



## **APPLICATION NOTE**

**FOR THE GENERAL CONDITIONS  
FOR THE SUPPLY OF PRODUCTS AND SERVICES OF THE ELECTRICAL AND ELECTRONICS INDUSTRY ("GL")**

– as of June 2011 –

### **1. SCOPE OF APPLICATION**

The GL are designed as general terms and conditions for commercial businesses. They should be used only vis-a-vis companies, corporate bodies or "special assets" under public law, but should not be used vis-a-vis private consumers since this could render some of the important clauses void.

Furthermore the GL are designed for domestic businesses. Should they, however, be used for foreign business partners in particular cases, we urgently recommend obtaining legal advice. For instance, it is advisable to agree on an arbitration clause instead of the venue clause (Article XIII.1 GL), especially with business partners domiciled outside the EU.

### **2. TO EFFECTIVELY INCLUDE GENERAL TERMS AND CONDITIONS IN A CONTRACT**

To assure that general terms and conditions are effective against a domestic business partner, the following requirements must be fulfilled:

#### *EXPRESS REFERENCE*

Between commercial entities it is necessary and sufficient for one party to expressly refer to its general terms and conditions at the time of the contract's conclusion or earlier. Example: "Delivery will be carried out under our General Terms and Conditions as of June 2011." The reference must be conspicuous, e.g. on the front page of the offer or of the order confirmation. It should not be printed below the signature. If there are several versions of the general terms and conditions, the then-current version should be indicated. If the reference occurs within the invoice only, but not earlier, the general terms and conditions will not become part of the contract. To merely attach the text of the general terms and conditions without expressly stating that they are made part of the contract would not be sufficient either.

A valid contract can come into being even if both parties refer to their respective general terms and conditions. Both of these terms and conditions then become part of the contract as long as they do not conflict with each other. The conflicting clauses do not become part of the contract; instead the statutory provisions apply.

#### *OPPORTUNITY TO TAKE NOTE*

The other party shall be enabled to reasonably read the full text of the general terms and conditions, e.g. by transmission or download from the internet. But it is irrelevant whether the other party actually reads the terms and conditions. If party so demands, the text of the general terms and conditions should be delivered to it. If this demand meets with no immediate response, the general terms and conditions will not become part of the contract. They will also fail to become part of the contract, if hindrances exist, e.g. if the text is difficult to read or is arranged in a confusing manner.

#### *THE OTHER PARTY'S ACCEPTANCE*

The express or implicit acceptance of the other party is necessary in order to have general terms and conditions effectively made part of the contract. Between businesses it is sufficient that the other party does not object to the general terms and conditions and both parties commence with the contract's performance.

### **3. RETENTION OF TITLE**

The GL as of June 2011 contain an extended retention of title (Article III), which is necessary, if the other party is a reseller or continue processor. Nevertheless there is a separate ZVEI clause for an extended retention of title still available.

### **4. SOFTWARE CLAUSE**

The ZVEI software clause is based upon the GL and contains additional special regulations for the provision of standard software forming an integral part of supplies, especially concerning rights to use and defects as to quality. The software clause should not be used separately, but only together with the GL. The software clause applies only to standard software that is provided as part of the attendant hardware supply or at least in connection with it, as well as to the entire delivery as far as an infringement or default originates from the software. The software clause applies both to perpetual as to temporary provisions of software.

### **5. GENERAL TERMS AND CONDITIONS, INDIVIDUAL AGREEMENTS**

Being general terms and conditions the GL are subject to strict legal restrictions in respect to their content, especially concerning exclusion and limitation of liability provisions. There is much more freedom regarding the legal provisions in an individually-negotiated agreement. This would always prevail over the GL or other general terms and conditions. For more detailed information please enquire our GL Guide that is available (in German only) at "[www.zvei.org/recht](http://www.zvei.org/recht)".