

General Terms and Conditions of Purchase and Delivery VOGT GmbH

§1 General information, scope of application

(1) These General Terms and Conditions of Purchase and Delivery apply to all our business relations with our customers (in the following „Customer“) provided the Customer is an entrepreneur (§14 BGB = German Civil Code), a legal entity under public law or a special fund under public law.

(2) All our deliveries, services and offers are based solely upon these General Terms and Conditions regardless of whether such goods are manufactured by ourselves or purchased by us from third-party suppliers (§§433, 651 BGB). These terms form part of all contracts which we enter with our suppliers for deliveries or services offered and also apply to all future deliveries, services or offers provided to the Customer, even if they are not specifically agreed.

(3) These Terms and Conditions of Purchase and Delivery apply exclusively. Differing, contradicting or supplementary Terms and Conditions of the Customer or third-parties will become part of the contract only if and to the extent that we have expressly agreed to them in writing. Our Terms and Conditions of Purchase and Delivery shall also apply if we perform the delivery to the Customer without any reservations in spite of knowing that the Terms and Conditions of the Customer are contrary or deviate from our ones.

§2 Offer and contract conclusion

(1) Our offers are subject to change without notice and non-binding unless expressly designated to be binding or specifying a fixed time frame for acceptance. This also applies if we have supplied samples, drawings, cost estimates, other product descriptions or documents – including in electronic form – in which we reserve ownership and copyright. The Customer must not allow third parties access to these items themselves or to their contents nor may he inform third parties of them, use or reproduce them himself or allow third parties to use or reproduce them without our explicit consent. Upon request, the Customer is required to return completely any such above-mentioned materials and to destroy all copies of documentation if they are no longer needed in the regular course of business or if a contract does not come to conclusion.

(2) Our specifications regarding the delivery or service (e.g. weights, dimensions, use values, load capacities, tolerances and technical data) as well as our representation of the same (e.g. drawings and illustrations) are only roughly applicable unless the usability for the contractually intended purpose requires precise conformity. They are no guaranteed characteristics but descriptions or distinctive features of delivery or service. Typical trade deviations and deviations required by law or which display technical improvements and the replacement of components by equivalent parts are permitted as long as they do not impair the usability of the contractually intended purpose.

(3) The ordering of the goods by the Customer is valid as a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contract offer within 14 days after receipt. This acceptance can either be declared in writing (e.g. by an order confirmation) or by delivering the goods to the Customer.

§3 Delivery period and default in delivery

(1) Delivery dates and delivery periods indicated by us are only approximate unless a fixed date or period is expressly promised or agreed on. If dispatch of the goods has been agreed, delivery dates and periods refer to the time of transfer to the forwarder, carrier or other third party assigned to transport the goods. A prerequisite of our punctual performance is that all commercial and technical questions between the Customer and us have been clarified and that the Customer has fulfilled all contractual obligations for which he is responsible.

(2) If we are unable to meet binding delivery dates for any reasons for which we cannot be held responsible (e.g. lack of energy, import difficulties, operating and traffic disruptions, strikes, force majeure or delays by our suppliers, the delivery period shall be prolonged for the duration of the delay.

(3) Partial deliveries are permitted provided that there are no negative effects for the Customer.

(4) If we should fall into delay with the supply of goods or services or if, for any reason whatsoever, it should become impossible for us to supply such, our liability shall be limited to damages as set forth in §8.

§4 Delivery, transfer of risk, acceptance

(1) Our delivery shall take place ex work Incoterm EXW. At the request and costs of the Customer the goods will be sent to another place of destination (contract of sale to destination). Unless otherwise agreed we are entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves. Information about the weight as well as the dimensions of the packaging are only considered approximate and not binding.

(2) Risk of coincidental loss and coincidental deterioration of the purchased goods passes on to the Customer at the time of handover of the goods at the latest. In the event of sale to destination, however, the risk of accidental loss and accidental deterioration of goods as well as risk of delay is already transferred when the goods are handed to the carrier, forwarder or a third-party charged with transport of the goods. If acceptance has been agreed, then this determines the passing of risk. The statutory regulations of the works contract also apply to the agreed acceptance in accordance with the law. Default of acceptance by the Customer shall be equivalent to delivery or acceptance.

- (3) Any complaints due to transport damages must be made to and claimed against the carrier immediately upon receipt of delivery within the applicable time limits.
- (4) The Customer shall accept short and excess deliveries due to production factors of up to 10% of the ordered quantity.

§5 Prices and terms of payment

- (1) Unless otherwise agreed in a particular case our prices current at the time of conclusion of contract shall be valid. All prices are ex works in Euro plus packaging, the legal value added tax, as well as in case of export deliveries plus customs duty and charges and other public charges.
- (2) In the case of a sale to destination (§4(1)) the Customer bears the transport costs ex work plus transport insurance if requested by the Customer.
- (3) Unless the confirmation of the order states otherwise, the purchase price is payable net (without a discount) within 30 days from the date of invoice.
- (4) With the expiry of the above-mentioned term of payment the Customer will be in default without the necessity of a reminder. During the payment default, interest will be charged according to §288 BGB. We reserve the right to claim additional damage due to delay of payment. Our claim for the commercial maturity interest (§ 353 HGB =German Commercial Code) against merchants remains unaffected.
- (5) The Customer is only entitled to the rights of set-off or retention if his counterclaims are either legally established or undisputed.
- (6) We are within our legal rights to fulfil pending deliveries or services only against an advance payment or security deposit, when on conclusion of a contract, circumstances are made known, that are appropriate in reducing the creditworthiness of the Customer considerably and through which the payment of our outstanding claims by the Customer within the framework of the existing contractual relationship is at risk.

§6 Reservation of title

- (1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and an ongoing business relationship (secured claims).
- (2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The Customer must inform us immediately in writing if and insofar as there are any accesses of third parties to the goods which belong to us.

(3) In cases of actions by the Customer which are in breach of the agreement, in particular in cases of non-payment of the due purchase price, we will be entitled to cancel the agreement as provided by law and demand possession of the goods by reason of retention of title and the withdrawal. In the event that the Customer does not pay the due sales price, we can assert these rights only if we have previously set the Customer a reasonable period for payment without result or if the setting of such a period is superfluous according to the statutory regulations.

(4) The Customer is obliged to treat the goods subject to a retention of title with care and to insure it sufficiently for the original value against damages regarding fire, water and theft. Any claims under the particular contract of insurance are already at this early stage assigned to us. We hereby accept this assignment.

(5) The Customer is entitled to resell and/or further process any goods subject to the reservation of title in the ordinary course of business. In this case, the following rules will apply additionally.

(a) The reservation of title covers the products which are produced by processing, mixing or combining our goods at their full value, whereby we are considered to be the manufacturer. In case of processing, mixing or combining our goods with products of a third party, the title of which is retained, we shall acquire co-ownership in such processed, mixed or combined goods in proportion to the invoice value. Furthermore the same applies for the resulting product as well as for the supplied goods which are subject to reservation of title.

(b) As a security, the Customer shall already transfer to us now and immediately all claims against third parties resulting from the sale of goods or products, either in full or up to our potentially shared ownership according to the section above. The Customer's duties under §2 also apply to the claims assigned.

(c) The Customer remains authorised to collect this claim in addition to us. We, however, engage ourselves not to call in the claims as long as the Customer meets his payment obligations to us, does not become in default of payment, no application is made for opening insolvency proceedings, and there is no other deficiency in the Customer's performance capacity. However, if any such circumstances arise we can request that the Customer informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(d) If the realisable value of the securities held by us exceeds our claims by over 10%, we will release the securities of our choice upon your request.

§7 Warranty

(1) The statutory regulations shall apply to the rights of the Customer in case of defects of quality and title insofar as not otherwise determined in the following.

(2) The Customer has the duty to inspect the goods immediately upon their arrival for defects. Regarding noticeable defects the Customer has to notify us in writing about any deficiency within two weeks upon receipt of goods or - if deficiency comes up later - within two weeks upon discovery. The obligation to examine the goods and give notice of defects according to §377 HGB remains unaffected.

(3) The customer has the duty to give us the necessary time and opportunity for due subsequent performance, especially to hand over the goods concerned completely for inspection reasons. We have to be informed by the Customer in advance about return shipments in order to ensure acceptance of the shipment. A paid self-performance of defect repairs by the Customer or third-parties requires our written agreement in advance.

(4) Deviations in dimensions are unavoidable during manufacturing. Therefore tolerance ranges are reserved according to the relevant state of technology (general tolerances according to DIN 40680 medium, form and position tolerances according to DIN ISO 8015 independent). Tolerances different from those specified in these standards have to be agreed separately in each case. The acceptance quality at the customer is checked according to the AQL inspection level 2.5 I single sampling plan except otherwise agreed.

(5) Warranty does not apply if the Customer modifies the goods or let them modify by third parties without our agreement and which makes the supplementary performance impossible or more difficult. In any case the Customer has to bear the additional costs for the supplementary performance caused by this modification.

(6) Claims of the Customer for damages or reimbursement incurred in vain only exist as provided in §8; otherwise such claims shall be excluded.

§8 Other liability

(1) Unless otherwise results from these General Terms and Conditions of Purchase and Delivery and the subsequent provisions, we will be liable on violation of the contractual and non-contractual duties according to the relevant legal regulations.

(2) We can be hold liable in case the damages arise from gross negligence or due to breaches of cardinal obligations of the contract regardless of any legal basis. In case of ordinary negligence we will only be liable for a) damage caused by harming life, body or health, b) damage resulting from violation of a major contractual commitment (an obligation whose fulfilment makes the proper execution of the agreement possible at all and on the adherence to which the contractual partner relies and may rely on a regular basis) - in this case, however, our liability is restricted to foreseeable and typically occurring damage.

(3) The limitations of liability stated in §2 do not apply to the extent that we have fraudulently concealed a defect or have accepted a quality guarantee. The same applies for claims of the Customer according to the Product Liability Act.

(4) The Customer can only withdraw from the contract or cancel the contract due to a breach of duty which does not consist in a defect, if we are responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§ 651, 649 BGB) is excluded. Otherwise the legal preconditions and legal consequences are applicable.

§9 Property rights

(1) It is exclusively up to the Customer to ensure that the objects to be manufactured by us in the contract do not violate the copyrights of third parties. The Customer hereby agrees to inform us immediately of any third-party property right claims with regard to the delivered products.

(2) The Customer is obliged to release us from all claims which third parties may assert due to a violation of commercial or industrial property rights as referred to in section 1 above, and to reimburse us for all necessary expenses in connection with this claim. In the case of a violation of industrial property rights for which the Customer is responsible, the Customer is obliged to pay compensation for any resulting damage.

(3) Should a third party prohibit us from manufacturing or delivering under reference to a protected property right it owns, we shall be entitled to suspend the production and delivery until the legal situation has been clarified by the Customer and the third party.

(4) If the Customer demands the affixing of test symbols of any kind, the Customer guarantees the articles concerned are entitled to bear these test symbols.

§10 Construction, tools

(1) Models, tools, forms and devices as well as their modifications will be invoiced separately to the Customer. Allocated costs are due within 14 days after issuing of invoice without deduction. The Customer acquires the ownership after full payment.

(2) The models, tools, forms and devices as well as the the constructions proportionally invoiced to the Customer, remain in our possession in order to protect the construction. Their delivery cannot be required even in case of complaints and regardless of whether deliveries are made from them or not.

(3) The copyrights, rights of utilisation and exploitation rights regarding all models, tools, forms or matrices created for the Customer or third-parties remain our property.

(4) The costs for maintenance, overhaul and repair of these models, tools, forms and devices due to usual wear and tear are borne by the Customer unless otherwise agreed. The costs in case of a potential damage or loss are borne by us.

(5) If there are no orders for tools or matrices placed within 5 years after delivery of the last order, then we are entitled to destroy the tool or the matrix after prior notification of the Customer.

§11 Limitation period

(1) Notwithstanding §438 par. 1 no. 3 BGB the general statute-of-limitations for claims from defects of quality and title is one year from delivery. If acceptance has been agreed, the limitation period begins with the acceptance.

(2) The above-mentioned limitation periods shall also apply to the Customers contractual and extracontractual compensation claims based on defective goods, except if the use of the standard legal limitation period (Sections 195, 199 BGB) results in a shorter limitation period in individual cases. The limitation periods of the Product Liability Law will remain unaffected in any case. Apart from that the statutory limitation periods according to §8 apply exclusively for damage claims of the Customer.

§12 Choice of law, place of fulfilment and jurisdiction

(1) The law of the Federal Republic of Germany applies to all legal relations between the Customer and us under exclusion of the United Nations Sales Convention.

(2) Unless the order confirmation states otherwise, our place of business is also the place of fulfilment.

(3) In cases in which the Customer is a merchant in terms of the Commercial Code, a legal entity under public law or a special fund under public law, our registered place of business is the exclusive – also international place of jurisdiction for all disputes resulting directly or indirectly from the contractual relation. However, we shall also be entitled to take action at the general place of jurisdiction of the Customer.

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