

Contract

Sample Customer

and – hereinafter referred to as the ‘CUSTOMER’ –

Zentek GmbH & Co. KG (AG Köln, HRA 13559), Ettore-Bugatti-Straße 6 -14, 51149 Cologne, Germany.

VAT-ID-No.: DE 173 788 828

– hereinafter referred to as “ZENTEK” –,
– hereinafter also referred to collectively as the ‘Parties’ –

conclude the following contract with the contract number: **Sample123**.

1. Terms Used and Their Definitions

An explanation or definition of each of the following terms used in this contract is contained in Schedule 2 to this contract.

Packaging Act (VerpackG)

Manufacturer / Duales System

Zentrale Stelle / Gemeinsame Stelle

Packaging subject to system participation

Estimated volume / Adjusted estimated volume

Year-end volume / Increased volume / Reduced volume

Minimum invoice amount

Customer portal

2. Objects of the Contract

2.1 As a manufacturer, the CUSTOMER participates – with 100% of the packaging subject to system participation that is placed by it on the market – in the Duales System Zentek, i.e. a system operated by a waste management company, and commissions ZENTEK with the taking back and recycling of this end-user product packaging.

2.2 ZENTEK ensures the proper fulfilment of the CUSTOMER’s obligations under packaging law in accordance with the provisions of the VerpackG through the direct participation of packaging in the Duales System ZENTEK and is authorised to do so by the CUSTOMER pursuant to Paragraph 33 VerpackG (Authorising Third Parties).

2.3 ZENTEK is entitled to engage subcontractors to fulfil its contractual obligations.

3. Volume Report, Registration Number

- 3.1 The CUSTOMER must, for the first time at the time the contract is concluded, report to ZENTEK the estimated volume that it expects to put on the market in the first contractual year.
- 3.2 The CUSTOMER must report to ZENTEK on or before 31 January of the following year the volumes actually put on the market (actual volumes). The report must be made via the customer portal provided by ZENTEK. The prerequisite for submitting the reported actual volume is the prior confirmation or the adjustment of the estimated volume on or before 31 December for the following year, if the contract has been renewed for a further year.
- 3.3 If the CUSTOMER fails to submit a separate report or an adjustment via the customer portal on or before 31 December, then the annual volume last invoiced is deemed the new estimated volume for the following year.
- 3.4 If the CUSTOMER is obligated by law to provide a declaration of completeness pursuant to Paragraph 11 VerpackG, the actual volume (year-end report) for the previous year with respect to the reported packaging must, no later than 20 March of the respective calendar year, be confirmed as towards ZENTEK by a registered appraiser or by a German certified public accountant, tax advisor, or certified accountant who is registered in accordance with Paragraph 27(2) VerpackG.
- 3.5 The CUSTOMER undertakes to register with the Zentrale Stelle Verpackungsregister (ZSVR) (currently at www.verpackungsregister.org) and to provide ZENTEK, at the time the contract is concluded, with the registration number.
- 3.6 The CUSTOMER is obligated, after reporting its data volume to ZENTEK, to promptly report the same volume to the ZSVR (Paragraph 10 VerpackG).

4. Remuneration, Invoicing

- 4.1 Payment must be made via a payment service provider (such as PAYONE, credit card, SEPA direct debit mandate, or a debiting of the payer's own PayPal account) or per invoice. The annual remuneration is calculated by multiplying the estimated volume per material category by the prices stipulated in the price list (Schedule 1), in observance of any applicable minimum invoice amounts (also Schedule 1).
- 4.2 On or before 31 December of an ongoing year, the CUSTOMER must license the estimated volumes for the following year pursuant to Section 3.3 via the customer portal and effect payment via the payment methods set out in Section 4.1 on the basis of the acknowledged conditions.
- 4.3 A report pursuant to Section 3 that is made late or not made at all entitles ZENTEK to issue the invoice on the basis of its own estimation based on the estimated volume stated by the CUSTOMER or on the volumes reported by the CUSTOMER in previous years. In such a case, the estimated packaging volumes on which the invoicing is based will also be used for any volume reports that may have to be made to the Zentrale Stelle, to which the CUSTOMER grants its consent.

- 4.4 The invoice is issued electronically in adherence to the provisions of Paragraph 14(3) of the [German] Turnover Tax Act (UStG). The CUSTOMER must ensure receipt of the message. The CUSTOMER's e-mail address for receipt of the electronic invoice is:

Mustermann@muster.de

5. Invoicing Based On the Reported Actual Volume (Year-End Report)

- 5.1 ZENTEK is obligated pursuant to Paragraph 19 VerpackG to participate in the so-called 'Gemeinsame Stelle' (clearing house). No later than 15 May of each year, the Gemeinsame Stelle must determine the volume of packaging actually put on the market in the previous year. It then must carry out a financial equalization among all Duales Systems. According to the equalization rules, additional fees must be paid to the Gemeinsame Stelle for increased volumes. For reduced volumes, no reimbursement is made. In light of the foregoing, the Parties agree as follows:
- 5.2 If the mandatory reported actual volume (year-end report), in relation to the individual material categories, shows an increased volume, the additional licensing of and payment for this must be effected using the customer portal via the payment methods set out in Section 4.1.
- 5.3 If the reported estimated volume or the reported actual volume (year-end report), in relation to the individual material categories, shows a reduced volume, then ZENTEK, for the reasons set out in Section 5.1, has no obligation to reimburse the fees already paid by the CUSTOMER for the reduced volume.
- 5.4 If the reported actual volume (year-end report) pursuant to Section 3.2 is not reported or not reported on or before the deadline of 31 January of the ongoing year, then ZENTEK is released from its performance obligations under Section 2.2. in relation to any such increased or reduced volumes.

6. Price Adjustments

ZENTEK is entitled to make price adjustments in so far as the adjustments are due to changes to waste-disposal costs and/or such costs arising from amendments made to statutory/public-administration provisions and/or compulsory rules, especially in relation to the structuring and operating of a system within the meaning of Paragraph 3(16) VerpackG. ZENTEK must give written notice of a price adjustment at least six weeks ahead of time. If the CUSTOMER objects to the price adjustment within two weeks subsequent to receipt [of the notification], the CUSTOMER has the right to prematurely terminate the contract effective as per the point in time at which the price adjustment takes effect. The price adjustment otherwise takes effect at the notified time.

7. Setoff, Retention of Title

The CUSTOMER is only entitled to rights of setoff and to retentions of title to the extent to which its counterclaims are undisputed, expressly acknowledged by ZENTEK, or judicially determined as final and absolute.

8. Liability

- 8.1 Subject to the following contractual provisions, the contracting parties are liable in accordance with the statutory provisions.

8.2 In the case of ordinary negligence, ZENTEK's liability is limited to a) loss arising from a fatal injury, a bodily injury, or an injury to a person's health, and b) loss arising from a breach of a fundamental contractual obligation (a contractual obligation the fulfilment of which makes it possible at all to properly implement the contract and the fulfilment of which the CUSTOMER customarily relies on or is entitled to rely on). In the case of a breach of a fundamental contractual obligation, liability is limited to compensation of foreseeable loss that typically occurs; liability for indirect loss, especially loss of profits, is excluded.

9. Term of the Contract

9.1 The contract begins on [...].

9.2 Each party may terminate the contract by way of ordinary termination by giving notice of termination three months

9.2.1. prior to the end of the calendar year that was agreed on as the final contractual year, or,

9.2.2. once the agreed minimum term of contract has expired, prior to the end of a calendar year.

9.3 The right to terminate the contract by way of extraordinary termination [termination without notice] remains in effect.

9.4 Each party is entitled to terminate the contract by way of extraordinary termination [termination without notice] especially if the respective other party grossly breaches one of its main contractual obligations, or if insolvency proceedings are opened in relation to the assets of the other respective party or if the opening of such proceedings is denied due to an insufficiency of assets.

10. Final Provisions

10.1 If any provision of this contract is or becomes legally invalid in whole or in part, or if there is a gap in the contract or such a gap arises during the term of the contract, this does not affect the validity of the remainder of the contract. In such a case, the statutory provisions apply.

10.2 In the case of more than mere minor amendments to the law applicable to this contract, especially to the VerpackG, the Parties must try, within the transitional periods prescribed by law, to implement the changes that are necessary to enable a continuation of the contract under commercial parameters that are as unchanged as possible for each party.

10.3 No ancillary agreements have been entered into. Modifications and supplementations to this contract must be made in written form (*Schriftform*). The same applies to any agreement to exclude the written-form requirement.

10.4 German law applies to the exclusion of private international law.

10.5 The place of performance for ZENTEK is the registered office of ZENTEK.

10.6 If the CUSTOMER is a merchant (*Kaufmann*), a public-law entity, or a special public-law fund, the exclusive place of judicial jurisdiction (*Gerichtsstand*), including international jurisdiction, for all disputes arising directly or indirectly from this contractual relationship is the registered office of ZENTEK. The same applies if the CUSTOMER has no general jurisdiction (*allgemeiner Gerichtsstand*) in Germany or if its domicile or habitual residence is unknown at the time the suit is lodged. Contrary to the foregoing, ZENTEK is entitled to sue the CUSTOMER at the CUSTOMER's place of general jurisdiction.

10.7 The schedules listed below and attached to this contract form an integral part of this contract:

Schedule 1 (Price List and Estimated Volume)
Schedule 2 (Definitions and Explanations of Terms)

Schedule 1
Price List and Estimated Volume

Material Category	Price € / kg	Volume kg / p.a.
Glass		
Paper/paperboard/cardboard		
Iron metals		
Aluminium		
Plastics		
Liquid packaging boards		
Other composite packaging		
Other materials		

The **net minimum invoice amount** is € _____ per calendar year.

The prices set out above apply per volume-unit (kilogram) put on the market. German statutory VAT must be added to all prices.

Schedule 2**Definitions and Explanations of Terms**

Any use of the term 'Paragraph' without reference to a specific piece of legislation is a reference to paragraphs of the VerpackG. The abbreviation used in the following for the Zentrale Stelle Verpackungsregister is the ZSVR.

Wherever 'Glossary DC-Guidelines' is cited as a source, this refers to the glossary from the 'Declarations of Completeness Guidelines' for the auditing and verifying of declarations of completeness pursuant to Paragraph 11 VerpackG (as per 1 January 2019) of the ZSVR.

Term	Explanation/Definition
(Duales) System	A 'system' is a private legal entity or partnership that satisfies the requirements of Paragraph 3(16) and that is licensed pursuant to Paragraph 18. (Source: Glossary DC-Guidelines / Excerpt)
Gemeinsame Stelle	According to Paragraph 19, every (Duales) System has to participate in a so-called Gemeinsame Stelle (clearing house). Although the Gemeinsame Stelle is a private legal entity, it must perform statutorily prescribed tasks (Paragraph 19(2)). Based on a variety of contractual arrangements, the Gemeinsame Stelle has the task, for example, of offsetting the reciprocal claims between the participating systems, which constantly arise due to the fact that all of the systems are co-users of the existing collection systems and the amounts owed for these are based on the fluctuating market shares of the respective packaging volumes.
Liquid packaging board	'Liquid packaging board' within the meaning of Paragraph 16(2) is liquid packaging within the meaning of Paragraph 3(2) (in the form of composite packaging within the meaning of Paragraph 3(5), in which case the substrate material is cardboard). (Source: Glossary DC-Guidelines)
Manufacturer	A 'manufacturer' is a distributor within the meaning of Paragraph 3(14) and Paragraph 3(9). (Source: Glossary DC-Guidelines)
Year-end report	Report on the volume of end-user product packaging subject to system participation that was put on the market by the Customer in a calendar year and that was subject to participation with ZENTEK.
Customer portal	Customer Portal (zmart): At the time the contract is concluded, ZENTEK must provide the CUSTOMER with the login credentials for the ZENTEK customer portal (zmart) for easy payment and reporting purposes.
Kinds of material	The 'kinds of material' are, with respect to the declarations of completeness commencing in 2019, the kinds of materials listed in Paragraph 16(2), i.e. glass, PPK, iron metals, aluminium, liquid packaging board, other composite packaging. (Source: Glossary DC-Guidelines / Excerpt)
Increased volume	Positive difference between the (adjusted) estimated volume and the total volume of end-user product packaging actually put on the market in a calendar year as per the year-end report.

Reduced volume	Negative difference between the (adjusted) estimated volume and the total volume of end-user product packaging actually put on the market in a calendar year as per the year-end report.
Minimum invoice amount	The minimum amount that must be invoiced per calendar year pursuant to Paragraph 4(1).
Service packaging	<p>'Service packaging' according to Paragraph 3(1) sentence 1 no. 1 a) is 'end-user product packaging' that is filled by the final distributor at the place of sale or in the immediate vicinity of such (e.g. in a room adjacent to the sales room) in order to facilitate or support the physical delivery of the goods to the end consumer.</p> <p>Service packaging is used in retail trade and in the food services industry, for example.</p> <p>'Transport packaging' is not considered service packaging. (Source: Glossary DC-Guidelines / Excerpt)</p>
Packaging subject to system participation	'Packaging subject to system participation' is end-user product packaging or multiple-unit packaging within the meaning of Paragraph 3(8). For determining whether end-user product packaging or multiple-unit packaging is packaging subject to system participation, the Zentrale Stelle has developed the 'Catalogue of Packaging Subject to System Participation', which has the status of an administrative regulation. (Source: Glossary DC-Guidelines)
PPK	'PPK' is the abbreviation of the German terms for paper, paperboard, and cardboard. PPK is one of the kinds of material specified in Paragraph 16(2) VerpackG.
Estimated volume	The volume of the various packaging materials that the CUSTOMER, based on its forecasted sales of its products, will put on the market in the respective calendar year.
Multiple-unit packaging	Multiple-unit packaging is packaging within the meaning of Paragraph 3(1) sentence 1 no. 2. For determining whether end-user product packaging or multiple-unit packaging is packaging subject to system participation, see the 'Catalogue of Packaging Subject to System Participation'. (Source: Glossary DC-Guidelines)
Composite packaging	'Composite packaging' is packaging within the meaning of Paragraph 3(5).
End-user product packaging	'End-user product packaging' is packaging within the meaning of Paragraph 3(1) sentence 1 no. 1. This includes 'service packaging' and 'transport packaging'. (Source: Glossary DC-Guidelines / Excerpt)
Packaging Act (VerpackG)	The full name of the [German] Packaging Act is the 'Act on the placing on the market, the taking back, and the high-grade recycling of packaging' (Verpackungsgesetz – VerpackG) of 5 July 2017 (Federal Law Gazette (BGBl.) 2017, p. 2234) as amended from time to time. (Source: Glossary DC-Guidelines)
Zentrale Stelle	The 'Zentrale Stelle' as understood by the VerpackG is a packaging register known as the Stiftung Zentrale Stelle Verpackungsregister (see Paragraph 24(1)). (Source: Glossary DC-Guidelines / Excerpt)