

## **General Terms of Sales and Delivery**

### **§ 1**

#### **General scope of application**

- (1) Our Terms of Sale and Payment to which the customer declared his agreement at the time of placement of the order shall apply exclusively, including to future business transactions where they have not been referred to specifically but where they have been sent to the ordering party in the event of a previous order confirmed by us. Even where the order is placed in deviation from our Terms of Delivery and Payment, our Terms of Delivery and Payment shall apply, even when we do not state our disagreement. Deviations shall therefore be valid only when they have been expressly accepted by us in writing.
- (2) All agreements made between us and the customer for the purpose of the contract, are included in this contract in writing. Our terms of sales and delivery only apply in case of companies in the sense of § 310 paragraph 1 BGB.

### **§ 2**

#### **Quotation – documents of quotation**

- (1) If the order is to be qualified as quotation as per § 145 BGB, we can accept it within a term of two weeks by written order confirmation. The written order confirmation is decisive for the amount of the delivery.
- (2) We reserve the right of changing without prior information design and form of the subject matter of the contract, which due to technical progress support an improvement or better safety of the subject matter of the contract and which do not have any influence on the agreed upon and contractually assumed suitability for use of the subject matter of the contract; we are, however, not obliged to execute the said changes on products already delivered.
- (3) The customer is not entitled to transfer rights arising from this contract to third parties without prior approval.
- (4) We reserve the rights of ownership and copyright of photos, drawings, samples, calculations and other documents with the exception of printed matters of advertising. This also applies to such written documents, which are marked as "confidential". The customer needs the explicit permission of Uni-Geräte in writing before passing on any such information to third parties. They must be returned to us on request.

### **§ 3**

#### **Conditions of price and payment**

- (1) Unless the order confirmation states to the contrary our prices are to be understood in EURO "ex works" (Weeze), excluding packaging; the latter will be invoiced separately.
- (2) The prices apply, which are valid at the day of the delivery.
- (3) Legal VAT is not included in our prices; it will be separately shown on the invoice in the legal amount at the day of the date of the invoice.
- (4) Unless stated differently in the order confirmation, the sales price is due for payment without deduction within 30 days from the date of the invoice. Should the purchaser be in arrears with any payment obligations to us, all existing claims shall become immediately due.  
In case of delayed payment or respite we are entitled to charge interests amounting to 9 % points above the respective basic interest rate; the enforcement of a higher claim due to delay remains reserved.
- (5) We are entitled to transfer the claims from our business relationships.
- (6) All payments with debt-discharging effect are to be made exclusively to VR FACTOREM GmbH, Ludwig-Erhard-Straße 30 - 34, 65760 Eschborn, to whom we have transferred out current and future claims arising from our business relationship. We have also transferred our reserved property to VR FACTOREM GmbH.
- (7) Depending on the kind of packaging the cost price or the share of rental costs will be charged to the customer.
- (8) A set-off by the purchaser against counterclaims is excluded, unless the counterclaims are undisputed or have been established as final and absolute. The assertion of a right of retention by the purchaser is excluded, unless it is based on the same contractual relationship or the counterclaims are undisputed or have been established as final and absolute.

### **§ 4**

#### **Deterioration of the financial position**

- (1) If after signing of the contract concrete evidence occurs for any lack of the customer's ability to perform, we will be entitled to stop further working on the running order for such a period of time, until the customer will have paid the purchasing price owed to its full amount, or has produced securities of the respective amount. It must be assumed that there is concrete evidence for a lack of the customer's ability to perform, if he is in respite with more than just a small part of the sum owed to the seller and if he did not fulfil his payment obligation completely even after expiry of an adequate period of time, if sustained attachment or other general execution is implemented against him or if judicial or extra-judicial insolvency procedures have been opened against him.
- (2) If the customer does not fulfil continuously our request of pre-payment or granting of securities against receipt of the owed performance within a period of time determined by us, we will be entitled to cancel the contract and to demand damages instead of performance. There is no liability for damages, if the customer is not responsible for the circumstances due to which the in-time payment of the purchase price or the granting security is not possible.

## § 5

### Time of delivery, delay of delivery

- (1) The beginning of the delivery period is based on the condition that all technical questions have been answered and that the customer has provided all papers, permissions, releases and other documents necessary for the implementation of the contract.
- (2) Our fulfilling of our obligations of delivery is furthermore based on the in-time and orderly fulfilling of the obligations of the customer, especially the punctual receipt of a down payment probably agreed upon. We reserve the right of the plea of the non-fulfilled contract.
- (3) Unless agreed upon to the contrary the delivery time is considered as fulfilled, if the subject matter of contract leaves our plant by the date of expiry of the delivery time. Wishes as per changes or additions of the customer will prolongate the delivery time respectively.
- (4) We are entitled to partial delivery and partial performance at any time, unless partial delivery or partial performance is not within the interest of the customer.
- (5) Even in case of bindingly agreed upon terms and dates we are not responsible for delays of delivery and performance due to force majeure and due to events, which not only considerably impede or render impossible our delivery for a short period of time – this includes especially strikes, lockouts, and regulations of authorities, and this also if these events occur with our supplier or their sub-suppliers. The latter entitles us to delay the delivery, or respectively, performance by the period of time of the problems plus a reasonably start-up time or to cancel the contract partially or totally due to the not yet fulfilled part. The latter entitles us to delay the delivery, or respectively, performance by the period of time of the problems plus a reasonably start-up time or to cancel the contract partially or totally due to the not yet fulfilled part. If the problems take longer than three months the customer is entitled to cancel the contract after granting a reasonable additional period of time with regard to the not yet fulfilled part. If the delivery time is prolonged or if we get free of our obligation, the customer may not derive any liability claims from the latter. We may only refer to the mentioned circumstances if we informed the customer immediately after getting to know such circumstances.
- (6) Unless agreed upon to the contrary orders which we confirm on call, must be accepted at the latest within a year after the date of the order. The same applies to postponing of dates or additional putting to "on-call".
- (7) If the customer does not take delivery in due time or if he violates certain obligations of participation, we will be entitled to request the payment of the thus arising addition expenses. If the customer gets into debtor's delay with the acceptance of the subject matter of contract, we are entitled to set a reasonable period of grace, to use the subject matter of the contract in some other way after unsuccessful expiry of this period of time and to supply the customer within reasonably prolonged period of time, if he was informed on the latter as well as on the setting of a period of grace and if there are no justified interests of the customer standing against it. In this case we are entitled to correspondingly change our prices, if between the day of a different use of the subject matter of contract by us and the day of the acceptance of the subject matter of the contract by the customer increases or decreases of prices occurred, especially due to tariff agreements or changes of the price of material. This does not concern our rights to cancel the contract after setting a period of grace and to request damages instead of performance or the payment for futile expenses. If we request damages instead of performance, we may request - conditional to proving of the actually caused damage 20 % of the agreed upon price as indemnification without proof; it remains to the customer to prove that no or only minor damages have occurred. Further claims, especially due to culpable violation of further obligations for cooperation of the customer, remain reserved.
- (8) With occurrence of the delay of acceptance or the debtor's delay of the customer as per paragraph (7), the danger of accidental loss or accidental deterioration is passed to the customer.
- (9) We accept liability as per legal regulations if the purchase contract, which is the basis of the business, is a fixed business within the sense § 286 paragraph 2 no. 4 BGB or of § 376 HGB. We also accept liability as per legal regulations if as a consequence of a delay in delivery, for which we are responsible, the customer is entitled to claim that his interest in a further validity of the contract on longer exists. In the above mentioned cases, however, our liability for damages is limited to the predictable typically occurring damage.
- (10) We furthermore accept liability according to the legal regulations, if the delay of delivery is due to a violation of the contract for which we are responsible or which is grossly negligent; the respective default of our representatives or employees is to be regarded as our responsibility. If the delay of delivery is not due to a wilful violation of the contract by us, our liability for damages is limited to the predictable typically occurring damages.
- (11) We also accept liability as per legal regulations in so far as the delay of delivery for which we are responsible is based on a culpable violation of an essential contractual obligation; in this case, however, our liability for damages is limited to the predictable typically occurring damage.
- (12) Apart from that we accept liability in case of a delay of delivery for every complete week of delay within the frame of a flat-rate compensation for delay amounting to 0.5 % of the invoice value of the goods or performances affected by the delay, as a maximum however, for up to 5 % of the invoice value of the goods and performances affected by the delay of delivery.
- (13) With the exception of the cases in paragraph (9) the customer has the right to cancel the contract due to out-of-time delivery by us only if he has previously set a reasonable period of grace for the fulfilling of the contract and if we are responsible for the circumstances due to which delivery is delayed.
- (14) Further legal claims and rights of the customer remain reserved.

## § 6

### Passage of risk, costs of packaging

- (1) Unless stated to the contrary in the order confirmation delivery "ex works" (Weeze) is agreed upon.
- (2) If the customer wants the delivery to be covered by any transport insurance, we will sign one respectively; the customer will bear the thus arising additional costs.

## § 7

### Liability for defects of the goods delivered, liability due to breach of duty

- (1) The deficiency rights of the customer are based on the fact, that the latter has correctly fulfilled his obligations of checking and complaining in accordance with § 377 HGB.
- (2) If our operation and maintenance instruction are not followed, if the products are changed, if parts are exchanged or if consumables are used, which do not correspond to the original specifications, claims due the defects of the subject matter of the contract become void, if the customer does not disprove a correspondingly substantial statement that only one of these circumstances caused this defect.
- (3) We do not accept liability for normal wear and tear.
- (4) If there is a defect of the subject matter of the contract, we are entitled at our discretion to either repairing it by means of remedying the defect or to supply a new subject matter of contract without defect. In case of repairing of the defect we are at our discretion entitled, to request the customer to send us the defect part for the purpose of repair with subsequent sending back of the repaired part or to execute a repair of the part which has been made available by the customer on site. We are obliged to bear all costs up to the amount of the purchase price which are necessary for the necessary expenses for the repair, especially costs for transport, travelling, working time and material up to the amount of the purchase price, unless these costs increase due to the fact that the subject matter of the contract was taken to another site than to the place of delivery.
- (5) The customer is entitled at his discretion to either cancel the contract or to reduce the purchasing price, if a repair is not successful after a reasonable period of grace.
- (6) We accept liability as per the legal regulations, if the customer claims damages which are based on purpose or gross negligence, including on the purpose or gross negligence of our representatives or employees. If we are not charged with purposeful violation of contract, the liability for damages is limited to the predictable, typically occurring damage.
- (7) We accept liability as per legal regulations, if we guiltily violate some essential contractual obligation; in this case, however the liability for damages is limited to the predictable, typically occurring damage.
- (8) The liability because of guilty violation of life, body or health remains unchanged; this also applies to the binding liability according to product liability regulations.
- (9) Unless agreed upon to the contrary the liability is excluded.
- (10) Only the immediate purchaser is entitled to claims against us due to defects; they cannot be transferred.
- (11) The statutory period of limitation amounts to 12 months from the point of time of passage of risk.

## § 8

### Joint liability

- (1) A further liability for damages as planned for in § 7 is excluded - without regard of the legal nature of the claim. This especially applies to damage claims resulting from negligence at signing of the contract, due to other violations of obligations or due to tortious claims for replacement of damages as per § 823 BGB.
- (2) The limitation as per paragraph (1) also applies if the customer instead of the claim for damages requests replacement of useless expenses instead of performance.
- (3) In so far as the liability for damages against us is excluded or limited this also applies with regard to the personal liability for damages of our employees, staff member, workers, representatives and agents.

## § 9

### Reservation of ownership

- (1) We reserve the ownership of the purchased matter until receipt of all payments resulting from the business relationship with the customer; in case of mutual accounts this reservation refers to the acknowledged balance. If we agree with the customer on payment of the purchasing amount on the basis of the check-bill procedure, the reservation includes the customer's handing in of the bill accepted by us and does not become void to the crediting of the received check by us. In case of behaviour of the customer contrary to the contract, especially in case of delay of payment, we are entitled to take back the purchased matter. Our taking back of the purchased matter includes a cancellation of the contract. For the assertion of the rights arising from the reserved property, no withdrawal from the contract is necessary. After taking back of the purchased matter we are entitled to commercialisation of the product, the revenue of the commercialisation is to be set off against the obligations of the customer – minus reasonable costs for commercialisation.
- (2) The customer is obliged to treat the purchased matter carefully; he is especially obliged to ensure it sufficiently at replacement value against damages by fire, water and theft at his own expense and . If maintenance and inspection jobs are necessary, the customer must execute them at his own expense and in time.
- (3) In case of attachment or other intervention of third parties the customer must immediately inform us in writing so that we can suit correspondingly as per § 771 ZPO. In so far as the third party is not able to reimburse us with the judicial and extra-judicial costs of a law-suite as per § 771 ZPO, the customer is liable for the deficit occurring to us.
- (4) The customer is entitled to further sell the purchased matter in an orderly business process; however, as early as now he assigns all claims amounting to the final sum of the invoice (including VAT) of our claims, which may arise to him from the further selling against his purchasers or third parties, and this independently on the fact whether the purchased matter has been sold without or after machining. The claim assigned to us by the customer in advance also relies to the acknowledged balance as well as in case of an insolvency of the buyer to the then existing "causal" balance. Even after the assigning the customer remains entitled to the cashing the claims. Our authorization to cash the claims ourselves remains unaffected. However, we oblige ourselves to not cash the claims as long as the customer fulfils his payment obligations from the revenues, does not make default of payment and especially if nobody petitions the court to make an order for insolvency proceedings and if no suspension of payments occurs. However, if this is the case, we can determine that the customer

informs us on the assigned claims and of their debtors, of all information necessary for collection, hands out the necessary documents and informs the debtors (third parties) on the assignment.

- (5) The processing and changes of the purchased matter by the customer will always be done for us. If the purchased matter is further processed together with other matters, which do not belong to us, we acquire common ownership on the new matter in the ratio of the value of the purchased matter (final sum of invoice, including VAT) to the other processed matter at the point of time of the processing. By the way the same as in case of the purchased matter supplied under reservation applies to the matter arising from the processing.
- (6) If the purchased matter is inseparably mixed with other matters, which do not belong to us, we acquire common ownership to the new matter in the ratio of the value of the purchased matter (final sum of invoice, including VAT) to the other mixed matters at the point of time of the mixing. If the mixing is done in such a way that the matter of the customer is to be regarded as main ingredient, it is considered as agreed that the customer transfers the share of common ownership to us. The customer stores the thus created sole or partial ownership of the matter for us.
- (7) The customer also assigns the claims for the assurance of the safety of our claims against him to us, which arise from the connection of the purchased matter with his site against third parties.
- (8) We accept the obligation to release the securities to which we are entitled on request of the customer in so far, as the realisable value of our securities does not exceed the claims to be ensured for only a short time by more than ten %; we are entitled to select the securities to be released as per due discretion.

## § 10

### Place of jurisdiction – place of delivery

(1) If the customer is a merchant, a juridical person of the public right or is utility fund under public law, our place of business is place of jurisdiction or Frankfurt am Main, as we choose for all disputes arising directly or indirectly from the contractual relationship; however, we are entitled to sue the customer at his place of business as well.

(2) The contractual relationship is subject exclusively to German law, in particular the Bürgerliche Gesetzbuch (German Civil Code) and the Handelsgesetzbuch (German Commercial Code).

The validity of the UN purchasing law is excluded.

(3) Unless resulting differently from the order confirmation, our place of business is settling place for delivery and payment obligations arising from the contractual relationship to the customer.

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