund. For the avoidance of doubt, the warranty set out in *clause 5.1* shall not be restarted and shall only apply for the outstanding amount of any original and existing warranty period.

7. Title and risk

- 7.1 The risk and responsibility to insure the Goods shall pass to the Customer:
 - 7.1.1 Where delivery is to take place at a US/Canadian location; on completion of delivery as per agreed upon INCOTERMS;
 - 7.1.2 Where delivery is to take place at a non-US/Canadian location; when the Goods are dispatched from either Zund's premises or the premises of an Affiliate (as the case may be).
- 7.2 Title to the Goods shall not pass to the Customer until Zund receives payment in full (in cash or cleared funds) for the Goods and any other goods that Zund has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Zund's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Zund's behalf from the date of delivery;
- 7.3.4 notify Zund immediately if it becomes subject to any of the events listed in clause 13.3.2 to clause 13.3.4; and
- 7.3.5 give Zund such information relating to the Goods as Zund may require.
- 7.4 Subject to *clause 6.5*, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Zund receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 7.4.1 it does so as principal and not as Zund's agent; and
 - 7.4.2 title to the Goods shall pass from Zund to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in *clause 13.3.2* to *clause 13.3.4*, then, without limiting any other right or remedy Zund may have:
 - 7.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.5.2 Zund may at any time:
 - a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored or located in order to recover them.

8. Supply of services

- 8.1 Zund shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 Zund shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 Zund reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Zund shall notify the Customer in any such event.
- 8.4 Zund warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.5 For new machines and moves to new premises, a pre-installation survey will be carried out by Zund after the Contract has been formed.
- 8.6 All packaging arriving with any Goods supplied is the property of the Customer and will not be removed by Zund. The Customer is advised to retain the packaging in a safe location in case the Goods need relocation in the future. A packaging removal service may be available from Zund at additional cost if requested in advance.

9. Customer's obligations

- 9.1 The Customer shall:
 - 9.1.1 ensure the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - 9.1.2 co-operate with Zund in all matters relating to the Services;
 - 9.1.3 provide Zund, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Zund to deliver the Goods and/or to provide the Services;
 - 9.1.4 provide Zund with such information and materials as Zund may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 9.1.5 prepare the Customer's premises for the delivery and installation of the Goods and/or the supply of the Services;
 - 9.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the installation of the Goods and/or the provision of the Services in advance;
 - 9.1.7 comply with all applicable laws, including health and safety laws;

- 9.1.8 keep all materials, equipment, documents and other property of Zund (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain Supplier Materials in good condition until returned to Zund, and not dispose of or use Supplier Materials other than in accordance with Zund's written instructions or authorization; and
- 9.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification; and
- 9.1.10 where relevant and pursuant to clause 10.5, ensure that it complies with all duties and obligations contained within any Third-Party Additional Terms.
- 9.1.11 Advise Zund of any restrictions which may limit access of Zund employee to the facility.
- 9.2 If Zund's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 9.2.1 without limiting or affecting any other right or remedy available to it, Zund shall have the right to suspend performance of the Services and/or delivery of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Zund's performance of any of its obligations;
 - 9.2.2 Zund shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Zund's failure or delay to perform any of its obligations as set out in this *clause 8.2*; and
 - 9.2.3 the Customer shall reimburse Zund on written demand for any costs or losses sustained or incurred by Zund arising directly or indirectly from the Customer Default.

10. Charges and payment

- 10.1 The price for Goods shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in Zund's published price at the date of delivery.
- 10.2 The charges for Services shall be calculated on a time and materials basis:
 - 10.2.1 the charges shall be calculated in accordance with Zund's daily fee rates, as set out in its current price list at the date of the Contract and as available upon request;
 - 10.2.2 Zund's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8:00 am to 5:00 pm worked on Business Days;
 - 10.2.3 Zund shall be entitled to charge an overtime rate of up to 200% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in *clause 9.2.2*; and
 - 10.2.4 Zund shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Zund engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Zund for the performance of the Services, and for the cost of any materials. All bank charges incurred by Zund shall be reimbursed by the Customer.
- 10.3 Zund reserves the right to:
 - 10.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Zund that is due to:
 - a) any factor beyond the control of Zund (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
 - b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Zund adequate or accurate information or instructions in respect of the Goods.
- 10.4 In respect of Goods, Zund shall invoice the Customer as follows:
 - 10.4.1 For contracts in excess of £25,000;
 - a) 50% of the price on delivery of the Order Confirmation with provided invoice;
 - b) 40% of the price at the release of equipment from manufacturing facility with provided invoice; and
 - c) the remaining 10% following completion of installation of the Goods, as stipulated within the Order Confirmation.

Failure to submit payments as scheduled may result in delay of installation and/or loss of service/warranty.
- 10.5 In respect of Services, Zund shall invoice the Customer on completion of the Services.
- 10.6 Subject to the set payment terms under clause 9.5 or otherwise agreed, the Customer shall pay each invoice submitted by Zund:

- 10.6.1 If the Customer has a credit account with Zund, within 30 days of the date of the invoice or in accordance with any other credit terms agreed by Zund and confirmed in writing to the Customer; or
- 10.6.2 If the Customer does not have a credit account with Zund, immediately on presentation of an invoice.
- 10.6.3 All funds must be payable in full and in cleared funds to a bank account nominated in writing by Zund, and time for payment shall be of the essence of the Contract.
- 10.7 The payment terms as set out in clause 9.7 above shall not be applicable to certain servicing contracts. Under such contracts, the Customer shall be invoiced prior to any works being undertaken by Zund. Zund shall confirm to the Customer prior to acceptance of an Order if this clause 9.8 shall apply to their contract.
- 10.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of sales tax or value added tax (as the case may be) chargeable from time to time.
- 10.9 If the Customer fails to make a payment due to Zund under the Contract by the due date, then, without limiting Zund's remedies under *clause 13* (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this *clause 9.9* will accrue at the rate that is the less of (i) twelve percent (12%) per annum; or (ii) the maximum allowable interest under Wisconsin law. Customer agrees to pay all costs of collection which Zund occurs relating to overdue amounts, including reasonable attorneys' fees and costs.
- 10.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Intellectual property rights

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Zund Systemtechnik AG.
- 11.2 Zund grants to the Customer or shall procure the direct grant (subject to such other Third-Party Additional Terms) to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 11.4 The Customer grants Zund a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Zund for the term of the Contract for the purpose of providing the Services to the Customer.
- 11.5 The Customer acknowledges and agrees that in relation to the purchase of certain Goods and/or Services, there may be the necessity for Third-Party Software which shall be deemed to be incorporated within the Goods and/or Services for the purposes of the Contract and the procured licence under clause 10.2 (except where expressly provided to the contrary) and the continued use of the Third-Party Software shall at all times be subject to the Third-Party Additional Terms, which shall be available on request.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 12.2 Each party may disclose the other party's confidential information:
 - 12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 As used herein, Confidential Information shall mean Customer's or Zund's financial or banking information, the designs, drawings, specifications, software, or code relating to the Goods, the contents of the Contract, and any other information or documents designated in writing as "Confidential" by one party to the other during the parties' course of dealing hereunder. Nothing shall be deemed Confidential Information hereunder which, at the time of disclosure: (a) is in the public domain; or (b) receiving party can demonstrate it previously legally received from a third party.

13. Limitation of liability: the customer's attention is particularly drawn to this clause.

- 13.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 13.1.1 death or personal injury caused by negligence; fraud or fraudulent misrepresentation; or
 - 13.1.2 as otherwise prohibited under Wisconsin law.
- 13.2 Subject to clause 12.1, Zund's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 13.3 In clause 12.2:
- 13.3.1 cap. The cap is the greater of the total charges of the Goods purchased or the total charges for the provision of the Services in the contract year in which the breaches occurred;
 - 13.3.2 contract year. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it;
 - 13.3.3 total charges. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of either the goods or the services actually supplied by Zund, whether or not invoiced to the Customer; and
 - 13.3.4 total liability. Zund's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 13.4 This clause 12.4 sets out specific types of losses for which Zund shall not be liable to Customer:
- 13.4.1 Subject to clause 12.1, Zund shall not be liable to Customer for the types of loss listed in clause 12.4.2, in connection with or arising out of the Contract, the Goods, or Services.
 - 13.4.2 Zund shall not be liable to Customer in connection with or arising out of the Contract, with respect to the following types of losses, which Customer voluntarily waives and releases Zund from:
 - d) Loss of profits, Loss of sales, business, Loss of agreements or contracts, Loss of anticipated savings.
 - e) Loss of use or corruption of software, data or information.
 - f) Loss of or damage to goodwill
 - g) Special, indirect or consequential losses; and
 - h) Punitive damages.
- 13.5 The parties hereto expressly agree that they are sophisticated commercial parties and that the limitations of liability set forth herein are reasonable and still leave Customer with adequate remedies for damages, losses, or claims sustained under or arising out of the Contract.
- 13.6 Unless the Customer notifies Zund that it intends to make a claim in respect of an event within the notice period, Zund shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.7 This clause 12 shall survive termination of the Contract.

14. Termination

- 14.1 Without affecting any other right or remedy available to it, Zund may terminate the Contract by giving the other party not less than 3 months' written notice.
- 14.2 Without affecting any other right or remedy available to it, the Customer may terminate the Contract in accordance with the following:
- 14.2.1 where the notice relates to the termination of the provision of Services by Zund, by giving Zund not less than 3 months' prior written notice; or
 - 14.2.2 where the notice relates to the termination of the provision of Goods, by giving Zund not less than 8 weeks' written notice prior to the estimated date quoted for delivery of the Goods within the Order.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.3.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - 14.3.2 the other party takes any step or action in connection with its entering insolvency, bankruptcy, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 14.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 14.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.4 Without affecting any other right or remedy available to it, Zund may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.5 Without affecting any other right or remedy available to it, Zund may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Zund if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in *clause 13.3.2* to *clause 13.3.4*, or Zund reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

- 15.1 On termination of the Contract:
 - 15.1.1 the Customer shall immediately pay to Zund all of Zund's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Zund shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 15.1.2 the Customer shall return all of Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Zund may enter the Customer's premises and take possession. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, which shall for the avoidance of doubt include but not be limited to the following:

- a) acts of God, or other natural disaster, epidemic or pandemic;
- b) terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom;
- c) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- d) collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts;
- e) non-performance by suppliers or subcontractors; and interruption or failure of utility service; or
- f) Supply chain disruptions.

17. General

- 17.1 Assignment and other dealings
 - 17.1.1 Zund may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - 17.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Zund.
- 17.2 Notices.
 - 17.2.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - a) delivered by hand or by pre-paid first-class mail or other next working day delivery service at its principal place of business; or

- b) sent by email to the address specified in the Order Confirmation.
- 17.2.2 Any notice shall be deemed to have been received:
 - a) if delivered by hand, on signature of a delivery receipt; and
 - b) if sent by pre-paid first-class mail or other next working day delivery service, at 11.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 17.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 Entire agreement.
 - 17.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - 17.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - 17.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 17.7 Third parties rights.
 - 17.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights by third parties to enforce any term of the Contract.
 - 17.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 17.8 **Amendment.** Except as set out in these Conditions, no amendment of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorized representatives).
- 17.9 **Governing Law, Arbitration, and Exclusive Jurisdiction.** The Contract and any claims or disputes arising therefrom, shall be governed by, construed under, and interpreted in accordance with the laws of the State of Wisconsin. If there is any claim or dispute arising between the parties regarding or arising of the Contract, the parties agree to submit said claim or dispute to final, binding, and non-appealable arbitration in Milwaukee County, Wisconsin. The arbitrator shall be mutually selected by the parties and the arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association. In the event of a challenge to this arbitration requirement or if this arbitration requirement is held or determined by a court to be unenforceable, any legal suit, action, or proceeding arising out of or based on this Contract shall be instituted only in either the state or federal court located in Milwaukee County, Wisconsin, which shall be the sole and exclusive venues for any such claim or dispute, without regard to conflict of laws principles.