

ZENITEL Americas (BU Onshore) – TERMS AND CONDITIONS

Zenitel USA, Inc. (hereinafter referred to as “Zenitel”) shall not be bound by Buyer’s terms and conditions unless they are expressly agreed to in writing.

These terms and conditions are subject to change. The most recent version will be available on the Zenitel Order Portal at <https://orderportal.zenitel.com> or upon request. If you have questions about these terms and conditions, please contact your sales representative.

1. PRICE, PAYMENT AND CREDIT TERMS

- a. Price: the enclosed descriptions and prices are for equipment and services only as printed and prices represent Factory Lists Prices without consideration for any other obligations including labor for installation, maintenance, and purchase discounts.
- b. Payment Terms: Invoices are issued upon delivery FCA INCOTERMS 2020.

Buyer agrees to fully pay all valid Zenitel invoices within thirty (30) calendar days of the date of such invoices and to pay a service charge of one and one half percent (1-1/2%) per month on all past due amounts. Any agreed payment term is subject to Zenitel’s credit insurance coverage. If the credit insurer of Zenitel would change the terms of the credit insurance related to the Buyer, then Zenitel has the right to modify the payment terms and/or to demand immediate payment of the outstanding amounts. Zenitel will also have the right to suspend any further delivery to the Buyer.

Receipt of any check, draft or other commercial papers shall not constitute payment unless, and until, such instrument has been honored by the appropriate financial institution(s). Buyer’s account will be placed on “credit hold” when any invoice exceeds forty-five (45) calendar days past due.

Buyer may deduct two percent (2%) from Zenitel net invoice amount provided Zenitel receives payment payment by ACH, wire, or check from Buyer for such invoice within ten (10) calendar days of the date of such invoice.

- c. Dealers who are utilizing personal and/or business credit cards at the time of purchase of Zenitel products are not eligible to deduct any percentage of Zenitel’s net non-taxable invoice amount.
- d. Credit Terms: Buyer agrees that the purchase of Product shall at all times be contingent upon the credit approval of Buyer by Zenitel’s credit department. Upon Zenitel’s request, Buyer agrees to promptly furnish Zenitel financial and business information. Zenitel reserves the right to grant or refuse, or at any time vary, change, or limit the amount or duration of credit.

2. ORDER PLACEMENT

- a. Order placement: Buyers must submit all purchases orders through Zenitel’s Order Portal at <https://orderportal.zenitel.com>, unless otherwise agreed in writing by Zenitel. Zenitel will provide a secure login to each Buyer. Buyer is responsible for ensuring and confirming that the appropriate product(s) and shipping provisions are entered at the time of the order.

- b. Order acceptance: All purchase orders for equipment and services (the “Product”) shall be subject to acceptance in writing by Zenitel at its office located at 6119 Connecticut Ave., Kansas City, MO 64120, and may be rejected for any reason, including without limitation (i) Buyer’s breach of any provision of these Terms and Conditions, or other written agreement between Zenitel and Buyer; or (ii) Buyer’s purchase order has a requested shipment date less than normal lead time for the product.
- c. Order Cancellation: Unless Product for an order has already been shipped, Buyer, at its option, may cancel an order for up to three (3) business days following placement of such order by providing written notice (including via email) to Zenitel. In the event Buyer cancels an order, Buyer agrees to pay Zenitel, Zenitel’s then prevailing restocking fee for the Product set forth on such purchase order (20% of invoice amount).
All Buyer purchase orders for non-standard Product and/or Product whose part number is prefixed with a special designation (the “Custom Product”) are non-cancelable once accepted by Zenitel.

3. SHIPMENT PROVISION

- a. Shipment Terms: All shipments by Zenitel to Buyer shall be FCA Kansas City. Zenitel’s warehouse loading dock in Kansas City, Missouri, and all delivery obligations of Zenitel hereunder shall be deemed satisfied on the date the Product is delivered to a common carrier at such loading dock.
- b. The Shipment Date for any order which contains standard Product, Custom Product or special-order equipment shall be governed by Zenitel’s ability to supply the same and shall be determined by Zenitel on a case-by-case basis.
- c. Unless otherwise instructed, Zenitel will ship partial orders in more than one delivery based on Product availability.
- d. Shipment Rescheduling: Zenitel shall not be required to reschedule any shipment to a date in advance of the originally scheduled Shipment Date but will attempt to do so if the request is made in writing by the Buyer.
- e. Additional Shipping Fees will be billed at an ad-hoc rate for accessorial charges. This includes but is not limited to (a) signature required at delivery (b) delivery intercept or delivery change request after shipment has been acquired by a common carrier, (c) undeliverable shipments returned to Zenitel for any reason, (d) invalid shipping account number or refusal of freight collect costs.
- f. It is the Dealer’s responsibility to notify Zenitel within ten (10) working days from the date of delivery any differences from the enclosed packing list or damages found as a result of shipment. No credits or adjustments can be accepted after this time.

4. PRODUCT RETURNS

- I. General:
To return Product to Zenitel, Buyer must request a Zenitel Return Authorization at

<https://www.zenitel.com/claims-returns-support-form> and complete such form and to receive a valid Zenitel Return Authorization Number. All Product returned to Zenitel must be accompanied by such written Zenitel RMA form and a valid Zenitel Return Authorization Number and must be shipped freight pre-paid to Zenitel. All Product returned to Zenitel for the purpose of repair or return, from outside the United States, are to be sent delivery duties paid at the cost of the Buyer.

II. Return Product for Repair:

- A. If returned Product is under warranty, Zenitel, at its sole option, shall either repair or replace such defective returned Product and ship, freight pre-paid, to Buyer.
- B. Product returned for repair and not under warranty must be accompanied by a purchase order. For information on costs for Product repair, Buyer should contact rma.americas@zenitel.com. If the Product returned for repair is not defective ("No Problem Found"), Buyer shall be charged Zenitel's prevailing rates for testing plus freight.
- C. For Products receiving non-warranty repairs, Zenitel will grant an extended limited warranty of ninety (90) calendar days from the date Zenitel ships the Product back to Buyer.

III. Return Product for Restocking:

- A. Custom, non-standard and third-party Product and/or Product whose part number or model is prefixed with a description "CQ" or "5555" designation may not be returned to Zenitel for credit.
- B. Software licensing may not be returned to Zenitel for credit.
- C. All Buyer requests to return Product for restocking must be in writing and in advance of any shipment of such returned Product to Zenitel. Such written request must contain: (i) the part number of the Return Product; (ii) the quantity of Product to be returned; (iii) Buyer's original purchase order number; and (iv) Zenitel's original invoice number and amount.
- D. Any Product returned for restocking must, at the time of Buyer's request, be currently listed in Zenitel's Product Catalog.
- E. Any Product returned for restocking must: (i) have been shipped by Zenitel to Buyer within the immediately preceding ninety (90) calendar day period; (ii) be unused; and (iii) be boxed in the original Zenitel labeled container(s).
- F. All shipping and handling costs for Product returned for restocking shall be borne completely and exclusively by Buyer.
- G. All Products returned for restocking are subject to inspection and testing by our technical department. Credit may be issued on standard Product in new condition, based on shipping invoice, less twenty percent (20%) restocking fee. At Zenitel's discretion, an additional restocking fee may be applied, or Product may be returned to customer.

- H. All Products returned for restocking, in which the original invoice was paid within 10 calendar days of invoice and received 2% deduction of the net invoice, will have the credit memo value reduced by 2% to equal that of the paid cost.

IV. Replacement of Non-Functional Equipment on Arrival:

In the event Buyer receives a “bad out of box” Product, Buyer may be eligible for advanced replacement on standard production items. All advanced replacements require a Zenitel Tech Support case number which will be generated by Zenitel Tech Support. A new purchase order is required to ship the new Product. Buyer must notify Zenitel within forty-five (45) days following the date of shipment to Buyer date that the Product is “bad out of box”. Buyer must provide Zenitel the original invoice number and a clear problem description to request an advanced replacement.

Customized Products are not eligible for advanced replacement.

5. WARRANTY

Commencing upon the shipment date and continuing for a period of thirty-six (36) months, Zenitel warrants, that under normal use, each Zenitel Product sold and purchased hereunder shall be free from manufacturing defects of material and workmanship. Zenitel’s sole obligation and Buyer’s sole remedy, under this warranty shall be limited to Zenitel repairing or replacing, at its option, defective Product or components thereof when such are returned to Zenitel freight prepaid.

The foregoing warranties are expressly in lieu of all other warranties, express or implied, including the implied warranty of merchantability and/or fitness for a particular purpose. The aforesaid warranties are afforded by Zenitel only to Buyer and shall not be deemed to be warranties to Buyer’s customers or to any other person or entity. Should Buyer elect to offer its own warranty with respect to the Product, said warranty shall be in the Buyer’s name only, and Buyer shall make no representation that Zenitel has any responsibility therein.

All warranties shall become null and void in the event that Buyer, or anyone, alters or modifies any Product without Zenitel’s prior written authorization and/or should Buyer, or anyone, fail to follow Zenitel’s and/or the manufacturer’s recommended installation procedures and instructions.

6. SANCTIONS AND EXPORT CONTROL

The Buyer represents and warrants that neither the Buyer, any shareholder, employee, or director of the Buyer are subject to trade sanctions or export control restrictions adopted, maintained or enforced by the European Union, Norway, the United Kingdom, or the United States of America ("the Sanctions Authorities").

The Buyer represents and warrants that it will comply with sanctions and export control legislation in relation to the Contract including but not limited to, laws, regulations, decisions, or executive orders adopted, maintained or enforced by the Sanctions Authorities. The Buyer acknowledges to comply with the said regulations even if parts of or all such regulations are not formally applicable to the Buyer. The Buyer will retain documentation to support compliance with such laws and regulations. The Buyer will promptly provide all information required by Zenitel to assess Zenitel's sanctions and export control risks in relation to Zenitel's fulfilment of the Contract, or to provide information necessary for Zenitel to obtain licenses or approval by relevant authorities.

The Buyer is aware that Belgian, Norwegian and other countries' sanctions and export control regimes may have imposed restrictions on the Buyer's use of the goods and/or technical data, and/or on their transfer to third parties. The Buyer is therefore not entitled to transfer any part of the Goods under the Contract to any third party without the prior written consent from Zenitel. The Buyer will immediately notify Zenitel and cease intended activities with regards to the Goods in question if the Buyer knows or has a reasonable suspicion that the Goods may be redirected/diverted to other end-use or end users than what has been approved by Zenitel in writing.

The Zenitel shall not be held liable towards the Buyer for any failure to perform and shall be free of any obligations under the Contract, if Zenitel

- Has reason to suspect that by performing the Contract Zenitel will potentially violate sanctions and export control regulations adopted, maintained, or enforced by the Sanctions Authorities
- Fails to obtain necessary licenses or approvals from relevant export control authorities, and/or visas or consents for personnel required to provide Services.
- In a timely manner does not receive requested information from the Buyer enabling Zenitel to conduct sanctions and export control risk assessments pertaining to the deliveries of Goods and Services under the Contract.

The Buyer shall obtain at its own expense all consents necessary for the import of the goods to the country of final destination and where required any visas or consents required for the entry of the personnel into the country of final destination and shall comply with all laws and regulations in connection therewith.

The Buyer shall notify Zenitel promptly in writing upon discovery of any instance where it fails to comply with any of the provisions of this Clause.

The Buyer shall indemnify and hold harmless the Company from and against any losses, damages and claims arising from breach of this Clause. This indemnity shall survive termination of the Contract.

7. LIMITATION ON LIABILITY

Except for gross negligence, willful misconduct or other liability that cannot be excluded by mandatory law, Zenitel's entire liability under these terms and conditions and under law including for negligence or under any indemnity or warranty, shall be limited to 100% of the amount, exclusive of VAT, other taxes and fees, actually paid or payable by the Buyer to Zenitel relating to the actual product and/or services

that form the basis for the claim in the previous 12 month period, calculated from the date the Buyer informs Zenitel in writing of the claim.

Zenitel shall not be responsible to the Buyer for any loss of profits and/or indirect losses arising, such as but not limited to consequential damages, loss of data (including but not limited to business information), interruption of business or financial damages.

8. FORCE MAJEURE

The Zenitel shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a result of the supply of the Goods or Services being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of Zenitel. Without limitation, such circumstances shall include any act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident or breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials or transport, refusal of any licence or permit or any order, sanction or request of any government or government authority. In the event of any such circumstances Zenitel shall have the option (exercisable by notice to the Buyer) to terminate the Contract (whereupon Zenitel shall be relieved of all further liability under the Contract) or to vary the time for delivery or other performance, in any case without incurring any liability for any loss or damage suffered by the Buyer as a result.

9. TRADE NAMES, LOGOS, AND TRADEMARKS

The name "Zenitel" and/or its associated trade names, logos, and trademarks are the exclusive properties of Zenitel and nothing herein gives Buyer an interest in the same. Buyer may not use the name "Zenitel" and/or its associated trade names, logos, and trademarks without prior written authorization, in each and every instance, from Zenitel. All sales to Buyer shall be governed and construed in all respects in accordance with the laws of the State of Missouri.

10. CUSTOMER CODE OF CONDUCT

The Buyer shall comply with and accept Zenitel's [Customer Code of Conduct](#).