

## General Terms and Conditions of Variotech GmbH

### 1. Scope of Application

- (1) All our deliveries, services and offers shall be performed solely on the basis of these General Terms and Conditions. They are an integral part of all contracts which we enter into with our customers for deliveries or services offered by us. They also apply to all future deliveries, services or offers to the client, even if they are not subject to a separate agreement.
- (2) Terms and conditions of the client or third parties shall not apply, even if we do not specifically object to their validity in individual cases. Even if we refer to a letter that contains the customer's terms and conditions or those of a third party or refers to such, this does not indicate any agreement to the applicability of those terms and conditions.

### 2. Offer and Conclusion of Contract

- (1) Our offers are subject to change and non-binding unless they are expressly marked as binding or include a specific term of acceptance. The documentation pertaining to offers such as illustrations, drawings, weights and measurements or other technical data as well as DIN or other company and industry-wide standards and samples designate only the subject of the contract; unless confirmed in writing, they do not constitute a guaranteed condition or characteristics. Deviations according to custom and usage or deviations resulting from legal provisions or constituting technical improvements as well as replacement of components by equivalent parts are permissible as far as the usability for the contractually stipulated purpose is not affected.
- (2) Our written order confirmation is binding for the content and scope of the contract. Sub-agreements, changes and additions to the agreements made, including these General Terms and Conditions, are only valid in written form. To meet the requirement of written form, transmission by fax or email is sufficient.
- (3) We reserve the right of ownership or copyright on all offers and cost estimates issued by us as well as on drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and resources made available to the client. Without our express approval, the customer is not permitted to disclose or make these items as such or their content available to third parties or to allow use or reproduction by himself or by third parties. At our request, the customer must return these objects in their entirety and, where applicable, destroy any copies made if they are no longer needed by him during the course of normal business activities or if negotiations do not lead to the conclusion of a contract.

### 3. Prices and Payment

- (1) Prices apply to the scope of services and delivery listed in the order confirmation. Additional or special services will be charged separately. The prices are quoted ex works including loading, however excluding packaging and value added tax, which are at the expense of the customer. This includes the full provision of services when notification of dispatch readiness is received.
- (2) If return freight is paid, we credit wood pallets with 2/3 of the invoiced value. The basis is state-of-the-art technology and the relevant accident prevention regulations as well as safety-related regulations valid at the time when offer is submitted.
- (3) If delivery of goods or provision of services takes place later than four months after conclusion of contract and if wages and material costs or the prices of our suppliers increase after the effective date of the contract, we are entitled to increase the contract price accordingly. If our customer does not completely accept an order that has been firmly placed, then we are authorized to charge a minimum quantity surcharge.
- (4) The invoices are issued on the day of full provision of services (notification of dispatch readiness). They must be paid in full in contract currency within 30 days from date of invoice without any deductions. The date of receipt at our place is decisive for the payment. If - in individual cases and on the basis of express agreement - bills of exchange or checks are accepted, it is only on account of payment; the value shall be credited on the value date, subject to receipt. We are not liable for a timely presentation or protesting of bills of exchange. The customer bears the discounting and collection costs. In the event of default, the customer shall pay interest in the amount charged to us by our bank.
- (5) If we are entitled to several claims against the customer, we will determine (also if allocated to a current account) to which debt the payment is to be applied.
- (6) The offsetting with counterclaims by the customer or the withholding of payments against such claims is only permitted if the counterclaims are undisputed or have been established as legally valid.
- (7) If after entering into the contract we become aware of circumstances which may significantly reduce the credit worthiness of the customer, or the agreed payment conditions are not met, we are entitled to either request from the customer the immediate payment of all our open claims resulting from the business relationship or demand provision of collateral. If we have accepted bills of exchange, we may declare them due without justification or return them and demand immediate payment. We are also entitled to withdraw from the unfulfilled part of the contract or demand advance cash payment or collateral prior to further deliveries.

### 4. Delivery and Delivery Time

- (1) Deliveries are ex works. This includes the full provision of services when notification of dispatch readiness is received.
- (2) Deadlines and dates for the deliveries and services proposed by us apply only approximately unless a fixed deadline or a fixed date has been expressly promised or agreed. If shipping has been agreed, delivery deadlines and delivery dates refer to the time of transfer to the forwarder, carrier or other third party assigned to transport the goods. For reasons of deep-drawing technology, we reserve the right to exceed the agreed delivery quantity by 5% or fall short by 10%.

- (3) Regardless of our rights concerning default on the part of the customer, we can ask him for an extension of the delivery and service deadlines or postponement of delivery and service dates by the period for which the customer fails to meet his obligations towards us.
- (4) Adherence to deadlines and dates is subject to final clarification of any technical details and, if necessary, the timely provision of specifications or any documents, consents, releases etc. to be obtained from the customer, and the creation of any other conditions necessary and, if applicable, the receipt of the contractually agreed down payment.
- (5) We are not liable for the impossibility of delivery or delay in delivery if caused by force majeure or other events (e.g. all forms of disruptions in operations, difficulties in obtaining material and energy, delays caused by transport delays, strikes, legal lockouts, shortage of labor, energy or raw materials, difficulties in obtaining the required official authorizations, official measures or non-delivery, incorrect delivery or late delivery by suppliers) that could not have been foreseen at the time of contract conclusion and for which we are not responsible. If such events make delivery or services for us difficult or impossible and the obstruction is not only temporary, then we are entitled to withdraw from the contract. If the impediments are temporary, the delivery and service deadlines are extended or the delivery or service dates are postponed by the period of the impediment plus a reasonable start-up period. If, as a result of the delay, the customer cannot reasonably be expected to accept the delivery or services, he may withdraw from the contract by providing us with an immediate written statement.
- (6) We are entitled to partial deliveries if the
  - partial delivery can be used by the customer within the scope of the intended contractual use,
  - the delivery of the remaining goods ordered is guaranteed and
  - no significant additional work and expenses are incurred by the customer due to this (unless we agree to assume the respective costs).
- (7) If delivery or service is delayed, the customer is entitled to withdraw from the contract after expiration of a reasonable grace period of at least three weeks. The withdrawal must always be in form of a written statement. If the delay is limited to part of a delivery and service, then the right of withdrawal is also limited to the part in question if - based on objective assessment - the remaining contract is not affected by such a limitation of the right of withdrawal.
- (8) If we are late with a delivery or service, or if a delivery or service becomes impossible to us for whatever legal reason, then our liability is limited to compensation for damage in accordance with section 9 of these General Terms and Conditions.

### 5. Place of Fulfillment, Shipment, Packaging, Passing of Risk, Acceptance

- (1) Place of fulfillment of all obligations from the contractual relationship is Nordholm, unless otherwise specified.
- (2) The clearance of goods shipped by us is at the expense and risk of the customer, the latter even if prepaid delivery has been agreed. Shipment and packaging are subject to our sound commercial judgment. The shipping instructions of the customer are only binding if they have been agreed in writing. Extra costs for expedited transport or other type of shipment or the use of other means of transport shall be charged cash on delivery or invoiced to the customer if the different dispatch has been requested by the customer.
- (3) The risk is transferred to the client latest when the delivery item is handed over to the forwarder, carrier or other third party specified for carrying out the shipment (whereby the beginning of the loading process is decisive). This also applies even if partial deliveries take place or if we have undertaken other services (e.g. shipping). If dispatch or handover is delayed due to circumstances for which the customer is responsible, the risk is transferred to the customer on the day when the delivery item is ready for shipment and customer has been notified by us accordingly.
- (4) The customer bears storage costs after transfer of risk. If delivery items are stored on our premises, which is only done in exceptional cases, then the storage costs are 20 cent plus value added tax per European pallet and calendar day. The right to claim and proof of additional or lower storage costs remain reserved.
- (5) The shipment will be insured against theft, breakage, transport, fire and water damages or other insurable risks only if specifically requested by customer and at his expense.
- (6) If shipments are damaged or incomplete, then the facts must be reported immediately after receipt.
- (7) Insofar as an acceptance must take place, the purchased goods are considered as accepted if
  - the delivery has taken place in full,
  - we have informed the customer about this under the provision of fictitious acceptance as per section 5 and asked him to accept,
  - if twelve days have passed since delivery or the customer has started using the purchased goods and if in this case six days have passed since delivery
  - and the customer refuses acceptance within this time period for a reason other than the defect reported to us which makes the use of the purchased goods impossible or significantly impairs it.
- (8) Tools that become part of the customer's fixed assets after payment will be insured by us, stored free of charge for 36 months and serviced prior to the respective start of production. If after the expiration of 36 months no new assignment is given within 12 months, we will charge the customer an annual storage fee of € 99.00 for the past 12 months. Alternatively, the customer is entitled to release the tools for proper disposal or arrange a return at his expense.

## 6. Factoring

- (1) We are entitled to assign claims from customers for refinancing to active Factoring AG, Briener Strasse 23, 80333 München. During initial conclusion of the contract, the customer is informed whether the claims will be assigned. In such cases, payments with discharging effect can only be made to active factoring AG. The purchaser will receive the bank details of active factoring AG at the time of contract conclusion. In such cases, our reserved ownership is also transferred to active Factoring AG.

## 7. Warranty, Material Defects

- (1) The following regulations apply to our warranty and other liability concerning deficiencies in delivery or services, including incorrect deliveries or services.
- (2) The warranty period is one year from date of delivery and if acceptance is required, from date of acceptance.
- (3) The goods supplied must be thoroughly inspected immediately after delivery to the customer or to a third party appointed by customer. The goods supplied are considered approved if we do not receive a written complaint concerning the obvious defects or other defects visible in the course of an immediate, thorough inspection within seven working days after delivery of the delivery item or otherwise within seven working days of discovery of the defect or any other time before that at which the defect became evident to the client during normal use of the delivery item without closer inspection, as stipulated under section 2 (2) sentence 3. At our request, the rejected delivery item must be returned to us freight paid. In case of a legitimate complaint, we will reimburse the costs of the cheapest method of dispatch; this does not apply if the costs increase because the delivery item is located somewhere other than the intended place of use.
- (4) If the items supplied have material defects, we are entitled and obligated, at our own discretion, to either rectify the items or replace the claimed goods upon return within a reasonable period, excluding costs for dismantling and installation or assembly. We are liable for rectifications or replacements in the same way as stated in the warranty period that applies to the original delivery and service, however for a minimum of three months from completion of the rectification or rendering of replacement delivery or service. The customer is obligated to give us an opportunity for rectification during normal working hours after prior consultation. In the event of failure, i.e. impossibility, unreasonableness, refusal or undue delay in rectification or delivery of replacement, the customer is entitled to withdraw from the contract or reduce the purchase price appropriately. However, in case of undue delay of rectification this applies only after a final grace period of at least 5 working days.
- (5) If a defect is based on our fault, the customer can demand compensation under the conditions specified in section 9.
- (6) If products are manufactured according to design specifications provided by customer, we are only liable for manufacturing. If a claim for damages is made against us by third parties on account of damages that did not originate in our production area but rather in the area under customer's responsibility, the customer is obligated to indemnify us from such claims.
- (7) In case of defects in components from other manufacturers that cannot be eliminated by us for reasons of licensing law or factual reasons, we will - at our discretion - either assert the warranty claims at the expense of the customer against the manufacturers and suppliers or assign them to the customer. In case of such defects, warranty claims against us under the other conditions and in accordance with these General Terms and Conditions exist only if judicial enforcement of the aforementioned claims against the manufacturer and suppliers has been unsuccessful or is futile, for instance due to bankruptcy. During the duration of the legal dispute, the limitation period of the respective warranty claims of the customer against us is suspended.
- (8) The warranty becomes null and void if the customer repairs or modifies the delivery item or has it repaired or modified by third parties without our consent, thus making the rectification of defects impossible or unreasonably difficult. In any event, the client bears the extra costs resulting from the rectification of defects. The customer has the right to remedy the defect by himself or by a third party only in urgent cases where operational safety is at risk, of which we must be informed immediately. In this case he will be reimbursed for the costs that would have been incurred had we rectified the defect.
- (9) The assertion of warranty claims does not affect payment obligations and payment terms.
- (10) If, in individual cases, the delivery of used items is agreed with customer, any warranty for material defects is excluded.

## 8. Property Rights

- (1) According to section 8, we guarantee that the delivery item is free of industrial property rights and third party copyrights. Each contracting partner will immediately inform the other contracting partner in writing if claims are made against him based on the violation of such rights.
- (2) In the event that the item supplied infringes a third party industrial property right or copyright, we will - at our discretion and expense - either alter or replace the delivery item in such a way that it no longer infringes any third party rights, but so that the delivery item continues to meet its contractually agreed functions or procure the right of use for the customer by concluding a license contract. If we fail to do so within a reasonable period, the customer shall be entitled to withdraw from the contract or reduce the payment by a reasonable amount. Any claims for damage made by the customer are subject to the restrictions contained in section 9 of these General Terms and Conditions.
- (3) In case of violation of rights by products that we supplied from other manufacturers, we will - at our discretion - assert the claims against the manufacturer and upstream supplier at the expense of the customer or assign the claims to the customer. In such cases, claims against us in accordance with section 8 exist only if judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers has been unsuccessful or is futile, for instance due to bankruptcy.

## 9. Liability for Damages Due to Fault

- (1) Our liability for damages, regardless of the legal reasons, in particular impossibility, delay, faulty or incorrect delivery, violation of contract, violation of obligations during contract negotiations and unlawful acts is, to the extent that it involves a fault, limited to the respective contract value and maximum € 25,000, according to section 9.
- (2) We assume no liability in case of minor negligence by our executive bodies unless it concerns the infringement of contractual obligations. Essential contractual obligations include the obligation to carry out the timely delivery of goods that are free of essential defects, consulting, protection and due care obligations that enable the customer to use the delivery item in accordance with the contract or whose purpose is to protect life and limb of the customer's staff or his property from major damage.
- (3) If we are liable for compensation on the grounds of and in accordance with section 9 (2), this liability is limited to damage which we have foreseen at conclusion of contract as a possible consequence of a contract violation or should have foreseen if we had exercised reasonable care. Indirect damage and consequential damage resulting from defects in the delivery item are only subject to compensation if such damage is typically to be expected when using the delivery item as intended.
- (4) The aforementioned exclusions and limitations of liability apply to the same extent in favor of our executive bodies, legal representatives, employees and other vicarious agents.
- (5) If we provide technical information or act as advisers, and this information or advice is not part of the contractually agreed scope of services to be provided by us, then this is done free of charge and with the exclusion of any liability.
- (6) The limitations of section 9 do not apply to our liability due to deliberate conduct, guaranteed characteristics, injury to life, limb or health or according to the product liability law.

## 10. Reservation of Ownership

- (1) The reservation of ownership agreed to below serves as collateral for all our currently existing and future claims, regardless of the legal reasons, including any claims from bills of exchange as well as claims acquired from third parties according to the business relationship between the contracting partners. In case of an open account, our collaterals are regarded as collateral of the respective balance claim.
- (2) The ownership of the goods supplied by us to the customer remains with us until complete payment of all secured claims. The goods, as well as the goods covered by the reservation of ownership that take their place according to this clause, are hereinafter referred to as reserved goods.
- (3) The customer stores the reserved goods at no cost to us.
- (4) The customer is entitled to process and sell the reserved goods within the course of proper business until the event of enforcement (section 9). Pledges and transfers of collateral are not allowed. The right to sell expires when payments are stopped, bankruptcy proceedings have been applied for or opened, or receivership has been initiated. The installation of the reserved goods into properties or buildings and their use to meet other works or works delivery contracts also constitutes a sale in the above sense.
- (5) If the reserved goods are processed by the customer, it is agreed that the processing is done on our behalf and for our account as manufacturer and that we shall directly acquire the ownership or, if the processing involves goods of several owners or the value of the processed goods is higher than the value of the reserved goods, co-ownership (fractional share) of the newly created item in proportion of the value of the reserved goods to the value of the newly created item. The value of our delivery is determined by our delivery price including value added tax and without any deduction. In the event that no such acquisition of ownership occurs for us, the customer transfers to us his future ownership or, proportionately as above, co-ownership of the newly created item as collateral. If the reserved goods are combined to a single item or inseparably mixed and one of the other items is to be considered the main item, then - if the main item is owned by us - we transfer a co-ownership interest in the single product to the customer in the proportion defined in sentence 1 above.
- (6) If the reserved goods are resold, the customer here and now assigns the claims from the buyer arising from this - in case of co-ownership of the reserved goods proportionally according to the co-ownership share - to us as collateral. When sales are made within the framework of a current account relationship, our extended reservation of ownership relates to the current account claims or, after balancing to the balance claim. The same applies to other claims that take the place of the reserved goods or otherwise accrue with respect to reserved goods, e.g. insurance claims or claims resulting from unlawful acts in case of loss or destruction. We give customer a revocable authorization to collect the claims assigned to us in his own name. We may revoke this direct debit authorization only in the event of enforcement.
- (7) If third parties take hold of the reserved goods, particularly through seizure, the customer must make the third parties immediately aware of our ownership and inform us accordingly to allow us to enforce our ownership rights. If the third party is unable to reimburse us the judicial or out of court costs incurred in connection with this, the customer shall be liable for these.
- (8) Upon request, we shall release at our discretion the reserved goods and the goods that take their place if their value exceeds the secured claims by more than 20 %.
- (9) If we withdraw from the contract in case of contract violation by the customer - in particular default in payment - (event of enforcement), we are entitled to demand the return of the reserved goods.
- (10) Taking back the reserved goods shall not be deemed a withdrawal from the contract. The latter only applies if it is explicitly declared in writing by us. We are not required to provide a grace period before taking back the goods.

## 11. Prohibition of Assignment

- (1) The assignment of claims to which the customer is entitled against us under the business relation is excluded.

## 12. Final Provision

- (1) The place of jurisdiction for any disputes arising from the business connection between customer and us is, at our discretion, Nordhorn, Köln or the registered office of the customer. In the case of legal action against us, the exclusive place of jurisdiction is Nordhorn. Mandatory legal provisions on exclusive places of jurisdiction remain unaffected by this rule.
- (2) The relations between the customer and us are governed solely by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.

- (3) If the contract or these General Terms and Conditions contain any loopholes, those legally valid provisions which the contracting partners would have agreed on according to the economic objectives of the contract and the purpose of these General Terms and Conditions, had they been aware of these loopholes, shall apply to fill these loopholes.

- (4) Should a provision of these General Terms and Conditions and the additional agreements entered into be or become invalid, the validity of the remaining provisions of the General Terms and Conditions is not affected. The contractual partners are obligated to replace the invalid provision by a provision that comes as close to its economic success as possible.

Variotech GmbH  
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