

# General Terms & Conditions

## § 1 Scope

- These terms and conditions shall not apply to contracts with endusers.
- Otherwise these terms and conditions shall apply exclusively unless otherwise agreed in writing. Conflicting or deviating terms and conditions of the customer are not binding for us, even if we have not expressly objected to these or have made the delivery in the knowledge of conflicting terms and conditions.

## § 2 Contract

- Our offers are without obligation with regard to price, quantity, delivery and lead time. Customer orders shall only become binding upon receipt of written acceptance in the form of printed confirmation (invoice or delivery note).
- Other orders, instructions, explanations and notifications of the customer are valid without a form. Subsequent changes are to be clearly marked as such. The burden of proof for the contents as well as the correct and complete transmission shall be done by the party who refers thereto.
- Insofar as the written form is requested for explanations remote data transmission and all other legible forms shall be deemed equivalent to a written form provided the sender can be identified.

## § 3 Scope of deliveries and services

- Insofar as documents (drawings, technical data, etc.) are enclosed with our offers, these are estimations only and in particular are not guaranteed. Advice which we may provide in terms of application technology either verbally, in writing and through tests is carried out to the best of our knowledge and is deemed as non-binding advice with regard to possible property rights of third parties. It does not release the customer from their own verification of the products delivered by us for their suitability for the intended processes and purposes.
- The right is also expressly reserved to make changes in the productions methods, the recipes, the materials, etc. after the contract as long as the price and/or the essential specifications or the delivery time are not changed thereby.
- We reserve the right to over- and under-deliver to a manufacturing tolerance of 10 % of the ordered quantity. The customer cannot derive any rights from such a discrepancy in quantities.

## § 4 Delivery dates

- The delivery dates stated by us are non-binding. The pre-requisite is the full clarification of all questions relating to technical details. Any deviations need to be expressly agreed in writing.
- If a specific delivery time is expressly agreed in writing we shall only be deemed in default after a separate written reminder and after expiry of the final deadline stated therein, which must be reasonable.
- Force majeure of all kinds, unforeseeable disruption to operation, transport or shipment, fire damage, flooding, unforeseeable lack of manpower, energy, raw materials or auxiliary materials, strikes, lock-outs, government orders or other impediments for which we are not responsible, which reduce, delay or prevent or make unreasonable the production, the shipment, the acceptance or the use, release from the obligation to deliver and/or accept during the duration of the disruption. If the delivery and/or receipt is exceeded by more than 8 weeks as a result of the disruption then both parties are entitled to cancellation. With partial or full loss of our procurement sources we are not obliged to cover our requirements from third party sub-suppliers.
- We reserve the right to make partial and/or early deliveries.
- The adherence to delivery deadline by us presumes the timely and proper execution all contractual duties of the customer in particular his payment obligations.

## § 5 Risk Transfer, shipment, packaging

- The risk of deterioration, loss or damages to the delivered goods shall pass to the customer upon despatch or collection by the customer. Unless otherwise agreed in writing, we reserve the right to choose the shipment route and the type of shipment.
- There are no costs for standard packaging. Special packaging will be charged at cost. Costs associated with any special customer requests will also be charged to the customer. The same shall apply to increases in the cargo rates which occur after conclusion of the contract, possible additional re-routing costs, storage costs, etc., insofar as carriage paid delivery was not agreed.
- Deliveries into countries abroad are made upon basis of the current Incoterms 2020.

## § 6 Price, payment terms, security

- Our prices are valid for minimum net order values of EUR 160,--. Individual line items are subject to minimum quantities for made to order and stock items as shown in the relevant price list. The minimum order value of EUR 160,-- must be reached. For orders less than EUR 160,-- net we shall charge a surcharge of EUR 15,-- or increase the order to EUR 160,-- taking into account our sales units. Orders of less than EUR 60,-- net will not be delivered.
- The prices which apply on the date upon which the order is placed shall be invoiced unless otherwise expressly agreed in writing. Should we generally increase our prices during the time between conclusion of the contract and delivery then the customer is entitled to cancel the contract within a period of 2 weeks after publication of the price increase unless the price increase is due explicitly to an increase in cargo rates. The right of cancellation shall not apply to permanent supply contracts (Continuous Obligation contracts). Deposits and pre-payments are to be made plus value added tax.
- In case of changes in the financial circumstances of the customer after conclusion of the contract which may raise doubts about the customer meeting the payment obligation, or if we only become aware of such circumstances, then we shall be entitled to withhold the delivery of the goods until a) the customer either makes a pre-payment payment or b) has provided reasonable collateral. If the latter is not carried out within a reasonable period of time we are entitled to cancel the contract, also insofar as we have not provided the service yet.
- Retention on the part of the customer is excluded. He may only offset against undisputed claims or claims which have been declared final and absolute.
- We shall grant cash discount of 2 % (excluded bills of exchange) for payments received within 14 days from invoice date. The payment terms are 30 days net cash. The customer shall be deemed in default, without a reminder, with the expiry of the 30th day after invoice date. We reserve the right to use payments to settle the oldest due invoice item plus the interest on default and costs accrued on this amount in the following order: costs, interest, principal claim.
- Bills of exchange and cheques are only accepted as conditional payment. The acceptance of bills of exchange requires our express written consent. In such a case the bank, discount and collection charges shall be charged separately to the account of the customer.

## § 7 Customer Claims for quality defects

- We shall only accept rectification for quality defects according to the statutory regulations by improving defects in the recipe, the quality or in the design or delivering substitute goods at our choice free of charge within a reasonable period of time. Other or further claims of the customer owing to quality defects are excluded. Subclause 5 below remains unaffected.
- In case of a complaint of quality defects samples of the reported goods are to be sent to us for assessment. The balance of the goods under complaint is to be kept available without specific request for the duration of one month – at no charge to us – on request these goods are to be returned to us for inspection.
- Even with the existence of quality defects we are only obliged to subsequent rectification if the customer specifies in writing the recognisable quality defects according to §§ 377, 378 HGB [Commercial Code] within a period of 10 days after receipt of the goods and has informed us within this period unless he has resold the item in normal business transactions before discovery or identification of the quality.
- Product specifications or other features of the delivered goods, which are mentioned in the order documents, do not include any warranted properties and/or guarantees.
- If we are not willing to correct quality defects or are not in a position, within a reasonable time frame set to us, then the customer is entitled to cancel the contract or demand a reduction in the purchase price. Further claims of the customer, no matter for what legal grounds, – in particular claims for damages, also those of a non-contractual type – are excluded insofar as we, our executives and other vicarious agents can only be accused of ordinary negligence as a breach of duty. We shall only be liable for indirect damages and for damages which were not foreseeable at the time when the contract was concluded if there is a case of gross negligence. Mandatory statutory liability regulations remain unaffected.
- The warranty period is 2 years from risk transfer.

## § 8 Retention of title

- Title of goods shall only pass to the customer if he has met all his liabilities from the business relationship with us including secondary claims, claims for damages and the redemption of cheques/bills of exchange. This shall also apply to claims of such companies, in which we directly hold 50 % shares or more. The retention of title shall also continue to exist if individual claims are included in a current account and the balance is drawn and recognised.
- A possible processing or conversion of reserved goods by the customer is always undertaken on our behalf. If the reserved goods are processed with other items which do not belong to us we shall acquire the co-ownership for the new items as a ratio of the value of the reserved goods to the other processed items at the time of processing. Incidentally the same shall apply to the items produced as for the reserved goods themselves.
- We are entitled to demand that the reserved goods from the customer without setting a final deadline and without cancellation of the contract if he is in default with his obligations with us. The return of the reserved goods shall only represent a cancellation of the contract if we expressly declare this in writing.
- The customer is entitled to resell the delivered items. However he hereby assigns all claims to us which he acquires against the buyer or third parties from the resale no matter whether the reserved goods are resold without or after processing. The assignment comprises all claims with all secondary and security rights including bills of exchange and cheques. If reserved goods are sold together with other items at a total price the assignment shall be limited to the pro rata amount from our invoice for the co-sold reserved goods. If goods are sold in which we have a co-ownership share according to the above rules then the assignment is limited to that part of the claim, which corresponds with the co-ownership share of the goods delivered by us. If the customer uses the reserved goods for finishing items which are the property of a third party against payment he hereby assigns in advance his remuneration claim against the third party to us for the afore-mentioned security purpose. As long as the customer meets his payment obligations in time he is entitled to claims from a resale or a finishing process himself. He is not entitled to pledges of any assignments whatsoever.
- If our claims appear at risk to us, then the customer must inform his buyers of the assignment upon request and provide us with all necessary information and documents. The customer must inform us immediately of any claims of third parties to the reserved goods and assigned claims.
- If the value of the collateral to which we are entitled exceeds our claims which are to be secured against the customer by more than 20 % then we are, upon request of the customer, obliged to release collateral items. The collateral item to be released shall be chosen by us.

## § 9 Trademarks

- It is not permitted to offer or deliver substitute products instead of our products with reference to these products nor to use the word „substitute“ in connection with our product designations no matter whether protected or not, in price lists and similar documentation nor to compare these with the designations of substitute products.
- It is further not permitted when using our products for manufacturing purposes or further processing, to use our product designations, in particular our trademarks, on such goods or their packaging or in printed format and advertising material without our prior consent – in particular as a specification of a part. The delivery of products under a trademark is not to be classed as consent for the use of this trademark for the products produced from these.

## § 10 Place of performance and jurisdiction; applicable law; validity clause

- The place of performance for the delivery is the respective shipment department, the place for payment is Hanover.
- The place of jurisdiction for both parties is Hanover. We are also entitled to make our claims at the general place of jurisdiction of the customer.
- German law shall apply exclusively. Customary trade terms are to be interpreted according to the respective applicable Incoterms. If agreed that we shall bear customs and import duties of the country of destination any increases in such duties which come into force between the submission of the order confirmation and delivery of the goods shall be for the account of the customer. All other fees, taxes and costs associated with the purchase contract shall also be borne by the customer.
- Should individual clauses of these terms and conditions be invalid in whole or in part this shall have no effect on the validity of the other clauses or the other parts of such clauses. The parties must replace an invalid clause with a clause that, as far as possible, corresponds to the commercial intention of the invalid clause and is valid.

## § 11 Data protection

According to § 26 Par. 1 BDSG [Data Protection Act] we point out that we store personal data, of which we are made aware of during the contract.

## § 12 International purchase contracts

Insofar as the buyer is registered outside Germany German law shall apply exclusively under the inclusion of the CISG. In this case the following special terms shall apply notwithstanding the afore-mentioned sales terms:

- Contract amendments or cancellations must be made in writing. This shall also apply to agreements with regard to the cancellation of this written form clause.
- We shall be liable to the buyer for damages according to the statutory provisions, insofar as a breach of contract is due to willful or gross negligent breach of duty for which we are responsible; or a fault of our representatives or vicarious agents shall be attributed to us. We shall also be liable according to the statutory provisions insofar as we breach an essential contractual duty.
- In the event of delivery of goods in breach of the contract the buyer shall only be entitled to cancel the contract or to substitute delivery if claims for damages against us are excluded or it is not deemed reasonable for the buyer to use the goods which are in breach of the contract and claim for remaining damages. In these cases we are initially entitled to remedy the defect. If the remedy of the defect fails and/or it leads to an unreasonable delay the buyer is entitled, at his choice, to declare the contract null and void or demand substitute delivery. The buyer is also entitled to do this if the remedy of the defects causes unreasonable inconvenience or there is uncertainty about the reimbursement of possible expenses of the buyer. The remedy of the defect shall be deemed as failed after the second unsuccessful attempt.
- Responses of the customer to an offer from us which assume an acceptance, however contain supplements or deviations, always represent a rejection of our offer associated with a new offer of the buyer, even if the supplements or deviations do not essentially change the conditions of the offer.
- We do not guarantee that the goods delivered by us comply with the standards and laws at the location, at which the goods delivered by us are used or where they are resold unless it concerns international standards, i.e. in particular possible ISO Standard which apply to the goods or the buyer has informed us of the standards or other applicable regulations before conclusion of the contract and we have expressly confirmed their compliance. The technical compatibility of the goods delivered by us with tools and machines of the buyer or his buyers is the responsibility of the buyer unless we have expressly confirmed this.
- The interest for arrears is 8 percentage points above the base lending rate according to § 247 BGB in the respective version.
- If we have to repay the purchase price this shall bear interest according to Art. 84 Par. 1 CISG at the statutory interest rate according to § 246 BGB [Civil Code], should we be in arrears the interest rate valid on the day when arrears commenced will apply.
- Notwithstanding Art. 90 CISG contracts made under the law of other countries are not valid.

Status: Hanover, February 2020  
VSM AG